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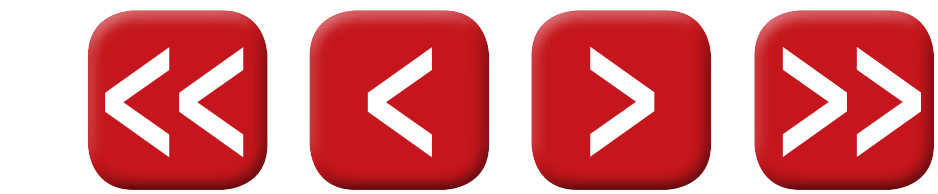

BACK TO CONTENTS PAGE

PREVIOUS PAGE

NEXT PAGE

NEXT SECTION/ FEATURE

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BACK TO CONTENTS PAGE

PREVIOUS PAGE

NEXT PAGE

NEXT SECTION/ FEATURE

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nationwide

News from around the country

Keith Walsh is principal of Keith Walsh Solicitors, where he works on civil litigation and family law cases

CORK

We have monsters in practice now?

In one of his first events after his appointment as Law Society president, Cork's own Simon Murphy returned to his roots to chair a monster practitioner update on Friday 13 November in the Clarion Hotel, Cork. Organised by Law Society Skillnets in partnership with the Southern Law Association and the West Cork Bar Association, it was one of the biggest CPD events in Cork in the last few years, as local colleagues turned out to support the new president.

One local lag was quoted as saying: "The last man to get a welcome like Murphy got in Cork last Friday was Jack Lynch." Speakers included local solicitors Patrick Ahern of RDJ and Patrick Dorgan of Coakley Moloney, Alan Haugh BL (deputy chair of the Labour Court), Liz Pope (examiner of titles, PRA), Paul Keane (Reddy Charlton), Colette Reid (course manager and skills leader, Law Society), Elizabeth Rimmer (LawCare) and Dr Geoffrey Shannon (Special Rapporteur on Child Protection).

MONAGHAN

Cluster events come to Monaghan

PIC: GLENN MURPHY PHOTOGRAPHY

At the recent CPD cluster event in Monaghan on 16 October were *(back, l to r)*: Anne Stephenson, Katherine Kane, Nicola Kelly, Conor MacGuill, Kevin Hickey, Richard Hammond, Lynda Smyth, Colette Reid and Ellen Twomey; *(front, l to r)*: Justine Carty, Dr Geoffrey Shannon, Úna Burns, Teri Kelly, Kevin O'Higgins (then Law Society president), Dermot Lavery, Attracta O'Regan and Frances Twomey

DUBLIN

Legal cartoons no laughing matter

Felix Larkin, noted historian and former public servant, had a capacity audience in stitches at the RDS when he presented his lecture as part of the Hugh M Fitzpatrick and RDS Speaker Series on 'The asinine law: Irish legal cartoons, circa 1800-2015' on 11 November.

Events took a funny turn even before Felix took the stage, as the head of the RDS Speaker Series introduced the eponymous Hugh M Fitzpatrick, who introduced press ombudsman Peter Feeney, who finally introduced the speaker.

Introductions over, Felix guided the assembled lawyers, judges, cartoon aficionados and one former taoiseach through over 150 hilarious years of legal cartoons. To sum up the last 40 years in four words – Martyn Turner is God.

GALWAY

Shut that door!

The Galway Solicitors' Bar Association held its AGM on 4 December 2015 in Galway Courthouse. In addition to the AGM, there were one-hour regulatory and one-hour general CPD points up for grabs.

Shane O'Donnell (legal costs accountant) gave an update on legal costs. The AGM was followed by the annual Christmas social in The Front Door pub on Shop Street.

Gazette v *Parchment* at IMAs

The *Gazette*'s poor relation, *The Parchment* (of the DSBA), and the *Gazette* itself are battling it out, as we go to press, at the Irish Magazine Awards (think 'Golden Cleric' awards, but for magazines).

The two magazines go head-to-head in four awards. In the 'best editor' category, it's the *Gazette*'s team of Mark McDermott and Garrett O'Boyle v *The Parchment*'s John Geary. The best journalist awards see the *Gazette*'s Lorcan Roche face a previous award winner from *The Parchment* in Stuart Gilhooly.

Other categories where they face off are 'best magazine' and 'best cover'. All was revealed on 3 December, when the awards took place in a blaze of glamour in the Chocolate Factory.

The DSBA *Parchment* was determined to exact revenge for last year, when the *Gazette* scooped the pool. Informed sources indicate that the odds-on favourite for magazine of the year is *Hair Today*, while *Weasel Week* and *Badger Matters* are both even-money favourites. With competition like that, let's hope both solicitors' mags take the gongs.

representation

News from the Law Society's committees and task forces

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

New *ADR Guide* available from Society

Then President of the Law Society Kevin O'Higgins recently launched a new guide on alternative dispute resolution (ADR) for solicitors. Drafted by members of the Law Society's ADR Committee, the *ADR Guide 2015* is available on the Society's website and is intended to increase awareness of the different methods of ADR available.

One of the aims of the guide is to encourage solicitors to advise their clients about the availability of ADR and its potential as an alternative to court proceedings. The guide provides a practical summary of the various forms of ADR, including mediation, arbitration, expert determination, adjudication and conciliation. The pros and cons of the various methods are identified and the differences between each method are explained. Importantly, the different roles of practitioners utilising each method is identified.

The booklet serves as a quick and practical guide when advising clients about the various forms of ADR, and it will help them choose the most appropriate method, depending on each particular situation.

PIC: LENSMEN

Pictured at the launch of the new *ADR Guide 2015* are *(l to r)*: John Lunney (secretary, ADR Committee), Kevin O'Higgins (then president), Helen Kilroy (McCann FitzGerald), Deirdre Flynn (course leader, Diploma in Mediation) and James Kinch (chair, ADR Committee)

HUMAN RIGHTS COMMITTEE

Launch of human rights report and annexes

The formal launch of the *Report on the Application of the European Convention on Human Rights Act 2003 and the European Charter of Fundamental Rights: Evaluation and Review* took place at the Annual Human Rights Conference on 10 October at Blackhall Place.

The Law Society and the Dublin Solicitors' Bar Association (DSBA) commissioned the report, which examines the impact of the convention and charter on Irish case law. It was published online in July 2015.

Authored by Dr Suzanne Kingston and Dr Liam Thornton of UCD, it reflects their exceptional expertise and knowledge of human rights law. The Law Society and DSBA are particularly grateful to the authors for producing such an excellent legal source of reference and analysis for practitioners.

One of the primary aims of the report is to raise awareness among practitioners of the human rights protected by the *ECHR Act 2003* and the charter, and their application and development by the Irish courts. Annexes were also developed that provide an extensive list of decided cases in which the convention, charter, or *ECHR Act* have been pleaded. This enables a detailed exploration of the potential of both the act and charter to be used in litigation.

The report and annexes are available at the Human Rights Committee's page on lawsociety.ie, under the 'Resources tab'. Printed copies can be ordered at www.lawsociety.ie/ECHR-Act-2003.aspx for €28.25, including P&P.

IN-HOUSE AND PUBLIC SECTOR COMMITTEE

In-house solicitors – have your voice heard!

As part of the Law Society's ongoing commitment to understanding its members, a survey will be rolled out shortly to help it gain a deeper insight into the important and ever-changing role that in-house solicitors occupy in the legal profession.

There has been a marked increase in the number of in-house solicitors practising in Ireland. This growth, along with the dynamic nature of the challenges faced by corporations and the public sector in Ireland, has brought with it an evolution in the role of the in-house solicitor.

The Society wants to ensure that it is in a strong position to represent every solicitor in Ireland as its member base continues to grow and develop. It is keen to identify key issues and trends affecting in-house solicitors so that it can better ensure that it is working to meet members' needs. It also wishes to assist with promoting the value that in-house solicitors bring to both public and private-sector enterprises in Ireland.

Gazette makes IMA shortlist for sixth year in a row

Once again, your *Gazette* has been shortlisted in this year's Irish Magazine Awards (IMAs), the national awards for consumer and business-to-business publications.

For the sixth year in a row, the *Gazette* has been nominated in the 'Best business-to-business magazine' category (which it won in 2010 and again in 2014 and 2015). In addition, it's hoping to make it a hat-trick for 'Best cover'.

The *Gazette* is vying with national titles in several other categories, including 'Journalist of the year' and 'Editor of the year' (the *Gazette*'s Mark McDermott and Garrett O'Boyle) while John Geary (*The Parchment*) is also in the running.

The awards take place as we go to press, and the results will be published on the Society's website and social media.

William Fry invests €290,000 in telecoms

William Fry has signed a deal worth €290,000 for the deployment of an integrated unified communications solution in its new offices at Grand Canal Square, Dublin. The solution, provided by US company, ShoreTel, has been installed by Irish company Phone Pulse.

The law firm expects to save up to €16,000 a year from its technology investment. Benefits will include increased staff productivity and the availability of new features such as instant messaging, call visibility, mobile app integration and local call rates between Ireland and the US.

Barry Dillon (regional sales director, ShoreTel), David Lang (sales director, Phone Pulse) and Michael Devitt (IT director, William Fry)

L&W mentoring programme announced

Law and Women (L&W) is a new pilot mentoring programme that has been set up to support women in legal practice. The programme is the joint initiative of the Law Society and the Bar of Ireland, in collaboration with the Irish Women Lawyers' Association.

Encompassing solicitors, barristers and staff of both the Law Society and the Bar, including in-house lawyers, L&W will support women lawyers and promote equality.

The pilot mentoring programme will begin early in 2016 and will appeal to solicitors and barristers at various stages of their careers. The aim of the programme is to improve diversity at all levels of the professions and to address pay inequality between men and women doing the same work.

Women who have just embarked on their career, or who are at a later stage in their professional life, will be matched with a suitable senior mentor from within their profession. Expectations for the mentor/mentee relationship will be well-defined by a mentoring agreement and will expire after one year. Training for mentors will also be provided.

An update regarding the pilot programme will be published early next year in the *Gazette* and the *Bar Review*.

Commission proposes stricter firearms controls

The European Commission has put forward measures to make it more difficult to buy firearms in the European Union, better track legally held weapons, strengthen cooperation between member states, and ensure that deactivated firearms are rendered inoperable.

The proposals were adopted in April 2015 by being included in the European Security Agenda but have been speeded up in light of the recent terrorist attacks in Paris. The proposals will see stricter and more harmonised controls, as well as a more efficient exchange of information.

The package of measures includes a revision of the *Firearms Directive*.

‘Justice funding must be election issue’

The Law Society’s new president, Simon Murphy, has called for adequate funding of the justice system to become an issue in the upcoming general election, in order to protect access to justice for all citizens.

Speaking at his inauguration ceremony on 6 November, Murphy said: “We are still reeling following years of cutbacks in our courts and justice services. The Courts Service budget alone has been slashed by 40% in recent years.

“Since 2008, a total of 77 court venues have closed and others, such as Skibbereen courthouse, are still under threat. Funding cuts around the country have led to delays in access to justice for citizens, especially in rural areas.”

Referring to the latest Comptroller and Auditor General report, he said that there had been an underspend of over €24 million for justice and equality within the allocated budget of €324 million in 2014. “These savings should be reapplied to core public-facing justice services,” he said, “in particular the courts, rather than simply absorbed into general Government coffers.

“My presidential year coincides with the coming general election,” he continued. “The Law Society intends to make funding for justice an issue of national debate and attention in addition to more familiar critical issues such as health, education and housing.”

PIC: LENSMEN

The Law Society’s new executive team 2015/16: junior vice-president Michele O’Boyle, senior vice-president Stuart Gilhooly, and president Simon Murphy

Murphy added that the Government’s latest capital plan had earmarked modest funding for justice, including €10 million for courts refurbishments and the development of a Family Law and Children’s Courts building. “These announcements, while welcome, do not nearly go far enough to undo the damage to the fabric of justice caused during the financial crisis.

“As a profession, we believe strongly in the principles of fairness, justice and equality for all – and it is vital that the justice system is adequately funded to protect those principles,” he concluded.

Murphy took the helm for 2015/16 with effect from 7 November 2014. He is joined at executive level by senior vice-president Stuart Gilhooly and junior vice-president Michele O’Boyle.

Murphy said: “It is a great honour to be the elected leader of the solicitors’ profession in a time of considerable change. I am also proud of the fact that we are the first legal profession in the world in which women are in the majority. We are a diverse, dynamic, confident profession, ready to meet all challenges capably, just as we have throughout our history.”

FOCAL POINT

council election 2015 results

The scrutineers’ report of the result of the Law Society’s annual election to the Council (November 2015) shows the following candidates being provisionally declared elected. The number of votes received by each candidate appears after their names: Paul Egan (1,473), Stuart Gilhooly (1,427), Aisling Meehan (1,344), James Cahill (1,281), Michele O’Boyle (1,273), Kevin O’Higgins (1,268), Valerie Peart (1,266), Bernadette Cahill (1,263), Keith Walsh (1,230), Paul Keane (1,227), Liam Kennedy (1,127), Catherine Tarrant (1,062), Justine Carty (1,027), Alan Gannon (947), Martin Lawlor (947) and William Aylmer (945).

Provincial elections

As there was only one candidate nominated for each of the provinces of Connaught and Munster, there were no elections. The candidate nominated in each instance was returned unopposed: David Higgins (Connaught), Richard Hammond (Munster).

FOCUS ON MEMBER SERVICES

Court facilities

Trying to complete work away from your office while attending court or settlement meetings can be challenging. The Law Society’s team at the Four Courts offers a range of services to members, including remote printing, use of a fax machine, photocopying and free wi-fi. Members have access to a cloakroom and can avail of a selection of mobile phone chargers and mobile-coverage boosters if required.

The Society has 26 consultation rooms available for hire, all with air conditioning, phone services and free wi-fi. Catering is available for these rooms and can be pre-booked. Two rooms have video-conferencing facilities. An assistive hearing loop is available on request.

For booking enquiries, contact Paddy Caulfield and his team at 01 668 1806 or book online at www.lawsociety.ie/fourcourtsbookings. Early booking is recommended.

The Solicitors’ Reading Room provides a quiet corner where you can read your notes, work on your files or digest the daily newspaper.

The Solicitors’ Writing Room has a suite of laptop portals with free internet access. Both rooms are available free of charge to members. Beverages and quick snacks are available at the Friary Café, which is open to all Law Society members.

The Law Society also has facilities at the Criminal Courts complex, with over 30 workplaces with wireless internet access available to members on a first-come, first-served basis. There is a coin-operated self-service photocopier available also. Video-conferencing facilities linked to Cloverhill Prison can be arranged directly with the prison.

Reinvest in your career

Antoinette Moriarty (Law School counselling service manager) with Walt Hampton JD (executive coach)

All too often, we lack training in the very attributes that enable us to go the distance professionally, without burning out personally.

To this end, the Law Society Finuas Network is partnering with an elite international team of executive coaches to deliver a new Executive Leadership Management Programme. Beginning in spring 2016, this four-weekend programme will answer the questions most frequently asked by professionals who manage units, teams or small groups of associates or trainees, specifically:

- **How can I increase my ability to influence others?**
- **How can I better understand the new generation of professionals?**
- **How can I improve my capacity to give feedback to partners, associates and trainees?**
- **How can I regain some of my enthusiasm for practising?**
- **How do I handle the added pressure that comes with being in a leadership position?**
- **How can I manage my time and delegate more effectively?**

A unique feature of this programme is the inclusion of five (1.5 hr) executive coaching sessions with individual members of the programme development team. These pivotal one-on-one sessions will offer confidential professional support with your leadership challenges.

For further details, contact Antoinette Moriarty by emailing finuas@lawsociety.ie.

Injuries Board applications – beware!

The Litigation Committee engages on a regular basis with the Injuries Board through the Injuries Board User Group. The group meets twice yearly to discuss concerns and developments in relation to the Injuries Board's processes, *writes Colette Reid* (secretary to the Litigation Committee).

Recently, the Injuries Board highlighted a number of common errors it has observed in applications (Form A) submitted to it by solicitors on behalf of claimants. Some of these errors can impede registration of the application.

In the interests of avoiding unnecessary delays and ensuring a smoother process, practitioners should pay particular attention to the following drafting points. In order to avoid a delay in registration of the application:

- The claimant's name should be identical on the application and the covering letter,
- The respondent must be correctly named (including its status as a limited company, where appropriate) and this name should be identical on the application and the covering letter,

- A full and accurate address should be provided in Form A for the claimant and each and every respondent,
- The date of the accident must be accurate and, therefore, should not differ on Form A, the medical report provided (Form B) and/or the covering letter, and
- Form A must be signed and dated.

Inclusion of the following information in Form A will avoid delays in the process after registration:

- The respondent's insurance details,
- The accident location,
- Details of the injuries,
- Confirmation whether or not the medical report submitted adequately describes the injuries sustained, and
- Details of previous accidents/injuries.

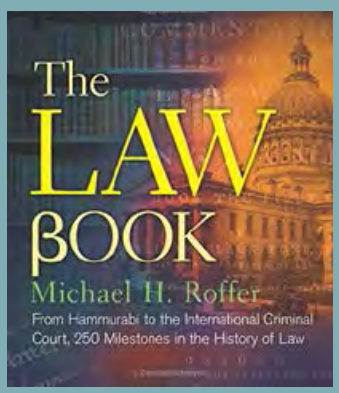
When seeking to issue court proceedings after the Injuries Board process, it is essential that the names of the parties on the proceedings and the relevant Injuries Board authorisation are identical. The court offices will not issue the proceedings where there are discrepancies. Titles such as 'Dr', 'Reverend' or 'Fr', should not be used in the title to court proceedings. Therefore, such titles should not be used in the Injuries Board application.

Take a bow, Robert Ashe

The winner of the *Gazette*'s competition for a copy of *The Law Book* is Robert Ashe, Gillick & Smithwick Solicitors, Riverside Business Centre, Tinahely, Co Wicklow.

Robert's name was chosen from our list of correct entries by our 'electronic hat'. He correctly stated that the original *M'Naghten Rule* was introduced in 1843 and was named for Daniel M'Naghten, who killed a man whom he had mistaken for the English prime minister Robert Peel. The *M'Naghten Rule* led to the plea of criminal insanity (see *Queen v M'Naghten*, 8 Eng Rep 718 [1843]).

***The Law Book* covers diverse topics, such as the Code of Hammurabi (c1792 BC), the Draconian Code (c621 BC) the Ten Commandments (c1300 BC), the trial of Socrates (399 BC), the Brehon laws of Ireland (c250 AD), right up to 2015. Organised chronologically, the entries consist of short essays on each topic, accompanied by full-colour images. The notes and further reading section provides resources for more in-depth study.**



***The Law Book* is published in hardback by Sterling and is available at amazon.co.uk, ISBN: 9781454901686, price: stg£25.**

President Higgins opens Court of Appeal building

PIC: COLLINS PHOTOS

The new Court of Appeal building in the Four Courts has been declared officially open by President Michael D Higgins. The building – once home to the historic Public Records offices destroyed in the Civil War – has been totally refurbished at a cost of €3 million.

Chief Justice Susan Denham greeted President Higgins, the President of the Court of Appeal Sean Ryan, and Minister for Justice Frances Fitzgerald, all of whom officiated at the ceremony on 26 November 2015.

President Higgins said: "In a very impressive fashion, a new court was created in a little over a year since the referendum to adopt the 33rd amendment to the Constitution was passed by over 65% of the voters. I wish to congratulate all involved in delivering on this most important reform of the courts structures in the State."

The Court of Appeal was established on 28 October 2014 and began sitting to hear appeal cases on 5 November 2014.

Since inception up to 31 July 2015, the Court of Appeal has disposed of 468 civil appeals. Allowing for the outcome of recent call-overs in October and November, the number of civil appeal cases is approximately 450. New civil appeals number around 60 per month.

Whenever, wherever, we're meant to be together

The Law Society has launched a mobile version of its website.

You can now navigate the site on your phone or tablet using the familiar mobile menu. The content remains the same as the desktop view – it's just reorganised, so it can be viewed without the need for scrolling vertically or horizontally and, in the case of phones and small tablets, in single-column format.

Other features that don't translate to mobile, such as larger banner images, are removed. Text and any links are big enough to read easily on a smaller screen, while button size has also been increased, for an optimal mobile experience.

Now, whether visiting the site on your mobile or tablet, you can enjoy:

- An improved experience where relevant content fits to your screen for easier mobile browsing,
- More time on the site, as you can quickly find what you need using the mobile menu, and
- Faster loading times, as large images are stripped out for a true mobile experience.

You can also use your phone to pay online. A mobile version of the basket is currently in development for easier mobile shopping, including bigger buttons, larger text, single-column format for product lists such as courses, and less scrolling. We are also simplifying the booking process and refreshing the design to make it easier to book and pay online using the Law Society website on your PC, laptop or mobile device. Look out for the updated shopping basket in January 2016.

If you have any queries or feedback about the Law Society's website, we would like to hear from you. Please contact the web and digital media manager, Carmel Kelly, at c.kelly@lawsociety.ie.

Lively AGM sees several resolutions passed

Considered and passionate debate made for a lengthy and lively annual general meeting of the Law Society, which took place on 5 November 2015. In all, 60 members attended.

The *Report of the eVoting Task Force* and consideration of three motions – relating to System 360, a master insurance policy to cover the cost of complaints against solicitors, and the creation of a graphic for use by members who hold practising certificates – dominated proceedings.

Simon Murphy introduced the *Report of the eVoting Task Force*, which the Society had been asked to complete at the 2014 AGM. Task force member Richard Hammond delivered the findings, outlining the advantages and disadvantages of introducing an electronic voting system for the Society's Council elections. Considerations of turnout, cost, efficiency, and engagement were all examined, he reported, and ultimately the task force concluded that the current voting system works "exceptionally well". Therefore, while it may be looked at again, there is currently no pressing need to introduce an electronic voting system.

The chairman of the Finance Committee, Stuart Gilhooly, spoke on the urgent need to replace and upgrade the Society's information technology system, which has been in place since 1990.

Professional services firm Mazars presented the details of the System 360 project and introduced the chosen software provider. The Society's director of finance and administration laid out the costs. A debate on the motion resulted in overwhelming approval for the project.

Proposing a motion to investigate the provision of a master insurance policy to cover members against complaints before the Complaint and Client Relations Committee, the Solicitors Disciplinary Tribunal, and the High Court, Susan Martin spoke of the enormous strain such proceedings can place on solicitors. A number of speakers from the floor debated the issues passionately, and a vote on the motion resulted in the passing of the motion.

The final motion asked the Society to examine the creation of a graphic that could be used on websites, stationery and other promotional material by members who hold practising certificates. Sonia McEntee asked that the Society report back on this investigation at the next AGM and the motion was passed.

The meeting appointed the date of the next AGM as Thursday 3 November 2016.

Legal Services Regulation Bill is 'working recipe for the coexistence of the old and the new' – Fitzgerald

This is how Justice Minister Frances Fitzgerald opened the Seanad committee stage debate on the *Legal Services Regulation Bill* on 19 November 2015: "I am very pleased to bring the bill before the House on committee stage. The bill is a working recipe for the coexistence of the old and the new, which can ensure our legal services sector does not end up at a permanent competitive disadvantage, and provide people who use legal services with better and more competitive choice. The *Legal Services Regulation Bill* will deliver on the programme for government commitment to establish independent regulation of the legal profession, improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints.

"After 30 years of reports and recommendations, the bill, with the enhancements we will make to it in the Seanad, will provide for the independent regulation of the provision of legal services in the State, and a far more transparent legal costs regime. It contains substantial provisions, which will promote competition, help reduce legal costs in Ireland and support Ireland's economic competitiveness. These very important reforms, which are good news for customers and small business enterprises, will improve equity of access to the justice system for all. All of this will be achieved by balancing in law, in the stated objectives of the bill and by amendment where necessary, legal professional principles and the interests of those who avail of legal services, this time in a more modern way under an independent regulator."

Minister Fitzgerald: 'Some observations have been critical of the proposed new regulatory regime and some aspects of today's anticipated amendments – they have missed the point'

Missing the point

"Let there be no doubt that, while the bill does not obstruct the traditional form of legal practice, it demands that legal practitioners do not obstruct the bill's reforms. While some observations have been critical of the proposed new regulatory regime and some aspects of today's anticipated amendments, they have missed the point. The new regime is being built by specific statutory provision on the foundation of an independently nominated regulatory authority, an independent complaints committee, an independent practitioners' disciplinary tribunal, and a full suite of High Court powers and safeguards.

"As passed by the Dáil, the bill already comprises 158 sections spread over 13 parts. During its passage through the Dáil, more than 235 amendments were made, and I will lay out for the Seanad, very briefly, the amendments I am about to propose. They will see the replacement and reconfiguration of two parts of the bill to reflect the co-regulatory framework now in place between the new legal services regulatory authority and the Law Society. This was foreseen in some of the amendments in the Dáil, but the bill was skeletal in some areas with a great amount of work to be done, which is what I am bringing forward today."

Complaints handling

"Provision will be made for the possible transfer of the complaints handling staff of the Law Society and the Bar Council into the new body, to ensure adequate working capacity and expertise as we move from the old system to the new. I am glad to say such a transfer has received support from all parties in the Dáil and, I am led to believe, the Seanad has the same view. It makes sense to ensure the ability of the new complaints facility to hit the ground running and gain early public confidence. The societies have been doing this for decades. There has never been independent regulation. This is a serious transfer of function and we must take account of procedures and practices, history, and expertise in the transfer to the new body of certain obligations. We must ensure the new body works in tandem with the established bodies, and nothing is lost in translation, so the consumers and practitioners do not lose out on the expertise in handling issues such as the financial compensation fund, which has been built up so painstakingly over a long period.

"On foot of the amendments proposed, all public complaints, no matter what their subject matter, will be made to and remain in the hands of the Legal Services Regulatory Authority to be prosecuted to a conclusion. The authority will have the power to go back to the relevant body, such as the Law Society, and I will go into detail in this regard.

"The provisions on inspections and search-and-entry will be strengthened, legal services advertising will be brought in line with EU directives, and there will be a strengthening of existing provisions on cost, including the chief legal costs adjudicator replacing the taxing master. There will be more transparency on fees, and there is quite an amount of detail on this point. A two-year review clause is built in, at the end of which note will be taken of how consumer and competitiveness issues have been addressed over the two-year period."

'Over the top reaction' to Government's LSRB amendments

'Legal services – government caves in' was the headline on an outraged editorial in the usually more measured *Irish Times*, *writes Ken Murphy*.

Other national newspaper headlines included 'overhaul of legal services dampened by prolonged lobbying offensive', 'watered down bill on legal services', and even 'how the lawyers beat the system'.

Justice Minister Frances Fitzgerald, when introducing the Government amendments to the *Legal Services Regulation Bill* in the Seanad, spoke of "balancing, in law, legal professional principles and the interests of those who avail of legal services". However, there was very little 'balance' in most of the reporting and commentary that followed, at least initially, on the announcement of the Government's amendments to the bill.

A metaphor of 'dilution' was regularly employed, in print and broadcast commentary, in relation to "measures to control legal costs". Yet even basic checking of facts would have revealed that the legal costs parts of the bill remained almost completely unchanged from the initiation to conclusion of the legislative process. How, therefore, could Minister Fitzgerald have "caved in" on this? She couldn't have and, of course, she didn't.

Likewise, she was depicted as having made a huge concession in leaving with the Law Society a central role in protecting clients' moneys in the accounts of solicitors and, thereby, indirectly also protecting the compensation fund into which every practising solicitor must contribute. But in fact her predecessor had made that change three years ago.

Paranoid elements

Contrary to what is often implied about former minister Shatter, in the Society's experience he was prepared to listen to views other than his own – and to make significant changes to his initial position when convincing argument and information were presented to him.

Ken Murphy: 'Vituperative and unfair attacks on Minister Fitzgerald'

When minister, he had acknowledged that the initial bill had been drafted in a rush, to meet a troika deadline, and needed a great deal of improvement during the legislative process – a process that took far too long for reasons that were entirely to do with the Government's scarce drafting resources and other political priorities.

The delay also resulted from the project, perhaps belatedly, being recognised as very much bigger and more complex than was initially assumed. The delay had very little to do with "resistance from the legal profession" – although paranoid elements of the media remained absolutely certain that some sinister power of the legal profession was at work behind the scenes, mysteriously frustrating the legislative process.

In the view of the Law Society, the bill, even as passed at committee stage by the Dáil, was so full of errors, incoherencies and unintended consequences as to be unworkable. Having played an important role for over 60 years in applying in the public interest the legislation under which the solicitor's profession in Ireland is regulated, we felt we knew something about the subject. We wanted to help. We pointed out that it was very much in the interest of the solicitors' profession, as well as the public, that there be a regulation system that worked sensibly, effectively and efficiently.

Ministers Shatter and Fitzgerald, as well as their officials, accepted both the Society's *bona fides* and assistance in achieving the Government's objective of creating independent regulation of the solicitors' profession (we had little or no engagement in relation to the Bar) through a system that we believe will work, in the public interest, sensibly, effectively and efficiently.

Vituperative attacks

The vituperative and unfair attacks on the Government and, in particular, on Minister Fitzgerald following the publication of the Seanad amendments to the bill were astonishing and completely 'over the top'. It is to be hoped that, as time passes, better-informed and less prejudiced assessments of this well-balanced legislation will come to the fore.

LLPs approved

"Amendment agreed to." It was as simple as that in the end. The introduction of limited liability partnerships (LLPs) as a modernising business model option for solicitors' firms in this jurisdiction – for which the Law Society had openly campaigned and lobbied successive governments since 2001 – was, in the end, approved without any opposition in the Seanad. The Government's detailed amendments to the bill were accepted.

Minister Fitzgerald pointed out the specific features of the new regime for LLPs. These include a system of authorisation and registration through the Legal Services Regulation Authority (subject to appropriate fees) of those partnerships that wish to become an LLP, and the maintenance of a publicly available register. Protection will be provided for the consumer in the form of an obligation on the firms to have substantial professional indemnity insurance.

Section 107 of the bill provides that a partner in an LLP shall not, by reason only of his or her being a partner, be personally liable directly or indirectly for any debts, obligations or liabilities arising in contract, tort or otherwise of the limited liability partnership.

Law Society director general Ken Murphy welcomed the fact that the Government had adopted what is known internationally as a 'full shield', rather than a 'partial shield', LLP model.

The only way is up, according to recent survey of firms

Confidence, employment, revenues and profits are all up, and expected to rise further, according to the fourth annual survey of Irish law firms, published by accountants Smith & Williamson.

Over 100 firms took part in the survey, including 15 of what Smith & Williamson describe as "the top 20 Irish law firms". For the second year running, they treat 'the top 20' as a separate category from the profession as a whole.

Of the other 90 firms, 13 are described as mid-tier firms and 77 as small firms. Although there was a reasonable spread through Dublin, Leinster and Munster, a mere two firms from Connaught and Ulster participated.

Top 20

Confidence was sky-high in this category: 100% said that the legal sector outlook had improved in the last 12 months, and they expected further improvement in the year to come. In the last 12 months, 100% had increased staff numbers, 93% had experienced revenue growth, and for 73 % profits had increased.

Identifying key issues for the next 12 months, 67% pointed to downward pressure on fees, 47% spoke of managing cash flow, while for 33% it was maintaining profitability. The most striking statistic in response to this question, however, was that an astonishing 80% identified as their most important issue in the next 12 months 'recruitment and staff retention'. This had increased to 80% from just 25% in 2014. Perhaps reflecting the pressure, 100% had made staff pay increases in 2015 and a striking 67% said their level of pay increase had been 5% or more.

For the 'top 20' firms, their key issues for the next five years were changing reward/remuneration models and use of technology, either to manage the firm or to interact with clients.

Outside the top 20

Confidence was somewhat lower among these firms, although still relatively high: 74% said that the legal sector had improved in the last 12 months, and exactly the same percentage expected more improvement in the year ahead. However, only 49% said they had increased staff numbers over the last 12 months, and 11% had actually decreased staff numbers. A healthy 70% had seen revenue growth, and only 5% had experienced a fall. For 68%, there had been a profit increase, with just 8% experiencing a decrease.

For these firms, the key issue of the next 12 months, identified by 68%, was downward pressure on fees (almost identical to the 'top 20' firms, demonstrating that client-fee consciousness and intense competition are felt equally by all sizes of firms), with maintaining profitability concerning 57%, and managing cash flow an issue for 50%. Recruitment and staff retention – by contrast with the 80% of 'top 20' firms where this was an issue – was identified as an issue by only 34% in this category.

On the question of pay increases, 59% had given some pay increases in 2015, 36% had given none, and 5% 'didn't know'. A total of 29% said they had awarded pay increases this year of 5% or more.

Breaking bread at Blackhall with the Bar of Ireland

PIC: LENSMEN

The leaders of the Bar of Ireland (who recently officially changed their name from the 'Bar Council') were the guests of their Law Society counterparts at Blackhall Place on 22 October 2015. A meeting covering many matters of mutual interest was followed by a dinner; *(front, l to r)*: Ciara Murphy, Paul McGarry SC, David Barniville SC (director, vice-chair and chair, respectively, Bar of Ireland), Kevin O'Higgins, Simon Murphy and Ken Murphy (president, vice-president and director general, respectively, Law Society); *(back, l to r)*: Sarah Moorhead SC, Michael P O'Higgins SC and Fergal Foley BL, Mary Keane and James McCourt (deputy director general and past-president, Law Society), Seamus Woulfe SC, Ronan O'Neill and Colette Reid (chair and secretary, respectively, of the Law Society's Litigation Committee)

Warm Killarney welcome for some very special guests

PIC: EAMONN KEOGH

Solicitors from Killarney recently hosted several dignitaries at a function in The Malton Hotel. *(Front, l to r)*: Judge James O Connor, Judge Elma Sheahan, Terence Casey (coroner), Mr Justice Adrian Hardiman (Supreme Court), Mrs Justice Yvonne Murphy (High Court), Jane O'Halloran, Mr Justice Carroll Moran, Pat F O'Connor, Judge Tom O'Donnell. *(Middle, l to r)*: Clodagh Brick, John O'Sullivan, Aoife Lynch, Mary Twomey, Pat Sheehan, Leonie Hussey-O'Brien, Padraig Burke (county registrar), Clare O'Donoghue, Úna Glazier-Farmer, Barbara Liston, Marie Louise Donovan, Ciara O'Connell, Bridget Reidy and Niamh White. *(Back, l to r)*: John O'Shea, Tommy O'Donoghue, Micheál Munnelly, Jim O'Sullivan, Eoin Brosnan, Cian Brady, John Cronin and Michael O'Donoghue

Cork 'practitioner update' cluster event is good news for IRLI

At the Law Society's 'Practitioner Update' cluster event in Cork, held in association with Law Society Skillnet, the Southern Law Association and the West Cork Bar Association on 13 November at the Clarion Hotel, the Law Society presented the proceeds of a fundraising event to Irish Rule of Law International; *(clockwise, from l to r)*: Attracta O'Regan (Law Society Skillnet), Dr Geoffrey Shannon (Special Rapporteur on Child Protection), Patrick Dorgan (chair, eConveyancing Task Force), Don Murphy (Southern Law Association), Patrick Ahern (Ronan Daly Jermyn), Colette Reid (Law Society), Emma Dwyer (Irish Rule of Law International), Michael Irvine (Irish Rule of Law International), Simon Murphy (president, Law Society), Kathy McKenna (Law Society), Elizabeth Rimmer (chief executive, LawCare) and Katherine Kane (Law Society)

The Arthur Cox legacy lives on in Zambia Project

Since 2008, Arthur Cox trainees have developed a charity project designed to raise the standard of living in some of the most rural regions of Zambia by investing in healthcare, agriculture and education. Since then, over €250,000 has been raised for various initiatives of the Zambia Project, with the participating trainees themselves covering all administrative and travel costs.

Alongside volunteers and contractors from the local community, the trainees work on the designated project for a fortnight each year, which typically includes construction, renovation or agricultural works. To ensure sustainability and avoid dependence, the programmes are designed to become self-funding, with carefully managed handover to the community or government.

In the Mwandi region in south-western Zambia, trainees have refurbished a regional medical clinic servicing over 4,000 people, constructed a bespoke maternity ward, refurbished accommodation for clinic staff, constructed ablution blocks, and provided running water and electricity to the clinic and health centre.

The trainees have also supported an extensive agricultural initiative, educating communities on better farming practices and climate change, which now reaches approximately 380 families. Most remarkably, the project pioneered a programme that brought a rice crop to the area for the first time, creating a new economy now involving over 500 farmers and contributing approximately US$500,000 annually to the economy.

In 2014, the trainees moved to a new location in southern Zambia – Chikuni – which is the burial place of the firm's founder, Arthur Cox. Following the death of his wife Brigid in 1961 and

Current and past leaders of the Arthur Cox Zambia Project *(l to r)*: John O'Donoghue, Ryan Ferry, Amelia Walsh, Ruth Donnellan and Chris Joyce at the official opening of the Hakalinda radio school in July 2015

FOCAL POINT

arthur cox partners visit founder's grave

In July 2015, five partners from Arthur Cox visited Mwandi and Chikuni to commemorate the 50th anniversary of the death of the firm's founder, Arthur Cox. Brian O'Gorman (managing partner), Eugene McCague, Orla O'Connor, Conor McDonnell and Rachel Hussey attended the opening ceremony of Hakalinda school, together with members of the Zambian Ministry of Education, local tribal representatives, Arthur Cox trainees and the Hakalinda community.

In a fitting tribute to the firm's founder, who dedicated his final months to the people of Zambia before dying tragically following a car accident in 1965, the Hakalinda school has been named in his honour.

Paying their respects at the grave of Arthur Cox *(l to r)*: Eugene McCague (former chairman and biographer of Arthur Cox), Rachel Hussey, Brian O'Gorman (managing partner), Orla O'Connor and Conor McDonnell. The inscription on the cross reads: 'RIP Fr Arthur Cox. Born 25 July 1891 Ireland. Died 10 June 1965'

Trainees with members of the community in Hakalinda, who worked together to build the Hakalinda radio school in July 2014

Trainees Edwina Stewart and Clodagh Power working on the Hakalinda radio school in July 2014

his retirement from practice that year, Cox decided to enter the priesthood. Although not ordained as a Jesuit, Fr Arthur Cox travelled to Chikuni in 1964 to work with the Jesuit mission there.

To reignite the connection between the firm and Chikuni, the trainees partnered with the Jesuit mission to build rural 'radio schools', which provide a government-approved curriculum to children who cannot attend formal schools due to geographic and financial barriers. Lessons in the schools are broadcast over wind-up radio and facilitated by locally trained mentors.

The first school was opened in Hakalinda village in July 2015, with the second school now nearing completion in Chipembele village. These schools will provide primary education to generations of children, and also operate as adult education and agricultural training centres. The current plan is to build up to six schools by 2017.

The completed radio school in Hakalinda, during the official opening in July 2015

Joint winners of 'Woman Lawyer of the Year'

PICS: LENSMEN

Joint winners of the IWLA 'Woman Lawyer of the Year 2015' award were *(seated, t to r)*: Mary O'Toole SC and solicitor Muriel Walls, with IWLA president Catherine McGuinness, Emily Logan, (chief commissioner, IHREC), and IWLA chairperson Aoife McNickle; *(standing, l to r)*: Prof Irene Lynch-Fannon, Eileen Creedon (chief state solicitor), Rosemarie Bryson, Maura Butler, Maura Smyth and Pauline Ward (Thomson Reuters), Prof Ivana Bacik (IWLA founder member), Aoife McNicholl, Jenny Aston (IWLA founder member), Maeve Delargy, Claire Hogan BL, Fiona McNulty, Noeline Blackwell, Aoife Gillespie BL, Tracey Donnery (Skillnets) and Attracta O'Regan (Law Society Skillnet)

Solicitor Muriel Walls and Mary O'Toole SC have been honoured as joint winners of the IWLA 'Woman Lawyer of the Year 2015' award in recognition of their leadership in the 'Lawyers for Yes' campaign for marriage equality.

Muriel (Walls & Toomey Solicitors) has specialised in family law for over 30 years and is chair of the Legal Aid Board and a former partner with McCann FitzGerald Solicitors.

She is an expert in family law and human rights and has been involved in many recent high-profile decisions in the area of surrogacy law.

The 2015 Irish Women Lawyers' Association gala dinner was held at Blackhall Place on 24 October, in collaboration with Law Society Skillnet and the Bar of Ireland. Thompson Reuters sponsored the reception.

The atmosphere was aptly captured by the evening's keynote speaker Emily Logan (chief commissioner of the Irish Human Rights and Equality Commission) when she said: "Something big happened in Ireland when we voted to amend article 41 of our Constitution. Hearing a compelling personal testimony about the sting of discrimination still requires you to imagine what that must be like if you have not yourself experienced it – directly or indirectly – but it makes that task of imagining easier."

Ms Logan said that the two honoured women exemplified the very best of human rights advocacy and activism. "They are stellar lawyers who see it as part of their professional and public duty to engage actively as citizens in the public square. Through the 'Lawyers for Yes' group, they brought critically important legal expertise to bear on the campaign for marriage equality."

Further information on IWLA is at www.iwla.ie.

Emily Logan (chief commissioner, IHREC), Mary O'Toole SC, IWLA President Catherine McGuinness, and solicitor Muriel Walls

Trainee solicitors Julia Drennan, Aoife O'Brien, Susie Kiely, Aoife McNicholl and Karen Elliott

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letters

Reply to DPC on 'Water bomb' issue

From: Gary Fitzgerald BL, Distillery Building, Dublin 7

I refer to the letter from Ms Helen Dixon, the Data Protection Commissioner, in the November *Gazette*. Ms Dixon was responding to my analysis of Irish Water's interaction with landlords, where it requested that landlords inform it (Irish Water) of the names of any tenants renting properties. Irish Water needed this information in order to bill those tenants for use of water services.

In essence, my article made a very simple point: that, under the *Data Protection Acts 1988-2003*, landlords were precluded from handing over this information unless they could find a lawful reason for doing so. I analysed a number of exceptions in the *Data Protection Acts* and concluded that none of these exceptions applied in the circumstances. Therefore, any landlord who handed over names was breaching the data protection rights of their tenants. I find it somewhat worrying that, in a lengthy letter of nearly 700 words, Ms Dixon did not engage in any legal analysis of the acts. Either I am right in saying that landlords could not transfer the names to Irish Water, or there must be a section of the acts that allows for such a transfer. If Ms Dixon believes that my analysis is wrong, why did she not set out in her letter which section of the acts allows for the data to be transferred to Irish Water? The only conclusion that I can draw from this is that my analysis holds up to scrutiny. Irish Water has, therefore, unfairly obtained the names of tenants, landlords have unlawfully processed data, and Ms Dixon persists in defending both when she should be upholding the rights of data subjects (the tenants, in this case).

It is only in the last paragraph of her letter that Ms Dixon engages at all with the substance of my analysis, when she says that landlords consider it in their legitimate interest to transfer the names of tenants to Irish Water. That phrase, 'legitimate interest', is drawn from section 2A(1)(d) of the acts. It allows a data controller to process information if such processing is "necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject".

In my article, I analysed that section and concluded that, while landlords may have a legitimate interest here, processing the information was not necessary to protect that interest. There were other ways to protect that interest without breaching the data protection rights of tenants.

I know that a number of landlords have engaged in correspondence with Irish Water and the Data Protection Commissioner on this issue and have asked both parties to quote the precise section of the acts that allows for the processing of this information by landlords. Both organisations have referred to a number of exceptions, all of which I discussed in my original article, and none of which allow for the lawful processing of this information. If there is to be further correspondence from either Ms Dixon or Irish Water on this issue, I would ask that they engage with the legal analysis in my article and quote the precise sections of legislation that allowed landlords to release personal data to Irish Water prior to the commencement of the *Environment (Miscellaneous Provisions) Act 2015*. If the DPC and Irish Water fail to do so, the only possible conclusion is that no such legislation exists.

Society's marriage equality stance 'not appropriate'

From: Peadar O'Maoláin, Tullamore

I refer to the AGM of the Law Society on Thursday 5 November 2015, which I attended, and in particular to the *Annual Report 2014/2015*, which was part of item 3 on the agenda. A note in my diary for the time of the meeting had 5pm, but on arriving at that time, I learned that 6.30pm was the time fixed. Therefore, there was time to spend while waiting, and I got a copy of the annual report to read.

The report of the president referred to the passing of the marriage equality referendum and the duty of the Society to ensure that fairness, justice and equality are brought to the fore in public discourse. The report goes on to say that the Society's Human Rights Committee examined the issue carefully, finding no justification for denying marriage equality to same-sex couples, and that the Council of the Society had voted in favour of taking a public stance for equality ahead of the referendum.

I had intended to express my disapproval of the stance mentioned during consideration of the report, but the approval of financial statements for the previous year, which was linked with this item, took over all consideration, and the whole item was approved quickly, and the next item taken up.

I thought that the subject of the marriage equality referendum was not appropriate for the Society to take up, and that it should have avoided it automatically. It seemed to me that the marriage equality campaign was based on a use of the word 'equality' that was askew or crooked, and that the word was used just for propagandist reasons. Who wouldn't agree that, in the ordinary sense, everyone should be regarded and treated as equal?

But, in this case, the word 'equality' was used to obscure the obvious physical sexual facts in the difference between human male and female. These differences render same-sex intercourse unnatural, as they have been commonly understood from time immemorial, and no juggling of words can change that reality of things.

Great numbers of the voting population in the referendum were misled by that false propaganda, thinking they were doing the honourable thing.

My conclusion is that leaders of the people should have known better, and that the consequences of the referendum result are bound to be bad in the long run.

viewpoint

WORK ON TRANSGENDER EQUALITY NOT YET DONE

Despite the powerful message of acceptance contained in the *Gender Recognition Act*, its complete silence on the gender recognition of minors is deafening, argue Stephen Kirwan and Leanora Frawley

Stephen Kirwan is a trainee solicitor at KOD Lyons, solicitors

Leanora Frawley is a barrister specialising in public law

On 15 July 2015, the Government passed the *Gender Recognition Act 2015*. The act gives transgender people full legal recognition of their preferred gender and allows for the issue of a corrected birth certificate, regardless of whether the applicant has undergone gender reassignment surgery.

The act, for which the trans community and their supporters fought long and hard, is an enormously important piece of legislation that reflects and shapes a modern and compassionate Ireland. Campaigners say, however, that their work is not done, with some groups, such as those under the age of 18, continuing to face legal uncertainty and inadequate recognition and protection of their human rights.

Consent for minors

Section 12 of the act provides a legal pathway for individuals who are aged 16 or 17 to obtain an order from the Circuit Family Court exempting them from the minimum age requirement. Pursuant to section 12(4), a court may only grant such an application if:

- Parental or guardian consent has been obtained (section 12(4)(a)),
- In the professional opinion of the medical practitioner, having carried out a medical evaluation, an applicant has (a) a significant degree of maturity to make the decision to apply for gender recognition, (b) has considered and fully understands the consequences of such a decision, and (c) has made the decision without duress or undue influence (section 12(4)(b)(i)),
- An endocrinologist or psychiatrist, who has no connection to the applicant, furnishes to the court a certificate in writing confirming that his or her medical opinion concurs with the medical opinion of the above medical practitioner (section 12(4)(b)(ii)).

Aside from the onerous nature of the required proofs imposed on applicants in contrast to those of 18 years of age, there are clear inconsistencies here. As noted by the Office of Ombudsman for Children in their report on the *Gender Recognition Bill* (as it then was), section 23 of the *Non-Fatal Offences against the Person Act 1997* provides that the consent of a minor who has obtained the age of 16 years is fully effective in respect of medical treatment. An illogical situation arises here where a 16 or 17-year-old could validly receive gender reassignment surgery on the strength of his or her own consent, yet that same consent would be insufficient in obtaining legal recognition of the young person's preferred gender.

The ombudsman's report also notes that, in relation to children under the age of 16, there has been no clear legal authority in this jurisdiction, despite being explored by Birmingham J in *HSE v JM and RP* ([2013] 1 ILRM 305), as to whether at some point prior to an individual becoming competent, parental consent can be dispensed with in relation to medical treatment. In Britain, the House of Lords in the well-known case *of Gillick v West Norfolk and Wisbech Area Health Authority* made it clear that it was possible for a minor to consent to medical treatment if there was the requisite level of maturity and understanding of the nature of the risks of medical treatment sought. The act instead expressly excludes the notion of the evolving nature of decision-making capacity or even of recognising the possibility of obtaining an interim gender recognition certificate by placing an arbitrary and absolute limit on the capacity to consent.

> **At present, however, the lack of legal certainty, recognition, and support facing vulnerable transgender minors means the *Gender Recognition Act* has failed them**

Addressing legal uncertainties

Another major criticism of the act is its failure to expressly protect young individuals in the school system (who have undergone gender reassignment surgery or who identify with another gender to that on their birth certificate) against discriminatory access to school facilities and dress codes that conform to their preferred gender.

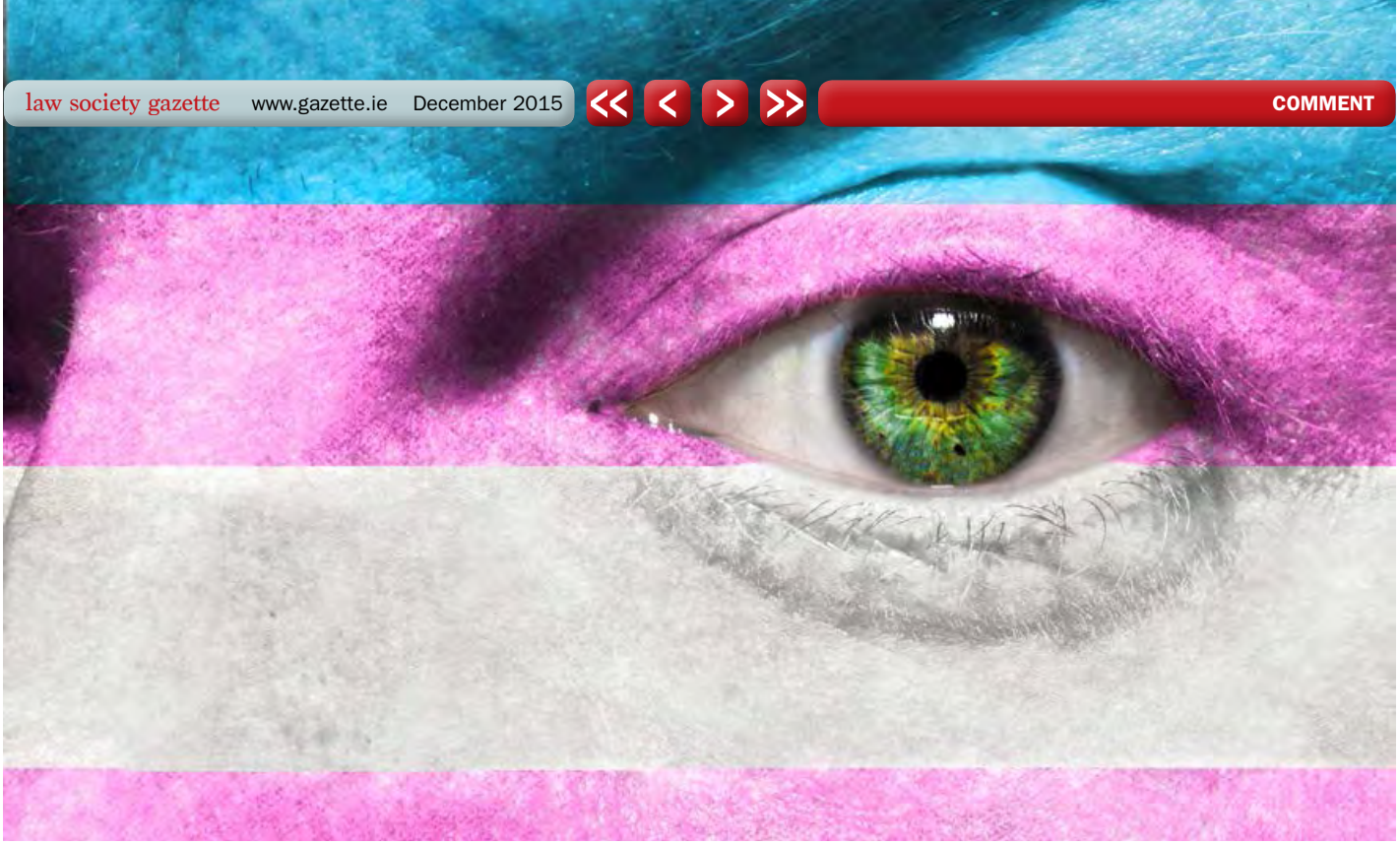
A preliminary question is whether the these individuals are entitled to rely on the protections afforded to them under

FOCAL POINT

trans mental health

On 2 December 2013, the Transgender Equality Network Ireland released the results of the largest transgender survey carried out in Ireland, with the publication of *Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland*.

The survey found that 78% of respondents had considered suicide, 40% of these had attempted to take their own lives at least once, and 44% of people had self-harmed.



PIC: SHUTTERSTOCK

the *Equal Status Acts 2000-2004*, given that the provision of different facilities *prima facie* discriminates on the basis of their gender identity.

Section 7(2) of the *Equal Status Act 2000* specifically prohibits discrimination in relation to the admission or the terms or conditions of admission of a person as a student in an educational establishment. Further, it prohibits the access of a student to any course, facility, or benefit provided by that establishment. This general protection, however, is subject to two important exemptions.

The first exemption, contained in section 7(3)(a) of the *Equal Status Act*, notes that, where an educational establishment is not a third-level institution and admits students of one gender only, then section 7(2) is deemed not to apply.

The second exemption, commonly referred to as the 'ethos exemption', is contained in section 7(3)(c) of the *Equal Status Act*. This exemption permits a school, in pursuing the objective of promoting certain religious values, to legitimately refuse to provide the requisite accommodations for transgender students on the basis that transgender identity does not form part of the religious ethos of the school.

Under both exemptions, the practical question becomes whether mixed or single-sex schools could be required to provide transgender students, who have enrolled in a school and prior to their legal transition, access to appropriate facilities. Such facilities include accessing the toilet of the gender with which the student identifies or allowing students who were assigned male at birth but who identify as female to wear a female uniform.

Recent US decisions

An increasingly developed jurisprudence appears to be developing in the United States, focused mainly on whether educational authorities are required to facilitate students in or following a gender transition.

The recent decision of *Maine Human Rights Commission in Doe v Clenchy*, concerning the law governing transgender access to sex-segregated bathrooms, is a good example of the type of conflict that may arise in this jurisdiction. The case concerned a young student who was biologically male but presented as female and had been formally diagnosed with gender dysphoria.

An agreement had existed with the school administration prior to the beginning of the school year that allowed her access to the female restrooms. Two separate incidents occurred during the school year where a male student followed the young student into the female restroom, claiming that he also had the right to use the female toilets. Despite the young student's protest, the school terminated their prior agreement and instead required her to use the single-stall, unisex staff bathroom instead.

The student's parents alleged unlawful discrimination in education on the basis of sexual orientation and unlawful discrimination in public accommodations on the basis of sexual orientation. The school sought to justify its decision under a separate law that required schools to provide restrooms that are separated by sex.

On appeal, the Maine Supreme Court ruled that the school had discriminated against the student by refusing to allow her to use the female restrooms. The majority of the court found that the school had violated the prohibition on discrimination by barring the student from the girls' restroom and, critically, it based its decision on the student's psychological and educational needs as determined by her doctors, family, and school.

The decision essentially evaded the tension between legal provisions allowing sex segregation and forbidding gender discrimination by instead emphasising doctors', parents', and schools' determinations of the psychological and educational needs of transgender students.

The issue of a student's right to wear clothing in accordance with their gender identity has already arisen in this jurisdiction. We have recently dealt with a case where a school appeared at a loss to know what to do with a transgender child who wanted to wear the girls' uniform to reflect her identified gender and had to seek legal representation, as did the child. This child had the full support of her parents; others may not.

What is clear, however, is that it is oppressive and potentially psychologically damaging to force any person, including a child, to conform to a gender role with which he or she does not identify and, in fact, may fiercely reject. To this end, in *Doe v Yunits*, the Massachusetts Superior Court held that a school that essentially forced a transgender student to wear clothes not consistent with his gender identity breached his right to liberty under the US Constitution.

We understand that guidelines are currently being contemplated by the Department of Education. At present, however, the lack of legal certainty, recognition, and support facing vulnerable transgender minors means the *Gender Recognition Act* has failed them.

news in depth

REPORT UNDERLINES NEED FOR DEDICATED FAMILY COURT

A disproportionate number of those facing child protection proceedings suffer from cognitive disabilities or mental health problems, or come from an ethnic minority, writes Carol Coulter

Carol Coulter is director of the Child Care Law Reporting Project. She was previously legal affairs editor of The Irish Times

Since November 2012, the Child Care Law Reporting Project has published more than 300 reports, ranging from about 400 words to over 20,000, on its website (www.childlawproject.ie) and has collected data on 1,194 cases in the District Court and 78 in the High Court. This data has been analysed and the results published in its final report, launched by Chief Justice Susan Denham on 30 November.

The issues examined include the reasons why orders were sought, the ethnic background and family status of the parents, the ages of the children and whether they had special needs, the length of time the cases took, and the outcomes.

The *Child Care Act 1991* states that, in order to obtain a care order or a supervision order, evidence must be presented to the court that the health, development or welfare of the child is at risk. The thresholds for the various orders are different: the risk must be both 'immediate' and 'serious' for an emergency care order; the court must have 'reason to believe' the risk exists for an interim care order; but the court must be 'satisfied' it exists or will in the future before granting a care order. A lesser, but nonetheless real, risk must exist for a supervision order, which permits social workers to visit the children at home in order to check that they are receiving adequate care.

Considerable variation

We saw considerable variation both in the thresholds at which orders were sought in different parts of the country and in the manner in which the cases were dealt with by the courts, and this is outlined in the report. The variations in both the practice of the Child and Family Agency and of the courts can also be seen in the latest Courts Service annual report, which shows great differences in the volumes of cases dealt with by different District Courts, in the kind of orders sought and granted, and in the outcomes.

Three judges sit in Dublin hearing child care cases; two days a week are devoted to these cases in Cork; and other major cities, including Limerick and Waterford, have frequent special child care days. This means that the cases get a thorough hearing. However, these resources do not exist in other parts of the country, and we have seen

REFERENCE POINT

case histories

Cognitive disability

In a provincial city, the Child and Family Agency had been involved with a family for some time before seeking care orders for all five children, two of whom had special needs. The parents were a cohabiting couple, both of whom had low cognitive functioning. A psychologist said the mother had low to average intellectual functioning, low morale, and a mood disorder, so the pace at which one could make recommendations about change would be low. The father would find it extremely difficult to follow complex instructions. During the case, the mother said there were so many people coming into the house with instructions she was confused.

After a six-day hearing, the judge declined to make the care order, on condition the parents attend a residential parenting course.

Child sex abuse allegations

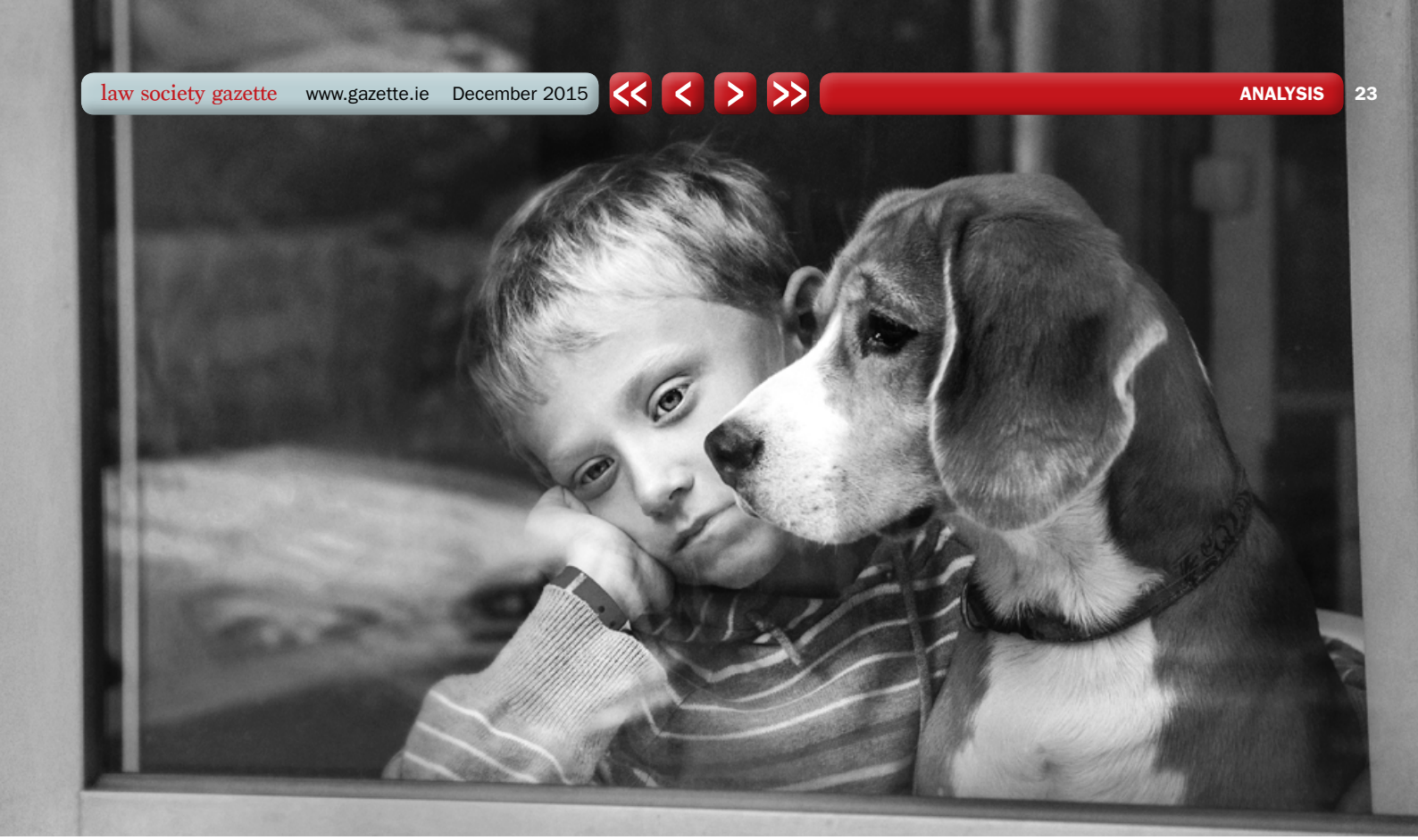
In a case where two older children were in care following credible allegations of abuse by an uncle, and two younger children were at home under supervision orders, the CFA sought care orders for the younger children when the older ones claimed they had been sexually abused by their parents three years earlier. The allegations were contained on DVDs of garda interviews and in a report from St Clare's child sexual abuse unit.

Interim care orders were sought, pending the care order hearing. Following several days' legal argument centring on the issue of hearsay evidence, the judge ruled that both the DVDs and the report, in redacted form, should be admitted. He also ruled that there should be an independent risk assessment of the parents, a credibility assessment of the children, and a credibility assessment of the information-gathering process prior to the full care order hearing.

Fathers in the system

In one case, the CFA sought an interim care order for a baby who had been born prematurely to a mother who suffered from mental health problems and had a previous child in care. Her partner did not have any mental health problems and his parents had offered to house the couple and the baby.

The judge asked the CFA if it had assessed the suitability of the father as the child's carer, and stated that he could not grant the order unless the father had been assessed and found unsuitable. He refused the interim care order and granted a supervision order instead, on the basis the child live with the father and grandparents. A year later, the CFA sought the discharge of the order, stating it had no worries about the child.



numerous instances where child care cases are included on family law lists with a total of 90 or 100 cases on the list. It is impossible for such courts to give adequate attention to child care cases in such circumstances.

In some instances, where cases arise that are considered likely to be complex and lengthy, a 'moveable' judge can be asked to come to the district concerned to take the case and will devote him or herself to it. However, that can pose its own difficulties as, where there are complex cases, the lawyers can underestimate the time the case will take and there are multiple adjournments. The judge, all the parties and all their lawyers must then juggle their diaries in order to find a slot to reconvene, leading to cases taking months, if not years, to reach a conclusion, with all the additional trauma that entails for children and their families.

This underlines once again the urgent need for a dedicated family court that would hear both private and public family law, setting aside dedicated days for child care cases.

The project also attended and reported on the High Court Minors' List, where special care orders are reviewed. The issue of finding an appropriate place for a child who needed to be detained for his or her own protection and for therapy arose again and again. Some of the cases concerned children returning from special units abroad but where there was no appropriate 'step down' place for them.

The reviews were usually over extremely quickly, as there was little contested evidence or legal argument, but they revealed the ongoing challenge faced by the State in meeting the needs of very vulnerable adolescents with very challenging behaviour. The issues raised by Mr Justice Peter Kelly two decades ago have not gone away.

The full report is on www.childlawproject.ie.

FOCAL POINT

recommendations

The recommendations include:

- **The establishment of a special Family Court as a matter of urgency,**
- **Pre-birth concerns about a child should be raised with the parents as early as possible so that they can obtain legal advice,**
- **The *Child Care Act* should be amended to include a 'holding order' keeping an infant in hospital with extensive access for the mother while alternative care is explored,**
- **Where it is suspected a parent may suffer from a cognitive impairment, they should receive an early cognitive assessment and parenting assessments should be tailored accordingly,**
- **In relation to the issue of special care orders, consideration should be given to withdrawing the *Child Care (Amendment) Act 2011*, which has never been commenced, and bringing all child care applications under a single jurisdiction,**
- **The courts should develop a consistent policy concerning hearing the voice of the child,**
- **As part of the overhaul of the guardian *ad litem* system, the Courts Service should be given responsibility and adequate resources for providing a national accredited service,**
- **In all cases where child sex abuse is alleged, the CFA should have prompt access to specialist child protection interviewers, and the protocol for joint interviewing with the gardaí, when appropriate, should always be followed,**
- **The Legal Aid Board should be resourced to have access to independent experts in both child sex abuse and non-accidental injury in the few cases where this is appropriate,**
- **In order to conform with the ECtHR jurisprudence, the CFA should outline the conditions that need to be met in order to bring about the reunification of the family when seeking a care order, except in exceptional circumstances.**

human rights watch

BALANCING PRIVATE RIGHTS AND THE PUBLIC INTEREST

This year's human rights conference examined the interplay between the right to freedom of expression and the individual's right to privacy in light of human rights law. Michelle Lynch reports

Michelle Lynch is policy development executive at the Law Society

The 13th Annual Human Rights Conference took place on Saturday 10 October in Blackhall Place. Organised by the Human Rights Committee and LSPT, in partnership with the DSBA, the theme was 'Human rights and the media: balancing public and private interests'.

The first plenary session explored media freedom and its rights and responsibilities, while the second session considered recent developments and concerns in relation to digital privacy and online surveillance. The distinguished panel of speakers included Mr Justice Donald Binchy, Olivia O'Kane, Judge Michael Reilly, Dr TJ McIntyre, Karlin Lillington, Michael Kealey, and Michael McDowell SC. The event was fully booked in advance and saw a large attendance on the day. This reflected the calibre of the invited speakers and demonstrated the high level of interest in the topics of privacy/freedom of expression and human rights.

'Cornerstone of democracy'

Mr Justice Donald Binchy gave the opening address. He commented that, while it might be considered a cliché, "privacy remains a cornerstone of democracy". He gave an incisive overview of the evolution of the right to privacy from its origins as an unenumerated right in *McGee v Attorney General* to its contemporary interpretation in light of technological developments. Mr Justice Binchy also noted the challenges faced in balancing the right to privacy (protected under article 8 of the *European Convention on Human Rights*) as against the right to freedom of expression (protected under article 10 of the convention).

> **'I know of no person who has benefitted from prison'**

Olivia O'Kane (media lawyer at Carson McDowell) discussed press freedom, the challenges the media face, and what happens when the media don't get the balance right. In considering this topic, she posed the question of "*quis custodiet ipsos custodes*? Who will guard the guards themselves?" She observed that it is the role of the courts to guard the guardians. It is for the courts to consider whether a fair balance has been struck when the right to privacy and the right to freedom of expression come into conflict.

She noted that, while the media continue to navigate issues such as censorship and protection of sources, new challenges have emerged with the growing trend of social media, user-generated content, and increasingly complex data protection laws. Emphasising the continuing necessity and utility of the media's freedom of expression, she concluded with the words attributed to Edmund Burke: "There were Three Estates in parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important than they all."

The lives of others

Judge Michael Reilly, Inspector of Prisons, drew upon his own experience of visiting prisoners, talking to prisoners' families, and working to improve prison conditions to deliver a compelling and impassioned speech on how the media affects the lives of prisoners and their families. He stated: "I know of no person who has benefited from prison. Of course, it is true to say that many people have been improved by the facilities offered in prison, but everyone is blighted by the experience of prison." Judge Reilly cited a number of recent provocative headlines relating to prisoners, while emphasising that they "are human beings just like you and me".

Judge Reilly shared the real-life experiences of prisoners and their families, including accounts of families being forced to move homes and schools and children facing bullying and even contemplating suicide. He argued that, while prisoners forfeit their freedom for

ALL PICS: CIAN REDMOND PHOTOGRAPHY

Members of the Human Rights Committee with speakers and special guests at the Annual Human Rights Conference. *(Front, l to r)*: Aine Flynn (Human Rights Committee), Olivia O'Kane, Grainne Brophy (chairperson, Human Rights Committee), Aaron McKenna (then president, DSBA), Michelle Lynch (secretary, Human Rights Committee) and Alma Clissman (Human Rights Committee). *(Back, l to r)*: Simon Murphy (then senior vice-president, Law Society), Dr TJ McIntyre, Shane McCarthy (vice-chair, Human Rights Committee), Mr Justice Donald Binchy, Michael Kealey (Human Rights Committee), Judge Michael Reilly (Inspector of Prisons) and Michael McDowell SC

the crimes they have committed, they do not forfeit their right to be treated with dignity and are "entitled to all the rights that you and I enjoy". Specifically, he emphasised that such headlines are often an affront to the dignity of the families, "who are victims solely by reason of their relationship to the prisoner". While Judge Reilly acknowledged that the media played an essential role through public reporting and uncovering serious human rights abuses, he concluded his presentation by posing a challenging question to the audience: "are the headlines that we see at times an abuse of human rights?"

Digital privacy

TJ McIntyre, lecturer in law at University College Dublin, provided a comprehensive account of current developments in online privacy. He highlighted the fact that Ireland has given rise to some significant European cases, including *Digital Rights Ireland and Seitlinger and Ors*, where the European Court of Justice found the *Data Retention Directive* invalid. He also commented on the recent and hugely consequential decision in *Schrems v Data Protection Commissioner*, where the European Court of Justice declared that the *Safe Harbour Agreement* with the US (on the transfer of data from the EU to the US) was invalid.

Dr McIntyre observed that we now have two European human rights jurisdictions and noted that the European Court of Human Rights is sometimes "unfairly called a court of moral victories", while the European Court of Justice "has more teeth" in terms of procedure and the route that has to be taken to get there. He argued that there is no requirement to keep emails on a centralised server and queried why emails cannot be kept private in the same manner that our post is safely stored in our homes, where it cannot be accessed by the authorities without a warrant.

Karlin Lillington, journalist with *The Irish Times*, concluded the conference with her thought-provoking insights into the impact of everyday technology on individuals' privacy. She urged that we all need to think "urgently, deeply, thoughtfully" about where we are now in terms of technological capability and, in turn, what this means for data privacy. She warned that we now have "a nearly invisible trade-off – our data for fun or cool or useful service, with the added scrutiny of state surveillance agencies delighted to have this never-ending and ever-increasing stream of data to sift through."

She referred to public debate around the electronic tagging of criminals and drew a parallel with mobile phones, remarking that "most of us sleep with our own personal tracking device right next to the bedside" and "fail to notice we have surrendered many of our own liberties and much of our privacy" each time we carry our phones and use the internet. She highlighted the concerns around private companies using personal data and 'data brokers', who specialise in sourcing various types of online data and selling it on to third parties, including the NSA. She referred to the discovery in the wake of the Snowden revelations around GCHQ's data gathering that much of that data was generated from Irish internet users.

Michael McDowell SC chaired the plenary sessions and also provided some of his own illuminating insights into some of the issues raised by the speakers.

To close the event, Michael Kealey chaired an engaging Q&A session with the attendees and the panel of conference speakers.

The conference papers are available on the Human Rights Committee page at www.lawsociety.ie/Solicitors/Representation/Committees/Human-Rights, under the 'Resources' tab.

LIVE with me

Justin Spain is principal of Justin Spain Solicitors, a niche family law firm. He is a member of the Law Society's Family and Child Law Committee

The *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* has been in force for nearly five years. Justin Spain looks at how the legislation is working in practice

The introduction of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* was a milestone in Irish family law. From a position of being behind the curve in terms of family law legislation, Ireland is now ahead of many jurisdictions, including England, in legislating for cohabiting couples. The act was welcome, in that it provided the opportunity for a cohabitant to seek relief where they had been left in a vulnerable financial position by the ending of a relationship or the death of their partner. However, the act also has shortcomings and does not deliver all that might be imagined on first reading.

Irish society has changed dramatically in recent decades, as is shown by the passing of the same-sex marriage referendum earlier this year. The 2011 census showed that rates of births outside marriage and rates of cohabitation were on the rise. It is right and proper, therefore, that these new family units should be legislated for. There are those who would argue that such couples have the option to marry, with all the legal protections that entails, and so why should we legislate for cohabiting couples at all? As against this, the fact is that many couples do cohabit for long periods and so should be offered some protection, particularly because of the fact that there may be ignorance of the legal protections offered by marriage.

at a glance

- In contrast to marriage, the cohabitation legislation does not confer any automatic rights on couples – it is simply a redress scheme or safety net
- A cohabitant has to litigate to obtain relief from a court, and there are a number of hurdles that a cohabitant has to clear before a court is in a position to grant relief
- It is clear that cohabitants have a much harder time getting relief than spouses
- Even if successful, the outcomes are very uncertain and likely to be far inferior to the position of a spouse

It is important to note that, in contrast to marriage, the cohabitation legislation does not confer any automatic rights on couples – it is simply a redress scheme or safety net.

Waiting on a friend

I do not propose to go through the legislation in detail, but rather to look at how the legislation is working, now that it has been in force for nearly five years. However, to summarise, section 172 of the act states that, in order to qualify as a cohabitant, one must be one of two adults (either of the same or the opposite sex) who live together in an intimate and committed relationship for a minimum of two years if there are children of the relationship, or five years if there are no children.

Interestingly, section 172(5) states that the cohabitants must have lived as a couple for 'a period' of two or five years, not 'period or periods'. There is currently a case stated from the High Court to the Court of Appeal on whether the two-year period of cohabitation has to be one continuous period or can consist of a number of periods, and it will be interesting to note the outcome of this.

> Much time was spent arguing over whether the claimant had brought their claim within the two years since the relationship broke down

Any claim against a cohabitant or their estate must be made within two years of the ending of the relationship (section 195) or, in the case of death, within six months of probate being granted (section 194). The reliefs that a court can grant include lump sums, maintenance, property adjustment orders, and pension adjustment orders, although the range of reliefs is not as wide as those available to a spouse. For example, there is no specific provision in the act for interim maintenance.

Tumbling dice

Already it is possible to see some definition problems: for example, what is an 'intimate and committed relationship'? Also, who is to say when a relationship ended? Neither of these issues is defined in the act and, in the reported cases to date, both issues have led to a significant amount of argument in court.

So how has the legislation been working? Has it opened the floodgates to cohabitant litigation? The short answer is no and, in fact, there have been surprisingly few reported cases. One of the reasons for this is the fact that no automatic rights are conferred by the legislation, which means that a cohabitant has to litigate to obtain relief from a court.

Unless one is entitled to legal aid, this can be an expensive risk to take, particularly as there a number of hurdles that a cohabitant has to clear before a court is in a position to grant relief (see panel). This may be acting as a deterrent to cohabitants seeking relief from a court. Further, the lack of jurisprudence in this area means that there is a lot of uncertainty around the likelihood of succeeding in a claim.

From speaking with colleagues, there appears to be a general view that these hurdles have led to far fewer cohabitation claims than might have been envisaged when the legislation was introduced. I am aware of a number of cases that have been settled, but there are also now two written judgments – one relating to the breakdown of a relationship and one relating to a claim against the estate of their cohabitant. The outcome of the two cases differs significantly and shows the need for further jurisprudence in this area.

It's all over now

The case of *MO'S v EC* was taken in the Circuit Family Court and was heard by the President of the District Court Judge Horgan. Briefly, the facts of the case were that the applicant woman and the respondent man had lived together for 25 years before splitting up in 2011. Under the act, the applicant had to make her claim within two years of the breakdown of the relationship.

The parties had separated a few times during their 25 years together, and the respondent claimed that the relationship had broken down more than two years before the claim was made. This was disputed by the applicant. The judge found that the applicant was in time to make her claim and met the three tests necessary to seek relief from the court, that is:

1) She was living with him for the requisite amount of time,
2) She was in an intimate and committed relationship at the time the relationship broke down, and
3) She was financially dependent on the respondent, with such financial dependence arising from the breakdown of the relationship.

FOCAL POINT

jumpin' jack flash

In order to obtain relief from a court, a cohabitant claimant must clear the following hurdles:

1) **The claimant must be able to demonstrate that they are a 'qualified cohabitant', and this is not as straightforward as it may seem. In both of the reported cohabitation cases discussed in this article, a very significant amount of court time was spent on establishing whether the relationship was an intimate and committed one. In the case seeking relief on the breakdown of the relationship, much time was also spent arguing over whether the claimant had brought their claim within the two years since the relationship broke down. Neither of these is defined in the act and so will inevitably lead to disputes in court.**
2) **Section 173(2) of the act provides that a qualified cohabitant must satisfy the court that he or she is financially dependent on the other cohabitant, and that their financial dependence arises from the relationship or the ending of the relationship, before the court can grant redress orders. There is no guidance in the act as to what 'financial dependence' means. To get some guidance, one can turn firstly to the Dáil debates, when the then Minister for Justice Dermot Ahern stated that the act was intended to apply to those "in extreme financial difficulty" and who are left "high and dry" as a result of the ending of a relationship. The minister specifically stated that the act "is not designed to redistribute finances of a couple that has split up". Therefore, the fact that a claimant may be in a worse financial position as a result of the breakdown of the relationship is irrelevant – if he or she is not in need of financial support, he or she is not entitled to it. If the claimant had, for example, inherited money, one could argue that they were not in need of financial support and their claim should not succeed.**
3) **Section 173(2) further states that it must be just and equitable for the court to make an order in favour of the claimant. This is a final hurdle that a claimant must clear in order to get relief, and it gives a court a way out of making orders, should it wish to do so.**

> A very significant amount of court time was spent on establishing whether the relationship was an intimate and committed one

As regards the assets, the judge settled on a figure of €26 million as being the amount the respondent was worth. Judge Horgan awarded the applicant woman the following:

- Two properties with a combined value of €1.5 million,
- A lump sum of €850,000,
- Maintenance for herself of €70,000 per annum, plus €10,000 per annum for the dependent child.

Therefore, the applicant woman in this case received roughly 10% of the respondent's assets, notwithstanding the fact that they were together for over 25 years. This judgment has been appealed to the High Court.

Soul survivor

The second reported case is *DC v DR*, a High Court case heard by Ms Justice Baker, in which judgment was given in May 2015. The plaintiff was a 64-year-old farmer and horse trainer who was in a relationship with the deceased for about 20 years when she died in 2014, aged 69. She died intestate, and he then made a claim against her estate, pursuant to section 194(3) of the act. On her death, her estate was valued at €1.4 million.

In order to bring the claim, the plaintiff first had to satisfy the court that he was a qualified cohabitant – that is, that he lived with the deceased in an intimate and committed relationship for five years or more (as they had no children).

The defendant was the family of the deceased and claimed that the plaintiff was not in an intimate and committed relationship, since he retained a house elsewhere. Much of the evidence revolved around whether the couple presented themselves as a couple, whether they were living together, whether they were in a committed and intimate relationship, and whether there was financial interdependence.

Judge Baker concluded that the plaintiff was a qualified cohabitant and that he was in an intimate and committed relationship with the deceased at the time of her death. She awarded the plaintiff approximately 45% of the estate of the deceased.

What is clear is that the two reported cases have resulted in very different outcomes for the claimants, and this shows the need for further jurisprudence in this area. What is clear overall, however, is that cohabitants have a much harder time getting relief than spouses and, even if successful, the outcomes are very uncertain and likely to be far inferior to the position of a spouse, protected as it is by the Constitution.

look it up

Cases:

- *DC v DR* [2015] IEHC 309
- *MO'S v EC* (Circuit Family Court)

Legislation:

- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*

Murphy's LAW

Mark McDermott is editor of the Law Society Gazette

The Law Society's new president, Simon Murphy, talks to Mark McDermott about his career to date and his plans for the coming year

Simon Murphy isn't the kind of guy you'd think of buying a Christmas tree from – but 35 years ago, you might have been doing just that had you hailed from Colorado. Akin to selling sand to the Arabs or water to the Irish, selling Christmas trees to Coloradans ranks right up there among reasons to be measured up for a straitjacket. But, as many have proved before, mad money-making ideas can be staring us right in the face – it just takes an element of crazy genius to spot the opportunity.

And so it was for a pale-faced youth of 20 years, fresh out of college from a relatively anonymous city called Cork, who had decided to head for North America for nine months to see what the New World might offer. It didn't matter that he had a law degree in his back pocket. There would be plenty of time to put that to some use later.

Back to the future: it's November 2015 and the new Law Society president is not sporting a lumberjack shirt – his Christmas-tree selling days are long past.

"I headed off to the States in 1980, me and my rucksack, with another guy – a pal of mine from school who had just finished his BA – and we worked over there for nine months. I had clear water for about eight or nine months before picking up with the professional practice course at Blackhall Place.

"We flew to New York. We had a few bob and kept going. We arrived in Colorado in the middle of November and helped set up some lots for Christmas trees. We sold those and partied away for a while once Christmas was over. I think it was the end of January when I finally phoned home looking for money, so that wasn't so bad.

> **'Look at me here. Look at all those papers on the ground. Look at the time. Don't be a bloody fool. Go off and do solicitors!'**

"We ended up literally crossing the States overland, ended up in LA and San Francisco. We straddled Canada, visiting Montreal and Toronto, and later in the trip, when I was on my own, ended up in Calgary. My friend met a girl and headed for Mexico – and that was that."

What lessons did he take away from the trip? "Looking back, I learned what an idiot I was. You think you're great at 20, and then you cringe at some of the things you did. People were very good to us all the way around. Look, it got the itchy feet out of me a small bit."

Echo! Echo!

It'll come as no surprise to his fellow Corkonians that Simon Murphy has pedigree. Simply coming from that city, of course, gives him a certain cachet (at least for Cork

PIC: LENSMEN

people). From Simon's perspective, he can boast legal pedigree too. He owes his legal genes to his father, who comes up regularly during our conversation.

"My father was a barrister and a Circuit Court judge – AG Murphy – who, unfortunately, passed away four years ago." 'AG' or 'Tony' was the moniker used by his dad's friends and was short for 'Anthony Gabriel'.

Simon was raised initially in Ballintemple, on Cork's south side, and later in Tivoli on the north side, living there until his 20s. "My mother, Dorothea (Dot) still lives there. She's 86." Summer holidays were spent in Fountainstown, half an hour from the city, which Simon now calls home. Married to Fiona (who now works as an in-house solicitor with Skibbereen Credit Union and formerly worked with the Law Society), he has one daughter, Jennifer, who works for a media and advertising agency in Dublin.

His primary and secondary schooling were in CBC Cork. University College Cork beckoned, where he studied for his BCL from 1977 to '80. "I finished in UCC and was spat out when I was just 20. I was a year young for my class all the way along. I skipped second class or something, so I was always 'young'."

A career in the law was always on the cards. "I suppose my father was a big influence – he had to be, subconsciously. I can't remember wanting to do anything else, which is kind of sad really. I remember the careers guidance guy used to meet with us, pre-Leaving Cert, with all kinds of leaflets – electronics, science and engineering. From my early teens, I saw my father coming and going and it just seemed to me to be something I'd like to do."

Was following in his dad's footsteps as a barrister ever an option? "Perhaps, but only for a short time. Again, it goes back to my father – he looms large, I suppose. It was during the final year of my BCL. I didn't know which way I was going to go – solicitor or barrister. Those were the two choices back then. Nowadays, there are all kinds of choices. So I went to my father – he was working in the drawing room. He used to take it over every night and work away there after dinner. I went in to see him at 10 o'clock and said: "I need your advice. I can't decide." And he just looked at me and said: 'Look at me here. Look at all those papers on the ground. Look at the time. Don't be a bloody fool. Go off and do solicitors'!"

A practical man, then?

"A practical man, who went on to add: 'It will be a bit more regimented. We're all over the place, and the busier you get the harder you work. In a solicitor's firm, the busier you get, you'll have scope to delegate, so you'll be able to control things better and still do it all.'

"Things have changed drastically in both professions since then, of course, but back in the late '70s, my father's advice, by and large, rang true. So I thought about it – but not for too long!"

Was it was the right advice?

"I discovered that Cork is a small place. People identified me with my father. That would have probably become stifling if I'd followed him into the Bar. I used it to my advantage, of course. There were doors opened for me. I never saw it as a negative, but it might have been had I gone for the Bar. Who knows?"

Clear water

Back in the US, his aim had always been to get home in time to celebrate his 21st birthday on 16 April 1981. "I actually signed my indentures on my 21st birthday. The next week, I was up in the Law School. It was literally the early days of 'the new system' (as we called it then) at Blackhall Place. Professor Dick Woulfe and Larry Sweeney were holding court.

"It was brilliant: the best six months of my life. It topped the States even. I don't know why. It was a kind of coming of age – meeting people from all over the country. We had such craíc. The banter and the slagging we got, coming from Cork – but we dished it out to people from Dublin and other areas too! That stays with me, and you have that in the Council too. I have always enjoyed that."

He took up his apprenticeship with Barry O'Meara and Son on South Mall, Cork – the firm he has stayed with throughout his career.

Simon was taken in charge by partner Jack Phelan, who died earlier this year. "Even though I was apprenticed to John O'Meara, who was very generous to me, it was Jack who had the tradition of taking the apprentices under his wing. He was great and I learned a lot. He was a crisis manager. He wasn't best at routine, but when there was a crisis, he stayed calm and thought clearly. He always had a saying: 'There's nothing more dangerous than a cornered rat. A cornered rat bites. So if you corner a rat, always show him a way out so that you can control the conclusion, and there's no risk of a bite.' That's a good lesson in law.

"He took a practical approach and taught me how to keep calm in crisis situations. If there was a crisis, if there was something urgent, like an injunction, he'd pull me into it and we'd strategise. We'd always take time to strategise, even if the phones were hopping. We'd take half an hour and make sure he'd got the right counsel in as well. He'd keep the thinking going – 'Don't pull the trigger without thinking!' No matter how harassed or how many people were lined up shouting at you, you had to be able to think. You had to think about your next move."

Is that a skill he'll be bringing to his role as president of the Law Society?

"First of all, I hope there won't be any great crisis during my term, because that wouldn't be great! It's something that has stood me in good stead, however. This is

FOCAL POINT

slice of life

Most influential person in your life?
My father.

Favourite band?
From the '70s – Neil Young, Fleetwood Mac, moving on to U2. I like all music, except 'thump'. And now I listen to Lyric FM – I must be getting old!

Best advice to fellow lawyers?
No matter how hard or fast you have to pedal, always be in control of what you're doing.

Favourite writer?
Of late, CJ Sansom. He's written a series about a hunchback lawyer, Matthew Shardlake, in Tudor times. He's written about six books and they're brilliant. I've just finished a book, *The Truth about the Harry Quebert Affair*, by Joël Dicker, which is a great book recommended to me by my wife.

Favourite alternative job?
I've never thought of it, but maybe a quiet bookstore...

Unfulfilled ambition?
The only ambition I have after this is to continue on my career path and enjoy the rest of my career. And then my ambition is to have a long and healthy retirement with lots of time to relax or travel.

PIC: JASON CLARKE PHOTOGRAPHY

something to impart to younger colleagues: if you do something in a rush, nine times out of ten you're going to get it wrong if you don't think it through."

What has the Council ever done for us?

Simon was only 26 years of age when he took a phone call from John Jermyn, the then president of the Southern Law Association, inviting him to serve on the bar association's council. He has served on the councils of the SLA and Law Society ever since, for an unbroken period of just on 30 years.

He became vice-president of the SLA n 1998 and began serving on the Law Society Council as an SLA nominee. He became president of the SLA for 1999 – 2000. "In 2000, during my presidential year, there was a famous District Court walk-out. I then came under pressure from my Southern Law colleagues at that stage, because they figured I had profile to run for the Law Society's Council election. So I did, and I got in. I've been very fortunate and privileged to be elected and re-elected by my colleagues ever since."

To borrow from that famous Monty Python sketch: 'What has the Council ever done for him?'

"I'll bring it back to my experiences coming as a student to Blackhall Place. I found within a short time that I was very comfortable here, and I enjoyed the company of colleagues from Dublin and all over the country. Then I was given responsibility early enough in my Council career, first becoming vice-chairman and then chairman of what was then the Compensation Fund Committee – now the Regulation of Practice Committee. Suddenly, you're in the mix. Once you get a chair of a big committee like that, you're not going anywhere for a while. I subsequently chaired other important committees, including the Complaints and Client Relations Committee, and Education. It was all very interesting stuff."

The standout issue for Simon during his presidential year will be the passing of the *Legal Services Regulation Bill*, which will be enacted during his term of office.

"Of course, it had to be in my year!" he jokes. "I kind of felt that all along – even though it was introduced back in 2011. And so it has come to pass. It will be an exciting challenge, finally seeing it coming in, and then pinning it down and explaining what it will mean to the profession, through the numerous ways the Law Society communicates with its members, and on our various tours of the bar associations.

"It'll be interesting to see it working in practice. For instance, the handling of complaints in-house will be phased out and will move to the new Legal Services Regulatory Authority, the new costs provisions, and the introduction of LLPs and legal partnerships. All that is going to be a major feature of the year, and we're going to be very busy."

BUYING THE farm

Decisions on the transfer of a farming business affect the family unit, down to residency and control of environment. So what should practitioners do when a farmer comes in the door to discuss a transfer of their farm or the making of their will? Gwen Bowen has the answer

Gwen Bowen is principal of Bowen & Co Solicitors in Sixmilebridge, Co Clare. She holds a BCL, a Diploma in Trust and Estate Planning, and is a qualified mediator through the Mediation Institute

Farms are an unusual asset and, in Ireland, the connection farmers have with their parcels of land is a topic widely discussed. Farmers have a relationship with land that amounts to more than ownership: it is in their family and their townland, and it forms a part of their lives.

In some cases, this story can be one of frustration and burden; in others, of deep and sometimes unrequited love, where the next generation simply cannot see the charm.

However, for all the romance of land, over the last number of years, there has been a steady move towards viewing farming as a business rather than a vocation.

The legal profession will always be involved in transfers of land when it is handed over but, often, we are shut out of the discussion until the deal has been done and the minds of the transferor and transferee are made up as to what should happen.

When we spot a potential problem, it can be very difficult to unravel agreements that have sometimes taken the parties years to reach. However, our role as practitioners is to look forensically for side issues that may arise.

Down on the farm

An interesting report on the thought process of farmers and the farming community can be found in the report *Land Mobility and Succession in Ireland*, produced by Dr Pat Bogue of Broadmore Research in 2013.

Of interest was the finding that only 5% of farmers interviewed had received formal advice and information on succession and inheritance planning, and that the main source of advice was from accountants at 52%, while solicitors came in at only 24%.

Viewing the farm solely as a business in isolation can be a mistake, however. Farm businesses are not just a numbers game: often they are familial concerns, with spouses and offspring working together on farms. Decisions made on the transfer of the business affect the family unit, down to residency and control of environment.

So what should we do when a farmer comes in the

at a glance

- Only 5% of farmers interviewed had received formal advice and information on succession and inheritance planning, and the main source of that advice was from accountants (at 52%), while solicitors came in at only 24%
- Both the transferor and transferee must be separately advised. This is absolutely necessary to ensure equal representation of both parties' interests
- A party making a will must be made fully aware that the legal rights' share is always there. When a waiver of the legal rights' share on succession is sought, separate legal advice is, again, crucial

PIC: REXFEATURES.COM

'They have a natural suspicion of solicitors'

door to discuss a transfer of their farm or the making of their will? A full and detailed attendance is paramount. However, it would be foolish to imagine that this could be done immediately, as it is incumbent on you to ensure that both the transferor and transferee are separately advised. This, while absolutely necessary to ensure equal representation of both parties' interests, is something that has caused solicitors to pause for thought. So remember from the outset who you are representing. You can't ride two horses.

Brand new combine harvester

What of concerns in regard to losing a family's business? The truth is that we cannot rely on generational client loyalty for years to come. We need to accept that we will win some and we will lose some in transactions over the years.

Farmers who are married, or married with children, have pre-existing obligations to other parties, which need to be explained. While a farm is not a family home and can be transferred – subject to no pre-existing marital dispute – this can lead to significant bitterness.

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If the family home is being transferred and the spouse's consent is necessary, always make sure that the spouse is separately legally advised.

Clients need to be clear on how they will be provided for in the years to come. Perhaps an annuity or a lump-sum payment on transfer could be agreed. *Inter vivos* transfers are irreversible (save in the case of fraud), and it can lead to a huge loss of independence for the transferor or their spouse. It is important that they understand the irrevocable nature of the transaction.

Similarly, we should ensure that a party making a will is fully aware that the legal rights' share is always there. When a waiver of the legal rights' share on succession is sought, separate legal advice is again crucial, and the solicitor advising the spouse should make sure that all implications are discussed with their client and time given to ensure the spouse is fully aware of how vulnerable they may be. Be alive, too, to cohabitant's rights, which could lead to suit and consequential loss to an estate.

Where a right of residence simpliciter is being retained, the psychology of the loss of control of the surviving spouse's home can cause huge distress. At a minimum, the advice in regard to right of residence should be that the parties should retain an exclusive right of residence in a property so that they have a say in who comes and who goes to the property.

> **'Clients need to be clear on how they will be provided for in the years to come. Perhaps an annuity or a lump-sum payment on transfer could be agreed'**

Junior's farm

Imagine a scenario where a widower farmer wanted to leave his farm to his eldest son, but another son suffers from a mental disability. This son is being cared for by a sister in the farmhouse, and the farmer's instructions are to leave the farm to the eldest son, who will know to take care of his sister and his brother.

Fast forward a few years and the farmer who has made the will is elderly and incapacitated and, therefore, incapable of changing the will, and the successor son has met and married a woman who does not get on with the sister.

This is a recipe for a disaster in the event of the death of the father, as the sister, who is in a very insecure position, would have no option but to seek provision under section 117 of the *Succession Act* on behalf of herself, and also an application would have to be made for the incapacitated brother. The costs of such actions could devastate a family farm, and it is clear that the brother and sister would fall into the definition of children with needs, who should have been provided for by a just and prudent parent.

Regardless of the farmer's obligation to his eldest son, who may have worked on the farm, he also needs to deal with other children in his care, and we as practitioners need to advise appropriately.

Farmer Bill's cowman

When a farmer has neither spouse nor child, the question of farm succession can become more complicated.

This can arise particularly with farmers with no visible successor. They may be helped out either by neighbours or sons and daughters of relations.

A helper may insert themselves into the farm and develop an expectation that the farm will be theirs. However, basing this solely on the principles of past consideration, they cannot suddenly seek to be rewarded for years of altruistic work and translate this into a right of ownership of the property (*Coleman v Mullen*).

If the farmer asks someone to come and work on his land on the basis that they will be rewarded by the transfer of the land to them at some point in the future, this sets the premise of proprietary estoppel. These cases are difficult to prove where the promise has been made by way of discussion alone (*Coyle v Finnegan*).

When taking instructions in regard to a will, we need to question the farmer about who works on the land and on what basis. This information should be carefully recorded in case there is a future challenge against the will.

The difficulty with proprietary estoppel is that often the version of the story will be the survivor's, as the witness for the counterpoint of the story is no longer with us.

Sometimes, by having this discussion with the farmer, we can raise an awareness of a potential problem, and they may be able to clarify the position. The farmer may be paying the assistant in cash, and payment for services rendered would hugely weaken a claim in proprietary estoppel.

Maggie's farm

Retaining rights in the land is a delicate balance. As seen above, it is necessary to ensure the independence and privacy of transferors of farms and their spouses.

However, rights of residence, maintenance and support out of land can cause a difficulty for the 'Fair Deal Scheme'.

The question of farmers and nursing-home support has always been one that causes concern. Nursing-home care costs around €900 per week. A farm may well sustain this for many years, but it is anathema to farmers to see the land disposed of to pay for their care in a nursing home in the later years of their lives.

We all need to be aware that, under the Fair Deal Scheme, any transfer of assets within the previous five years is not counted for the purposes of estimating the value of a person's assets, and so the transfer of a farm in preparation for going into a nursing home is something that should set alarm bells ringing, and every practitioner should be aware of the five-year time limit.

Also, from the transferee's point of view, having lands transferred with a right of residence, maintenance and support needs to be clarified, as they could suddenly find themselves on the receiving end of a suit about what is reasonable support: is it reasonable for the younger farmer to support the older farmer in a nursing home, for example?

This could obviously devastate a business, and needs to be approached with care. All parties should be comprehensively advised.

Finally, on the transfer of land, one must also deal with the entitlements. Too often it has happened that entitlements fall into the residue, as they are not specifically given with land. If there is no land to attach them to, they are lost. So whenever a farmer talks about disposing of his land, always remember and reference entitlements.

The farming community are good and loyal clients. They have a natural suspicion of solicitors, but we need to know their business and why it is different. Being conscious of the complexities and giving sufficient time to all sides will result in good outcomes for transferor and transferee and avoid litigation from those around the transaction whose needs should be considered.

look it up

Cases:

- *Coleman v Mullen* [2011] 4 IEHC 179
- *Coyle v Finnegan* [2013] IEHC 463
- *Naylor v Maher* [2012] IEHC 408

Literature:

- Bogue, Pat (2013), *Land Mobility and Succession in Ireland* (Macra na Feirme)

Men at WORK

Loughlin Deegan is an associate at ByrneWallace

The *Workplace Relations Act 2015* is a significant reform of Ireland's employment rights institutions and has simplified what had been a confused and confusing structure. Loughlin Deegan doesn't forget his shovel

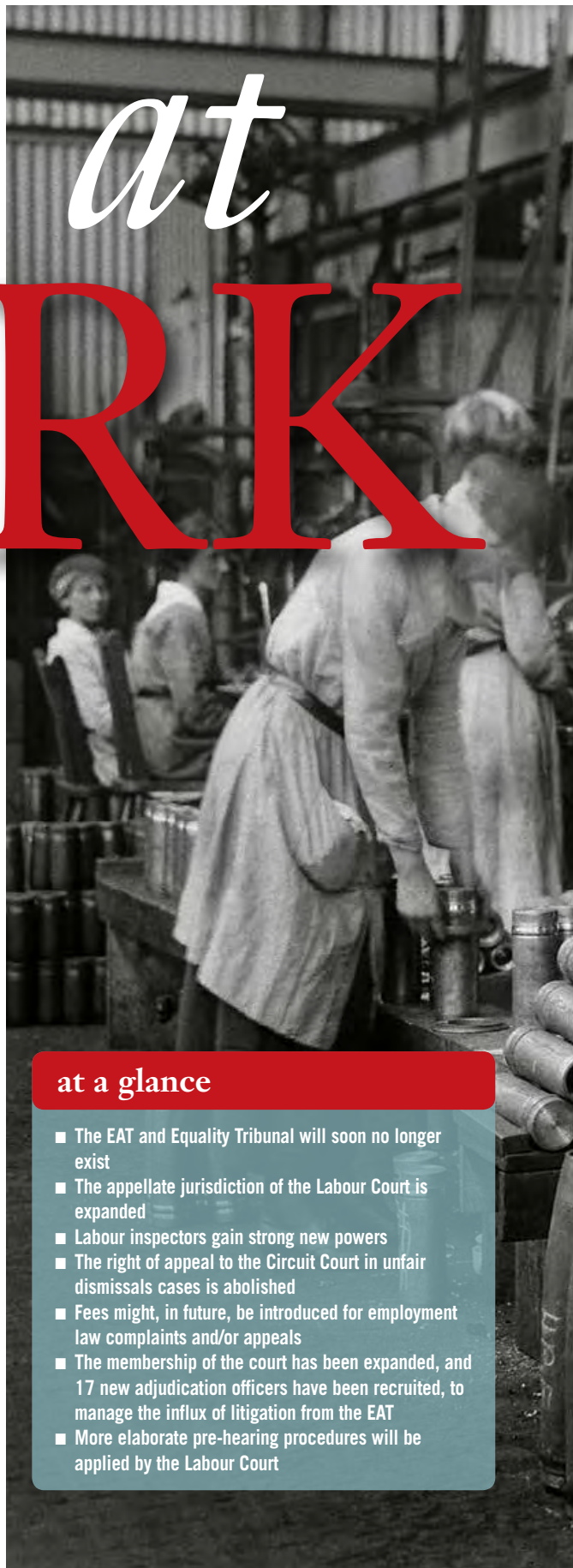
After years of consultation and debate, the *Workplace Relations Act 2015* came fully into operation in October 2015. The Labour Relations Commission has been replaced by the Workplace Relations Commission (WRC). All employment law complaints made on or after 1 October 2015 will be heard by 'adjudication officers' at first instance and by the Labour Court on appeal.

The new regime did not immediately obliterate the old. Complaints made before October will be determined under the former system. The Employment Appeals Tribunal (EAT) will not be dissolved until the cases currently before that tribunal have concluded.

The act will reduce the total number of employment law hearings. The previous system facilitated multiple complaints arising from the same set of facts being made to different forums. The new system will allow all complaints that are based on a single set of facts to be heard at a single hearing.

The nature of some complaints will change. Complaints of unfair dismissal, which previously could commence either in the EAT or before a rights commissioner, must all now commence before adjudication officers.

The WRC has published a (non-statutory) guide to



at a glance

- The EAT and Equality Tribunal will soon no longer exist
- The appellate jurisdiction of the Labour Court is expanded
- Labour inspectors gain strong new powers
- The right of appeal to the Circuit Court in unfair dismissals cases is abolished
- Fees might, in future, be introduced for employment law complaints and/or appeals
- The membership of the court has been expanded, and 17 new adjudication officers have been recruited, to manage the influx of litigation from the EAT
- More elaborate pre-hearing procedures will be applied by the Labour Court

the procedures that adjudication officers will follow. The procedures direct that the party on whom the burden of proof rests in cases under the *Unfair Dismissals Acts* and *Employment Equality Acts* must provide a "clear statement setting out the details" of the party's case in advance of hearing. In all cases, if the respondent seeks to raise certain procedural matters at hearing – such as whether the complaint has been brought within the prescribed time or whether or not the complainant is an employee of the respondent – the respondent must raise such matters in writing within 21 days of being notified of the complaint.

Some of these procedures may be aspirational and not enforceable. The procedures assert that the adjudication officer may draw an inference from a party's failure to provide the required details, but there is no statutory basis for that assertion.

Adjudication officers are likely to adopt relatively informal procedures during hearings. It is likely that hearsay evidence will sometimes be permitted, and parties may rely on copies of documents rather than originals. The extent to which witnesses may be cross-examined remains to be seen. Cross-examination was not normally permitted by rights commissioners, but the WRC procedures provide that parties are to be allowed to question "any" witnesses.

The 1977 decision of the Supreme Court in *Kiely v Minister for Social Welfare (No 2)* may result in greater formality in certain circumstances. In that case, Henchy J said that "tribunals exercising quasi-judicial functions are frequently allowed to act informally – to receive unsworn evidence, to act on hearsay, to depart from the rules of evidence, to ignore courtroom procedures, and the like – but they may not act in such a way as to imperil a fair hearing or a fair result".

If the informality of procedures before adjudication officers imperils a fair hearing, then the adjudication officer will need to apply stricter procedures or risk judicial review.

Hearings before adjudication officers will be in private. Reasoned written decisions will be published on the internet in a form that preserves the anonymity of the parties.

Labour Court rules

Decisions of adjudication officers may be appealed to the Labour Court, where procedures are relatively formal. Pursuant to its statutory powers, the court has issued the *Labour Court (Employment Rights Enactment) Rules 2015*. The rules provide for a more elaborate process for cases under the *Unfair Dismissals Acts* and the *Employment Equality Acts* than for cases under other employment statutes.

> **The *Workplace Relations Act 2015* is a complex piece of legislation. It amends 43 statutes and was itself amended twice before it was commenced. Solicitors are likely to be analysing its provisions for many years to come**

The rules may prove controversial. For example, they require each party to make two separate sets of submissions prior to the hearing of a matter. The first must outline each party's case and indicate the number of witnesses the party will call. The second must provide the names of witnesses the party proposes to call, a summary of the evidence each witness will provide, and a copy of any document the party intends to rely upon. The rules imply that any witnesses not notified in advance will not be heard by the court.

The rules provide that evidence will be given on oath. Cross-examination of witnesses both by the opposing party's representative and by members of the court is the norm.

Appeals before the court will be heard *de novo*. The court usually requires all evidence to be produced afresh and has little interest in deconstructing the merits and flaws of the first-instance decision.

Proceedings before the court will be in public, except where a party successfully applies for a private hearing on grounds of the "existence of special circumstances". Determinations of the court are published on the WRC website.

A party may appeal a decision of the Labour Court to the High Court on a point of law. The decision of the High Court shall be final and conclusive.

Both adjudication officers and the Labour Court have the power to require witnesses to attend hearings. Witnesses so summoned may be required to produce documents. This power is one the court has long held, but has used sparingly. The adversarial nature of unfair dismissals cases may increase the number of summonses issued by the court. However, a party applying for a witness summons will nevertheless need to make out a good case as to why the attendance of the witness in question is necessary.

Mediation

Under the new system, solicitors may find themselves more involved in alternative dispute resolution than before. Before a complaint is sent to an adjudication officer for investigation, the director general of the WRC may refer the complaint to a 'mediation officer'. The director general may do this only if he believes that mediation might resolve the complaint and provided that neither party objects to mediation.

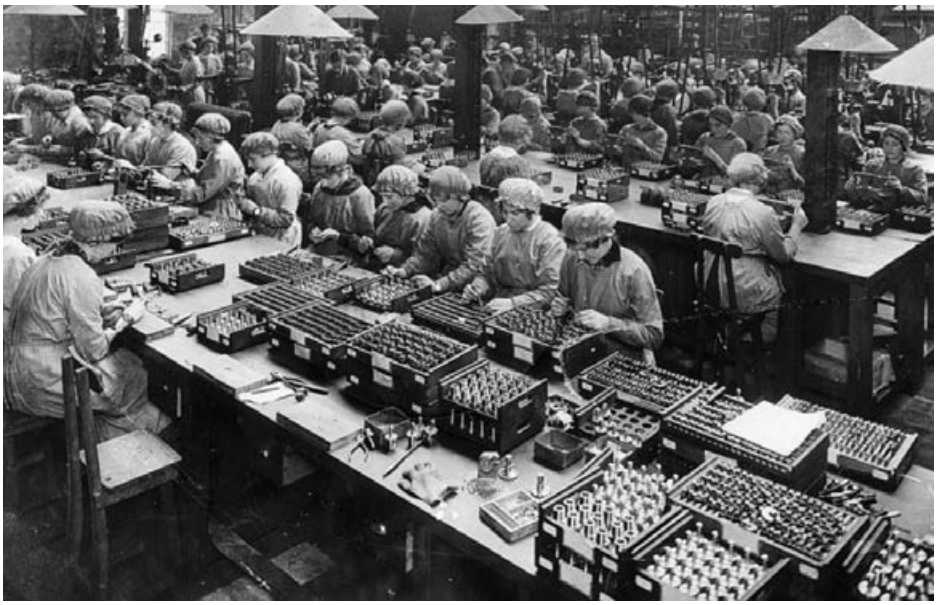
If a complaint is referred to a mediation officer, he or she may convene a mediation conference and attempt to resolve the matter. This is similar to the mediation process that previously operated under equality legislation.

An alternative model is available. The mediation officer may "employ such other means as he or she considers appropriate for the purposes of resolving the complaint". These other means are unspecified. They

FOCAL POINT

complaints process at a glance

- Complaints must be lodged within six months, or within 12 months if the delay is due to a reasonable cause,
- At least for the moment, no fees will be charged to initiate complaints,
- Claim forms are available on the WRC website,
- The director general of the WRC may refer a complaint for mediation, but only where the parties agree,
- If there is no successful outcome at mediation, complaints will be investigated (in private) by an adjudication officer,
- Decisions of an adjudication officer can be appealed to the Labour Court within six weeks,
- Determinations of the Labour Court can be appealed on a point of law to the High Court.



may include telephone-based conciliation or something else entirely. Solicitors may wish to ask very direct questions before entering any mediation process in order to be sure of what their clients should expect from it.

Communications during a mediation process are confidential, including in any subsequent investigation by an adjudication officer.

Labour inspectors

The act is not limited to providing a new process for employment law complaints. It also significantly expands the powers of labour inspectors.

One new power is the power to impose 'fixed payment notices'. Such notices can only be imposed in respect of three types of employment law offences. The first of these is failure to inform, and consult with, employee representatives in respect of a collective redundancy, for which offence the penalty is €2,000. The other two offences are failure to provide an employee with appropriate payslips and failure to provide a statement demonstrating the extent of the employer's compliance with the *National Minimum Wage Act 2000*. In those cases, the fixed penalty is €1,500.

Fixed payment notices are an alternative to prosecution. An employer who complies with such a notice may not later be prosecuted for the offence in question. Failure to comply with a fixed payment notice is not an offence in itself.

A second novel enforcement power is the 'compliance notice'. Such notices may be issued in a wide variety of circumstances, including where an inspector believes that an employer has breached working time rules or where an inspector believes an employer has made inappropriate deductions from an employee's wages. The inspector may issue a compliance notice that requires the employer to take specified remedial action by a specified date. The employer may appeal a compliance notice to the Labour Court and onward to the Circuit Court. In the absence of a successful appeal, failure to comply with a compliance notice is an offence.

Compliance notices will significantly alter the balance of power between employers and labour inspectors. They will give a criminal character to many alleged breaches that previously entailed exclusively civil redress. In the new structure, it will be far more difficult for an employer to resist the interpretation of employment statutes adopted by a labour inspector, even where the employer strongly denies that it has breached the relevant statutes. The prospect of an appeal to the Labour Court in which an employer can try to prove its innocence is unlikely to be appealing.

The issuing of a compliance notice does not prejudice the right of an employee to pursue a civil complaint against his or her employer in respect of the facts that gave rise to the compliance notice.

The institutional structure provided by the act includes a much closer relationship between labour inspectors and the Labour Court. For example, the Labour Court will now be able to direct that an inspector investigate an employer who is party to an appeal before the court. The inspector's report after such an investigation will be considered by the court and the parties. This power may help complainants who might otherwise face difficulties in gathering the evidence necessary to pursue a complaint to its conclusion.

Substantive changes

The act's effects are not limited to procedural and institutional matters. They also amend substantive employment law. From 1 August 2015, employees who have been absent from work due to medically certified illness have been entitled to accrue annual leave in the same manner as if they were at work.

Employees who are on long-term sick leave do not accrue annual leave indefinitely. Leave entitlements will expire 15 months from the end of the statutory leave year in which the entitlements accrued. The statutory leave year runs from 1 April each year until the following 31 March.

An employee is not entitled to take annual leave while on sick leave. Annual leave entitlements only crystallise at the end of an employee's period of sick leave, whether the sick leave ends because the employee returns to work or because the employee's employment terminates for any reason, including the death of the employee.

The *Workplace Relations Act 2015* is a complex piece of legislation. It amends 43 statutes and was itself amended twice before it was commenced. Solicitors are likely to be analysing its provisions for many years to come.

look it up

Cases:

- *Kiely v Minister for Social Welfare (No 2)* [1977] IR 267

Legislation:

- *Industrial Relations (Amendment) Act 2015*
- *Labour Court (Employment Enactment Rules) 2015*
- *National Minimum Wage Act 2000*
- *National Minimum Wage (Low Pay Commission) Act 2015*
- *Workplace Relations Act 2015*
- *Workplace Relations Act 2015 (Fixed Payment Notices) Regulations* (SI 419 of 2015)

Literature:

- *Procedures in the Investigation and Adjudication of Employment and Equality Complaints* (www.workplacerelations.ie)

21st century CHILD

Betty Dinneen is the managing solicitor of Popes Quay Law Centre Cork and a member of the Law Society's Family and Child Law Committee

In the second article on the *Children and Family Relationships Act*, Betty Dinneen outlines the changes relating to guardianship, custody and access arising from the new legislation

The *Children and Family Relationships Act 2015* introduces a range of reforms across a wide spectrum of family law. When introducing the bill at the second stage in February 2015, the Minister for Justice and Equality said: "When enacted, [the act] will be a watershed in the development of family law. It will align our family law with the reality of the modern life and family life. It addresses a world where children are reared in married families, lone-parent households, in blended families, in houses headed by same-sex couples, or grandparents or other relatives.

This article is intended to be a practical guide for busy District Court practitioners, so that they can hit the ground running when the act comes into operation and, indeed, to be in a position to advise their clients on their rights and obligations between now and then.

The original proposal was to repeal the *Guardianship of Infants Act 1964*, but that did not happen. The result of the 2015 act amendments is that it is difficult to navigate through the amendments. A solution is to refer to the revised 1964 act on the Law Reform Commission website. For the sake of clarity, the new provisions are referenced by the amendments they make to the 1964 act.

A number of the new provisions deal with the lacuna left by the lack of provisions relating to children in the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* and implement articles 3 and 12 of the *UN Convention on the Rights of the Child 1992* following the 'Children's Referendum'.

at a glance

- For the first time, the 'best interests of the child' are outlined in detail in the legislation
- The definition of 'father' in respect of guardianship has been amended
- The act introduces a wide range of people who can apply for guardianship and custody and access to a child

New principles

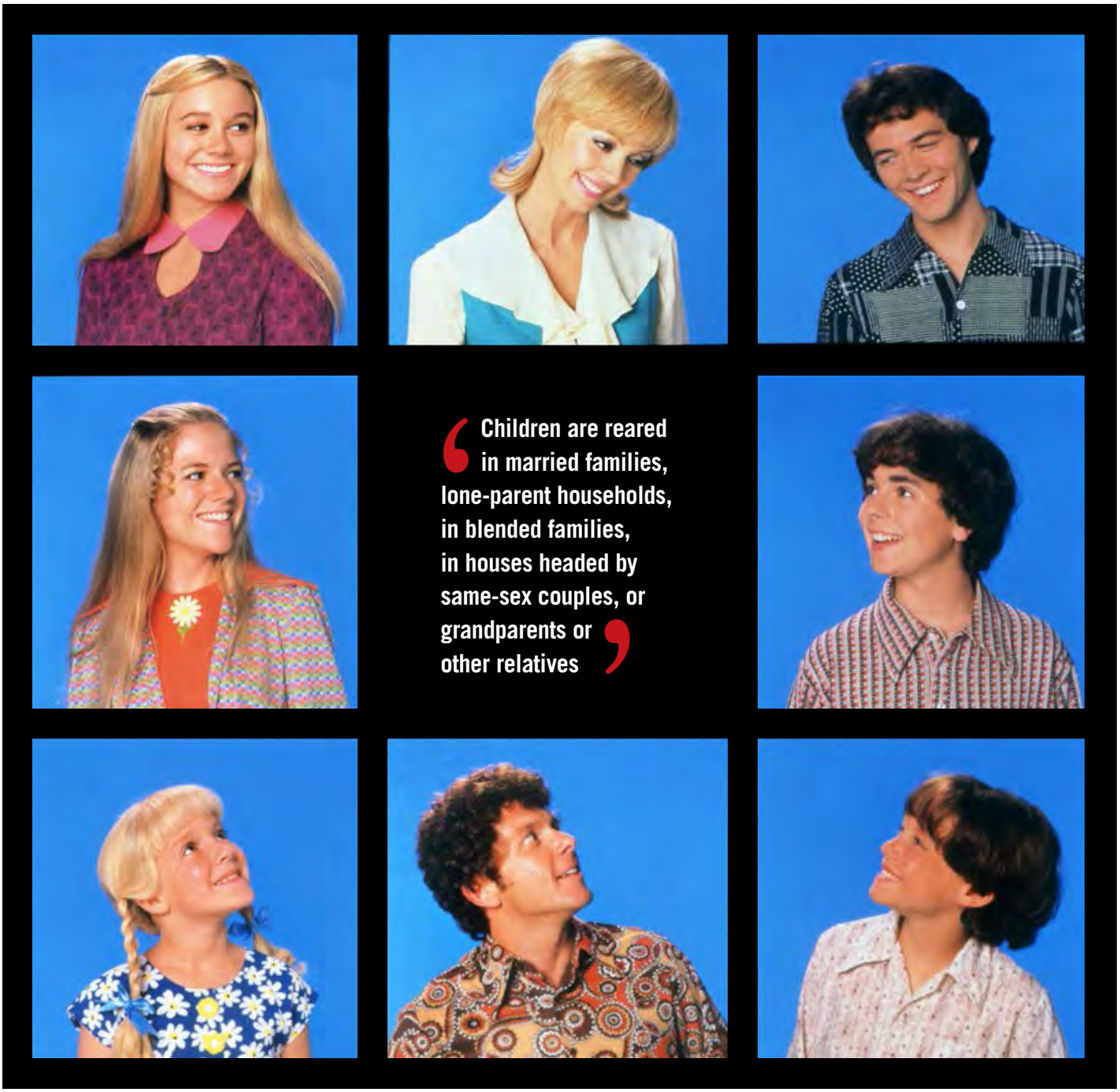
The welfare principle underlying the provisions in the 1964 act is replaced with the 'best interests of the child' principle. Section 31 sets out the criteria that must be taken into account by the courts.

The criteria are very extensive, and it is recommended that practitioners read this section. For the first time, the best interests of the child are outlined in detail in legislation, and it will be interesting to see how the courts implement and interpret these.

Who's the daddy?

The amended definition of 'father' in respect of guardianship under the 1964 act should be noted as, in terms of section 2(1), the definition of 'father' includes a male adopter under an adoption order, but not the biological father of a child who was not married to the child's mother, unless:

- The father has been appointed guardian by the courts (section 6(A)),
- The child's parents entered into a void or voidable marriage (section 2(1)),



PIC: REXFEATURES.COM

- The child's parents agreed that the father be a guardian and have signed the necessary statutory declaration (section 2(4)).
- The child's unmarried parents have cohabited for at least 12 consecutive months after commencement of the subsection. This includes a period of three consecutive months at any time after the birth of the child during which the parents lived together with the child (section 2(4)(A)). It would seem that the three-month period does not have to occur directly after the birth of the child, but can occur at any time up to the child's majority, provided that it is part of the 12-month period during which the parents have resided together.
- Under section 6(D), fathers acquire guardianship rights or the equivalent rights in another state.

The 2015 act introduces a wide range of people who can apply for guardianship and custody and access to a child. It is possible for a child to have more than two guardians, and provision is made for limitation by the courts of the powers of a guardian. There is also provision for temporary guardians with either full or limited guardianship powers where an acting guardian is unwell or unable to carry out his or her duties.

Automatic guardians

Under the new legislation, the following will automatically be guardians:

- The biological mother (as before).
- The father (see the new definition of 'father') and mother will be joint guardians. It is possible for a guardian or a person seeking a declaration that he or she is not a guardian to make the appropriate application under the new section 6(F).
- Where civil partners or a cohabiting couple have jointly adopted a child under an adoption order they shall be joint guardians of the child.
- The husband, civil partner, or cohabitant of the mother of a donor-conceived child – the qualifying conditions are set out in section 6(B).

Court-appointed guardians

The parties who can be appointed guardians by the courts are:

- A parent who is not a guardian (section 6(A)(1)). This obviously includes a biological father who does not have the necessary 12 months cohabitation with the mother. The criteria regarding the best interests of the child set out in section 31 will be applicable when determining whether the parent is made a guardian.
- A person who is (i) married to or is a civil partner of the parent of the child, and who cohabited with the parent for a period of three years, and has (ii) shared the day-to-day responsibility for the child for a period of more than two years, or
- (i) A person who provides or has provided for the day-to-day care for the child for a continuous period of more than 12 months and (ii) there is no parent or guardian willing or able to exercise the rights and responsibilities of guardianship (section 6(C)).

Where a parent is not the applicant, the Child and Family Agency must be put on notice of the application and their views (if any) taken into consideration by the court when making an order.

The new section 6(C) sets out the various safeguards – for example, any existing guardians must be put on notice of the application; the child should, if possible, be given an opportunity to make his or her wishes known; and a limited form of guardianship order under section 6(C)(9).

Temporary guardians

Section 6(E) provides for the appointment of temporary guardians in the event the qualifying guardian is incapacitated by serious illness or injury and cannot exercise the rights and responsibilities of guardianship. Again, the section includes various safeguards and requires that any existing guardians and the Child and Family Agency be put on notice. The court can limit the rights of guardianship to be given to the nominated person, as it sees fit.

Who can apply for access?

A new section 11(B) has been introduced into the *Guardianship of Infants Act*, which states that a relative of the child (which includes grandparent, aunt, uncle, brother or sister) or a person with whom the child resides or has formerly resided may apply for access.

The court will grant access to the child on such terms and conditions as it deems fit.

Previously, when a relative wished to apply for access, the leave of the court was required. This two-step process is no longer required, and it is open to a relative to apply directly to the court for relief. The court must take into account the wishes of the child, the child's guardians, and whether it is in fact necessary to make an access order.

> A dedicated and fully resourced family law court system, backed up by a comprehensive court welfare service, is exactly what is required in order for this act to do what it sets out to do

Who can apply for custody?

Relatives and certain persons may apply for custody of the child.

Section 11(E) repeats the categories of persons set out in section 6(C), being a relative of the child, or a person with whom the child resides, where that person (i) is or was married to, or in a civil partnership with, or has for a period of three years been the cohabitant of the child's parent, and (ii) has for more than two years shared the day-to-day responsibility for the child's care with the child's parent, or (iii) is an adult who for a continuous period of more than 12 months has provided day-to-day care for the child, and (iv) there is no parent or guardian willing or able to exercise the rights or responsibilities of guardianship in respect of that child.

There are various safeguards set out in section 11E. However, notice should be taken of the new category of persons who can apply for rights in respect of the dependent child.

Where things go wrong

Where a guardian or parent of a child granted a custody or access order has unreasonably been denied access by another guardian or parent, section 18(A) makes provision for an enforcement order. The court will only grant the order when it is satisfied that the access or custody was unreasonably denied by the other parent or guardian and it is in the best interest of the child or appropriate to do so.

What is interesting in this provision is that the enforcement order may be conditional on:

- The applicant being granted extra access to make up for the period he or she was denied,
- The errant party reimbursing the other party for any losses incurred in attempting to exercise rights under the order, or
- Both parties being required to participate in a parenting programme, and/or family counselling, and/or mediation.

The voice of the child

Throughout the 2015 act, provision is made for the voice of the child to be heard and reports to be obtained. The minister, in consultation with the Minister for Children and Youth Affairs, may set the qualifications and expertise of experts and determine which party is liable for the experts' fees.

It is clear that a number of regulations are necessary in order for the 2015 act to be properly operable.

What's on the tin?

When the bill was introduced in February, a number of deputies proposed the establishment of a comprehensive court welfare service to carry out assessments of the child's welfare and best interests, and to ascertain his or her views while also carrying out family risk assessments. Such a service would also ensure that supports and services, such as mediation services and child contact centres, would be available to children and families.

A dedicated and fully resourced family law court system, backed up by a comprehensive court welfare service, is exactly what is required in order for this act to do what it sets out to do.

look it up

Legislation:

- *Children and Family Relationships Act 2015*
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*
- *Guardianship of Infants Act 1964* (revised)

MARY REDMOND 1950 – 2015

Mary Redmond passed away at dawn on Easter Monday this year. One of the brightest lawyers of her generation, a distinguished academic and practitioner, business leader, fantastic colleague and genuine social entrepreneur, Mary made an incredible contribution to the world while she was in it. She was a colleague of whom we should all be proud.

Mary attended Loreto College, St Stephen's Green, and thereafter studied law at University College Dublin and taught there after her degree. She was apprenticed at Arthur Cox and qualified as a solicitor in 1971.

She moved from UCD to read law at both Oxford and Cambridge. She was awarded a PhD at Cambridge and was a fellow and Dean of Studies in Christ's College, Cambridge, until she returned to Dublin in 1985. She was made an Honorary Fellow of Christ's in 2004, which saw her involved in, and leading, fundraising and other activities central to the development of the college.

Mary ran her own practice in Dublin from 1985, specialising in employment law. She returned to Arthur Cox in 2002 as a partner, and later became a consultant to the firm, a role she maintained until her death.

In her business life, Mary was deputy governor of the Bank of Ireland, a member of the RTÉ Authority, served on the boards of Smurfit, Campbell Bewley, Royal Liver and, more recently, Choice Broadcasting Limited (Classic Hits 4FM). She also served two consecutive terms on the Labour Relations Commission.

She wrote the first textbook on unfair dismissal, which was published by the Law Society in 1982. The Society also published in 1980 *Cases and Materials on the Irish Constitution*, which she co-authored with James O'Reilly SC. She wrote the seminal text *Dismissal Law in Ireland* (1999), with the second edition following in 2007. Most recently, she co-authored, with Tom Mallon BL, *Strikes: An Essential Guide to Industrial Action and the Law* (2010). Mary was also the major contributor to, and editor of, the first yearbook and e-publication on Irish employment Law, the *Arthur Cox Employment Law Yearbook*.

She was conferred with an Honorary Doctorate in Laws (LLD) at Trinity College in June 2014 in recognition of her contribution to legal scholarship and social entrepreneurship.

It is, perhaps, for her deep concern for others and genuine desire to make the world a better place that Mary will be most remembered. Following the death of her father Sean in 1986 and Mary's family's experience of the Our Lady's Hospice, Mary founded the Irish Hospice Foundation, which continues to play a vital role in end-of-life care in this country. Paying tribute to Mary after she died, Sharon Foley, current CEO of the foundation, wrote: "Showing bravery, courage and inspirational leadership, she rose above territorial issues to help build a national hospice movement."

Partly as a result of her experience of setting up the foundation, Mary decided that the voluntary sector in Ireland needed a central network to celebrate what organisations in the sector have in common and to share best practice and foster collaboration. She founded The Wheel in 1999 – now the leading representative body for all charities, with 1,100 members.

She served on the boards of the Iveagh Trust and Cricket Ireland, was vice-chair of the Barretstown Gang Camp and was a fellow of St Columba's College. She was also instrumental in founding the St Francis Hospice in Raheny.

Mary became ill in 2009. During her illness, she wrote a book under her married name, Mary Ussher, *The Pink Ribbon Path*, which is about her journey living with cancer. Under the same name, she wrote a beautiful children's book, *Marlena the Fairy Princess – Making Friends*.

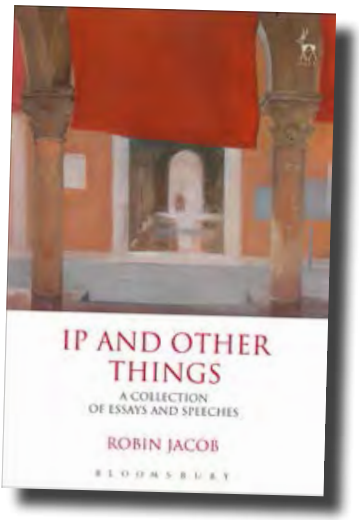
Mary was truly an exceptional person. Despite her many achievements and accolades, she was a humble person. She was great fun and occasionally bordered on being irreverent. She was genuinely interested in people, and it was a memorable experience to meet her and to hear her speak about the many subjects about which she knew so much. It was a privilege to have known her and to have worked with her.

Mary is survived by her husband Patrick Ussher, her son Patrick, her mother Máire Redmond, her sisters Maireád, Catherine, Gerardine, Janice and brother Liam, as well as three stepdaughters, Kitty, Felicity and Charlotte Ussher, and a wide circle of friends and colleagues. May she rest in peace.

Ar dheis Dé go raibh a h-anam dílis.

RH & SG

IP and Other Things: A Collection of Essays and Speeches



Robin Jacob. Hart Publishing (2015), www.hartpub.co.uk. ISBN: 978-1-8494-659-53. Price: Stg£65 (incl VAT).

Robin Jacob was called to the bar by Gray's Inn in 1965, having read natural sciences (physics) at Trinity College, Cambridge (1960-1963) and law at the LSE (1963-1967). He joined the chambers of the then leading patent QC, Thomas Blanco White, and spent the next 45 years practising as a leading member of the English patent bar, a High Court judge and, as Lord Justice Jacob, a judge in the Court of Appeal of England and Wales.

Throughout his glittering IP career, he particularly concentrated on patents and has been credited with accelerating and streamlining English patent litigation procedures, with consequent reduction in cost.

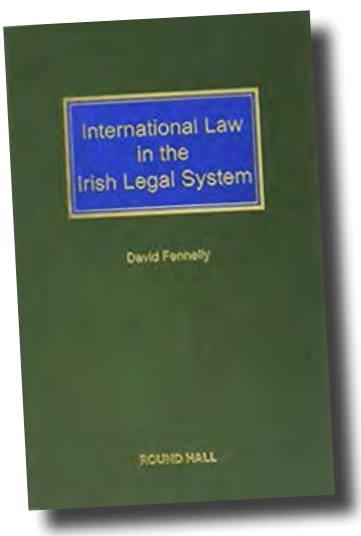
This collection of essays, spanning his career as both an IP practitioner and judge, reflects his unique insights into all that is good, bad, and sometimes ugly about English and European IP legislation and procedure. He faces down the patent abolitionists and the competition authorities that try to restrict patent rights, and is firmly of the view that the availability of a future IP monopoly right is a major driver for innovation.

He rails against what he sees as "woolly lines" in IP, however, and particularly despairs of aspects of current European trademark law and their interpretation by the ECJ. New British provisions, such as the criminalisation of design-right infringement and the ratcheting up of copyright terms, also come under fire and will only serve to stifle innovation and creativity, in his view.

This collection is not, by any means, an IP textbook, although many of the IP pieces are thoughtfully grouped under the traditional headings of patents, trademarks, copyright and designs. Secondly, this is not really a book about 'other things' either, save for some inspiring personal reflections and touching obituaries for past great QCs of the English patent bar.

All of the pieces are written in an accessible and entertaining style, and some include a useful commentary of what has happened since they were first published. This book would make the perfect Christmas gift for any practising lawyer, law student, or academic interested in the development and practice of IP law, and I heartily recommend it.

Mary Bleahene is a partner with FR Kelly, 27 Clyde Road, Dublin 4.



International Law in the Irish Legal System

David Fennelly. Round Hall (2014), www.roundhall.ie. ISBN: 978-0-4140-348-15. Price: €235 (incl VAT).

Irrespective of the breadth and depth of its impact, commentators have largely ignored the implementation of public international law in the Irish legal order. Written by a practising barrister and assistant professor at the TCD School of Law, this book endeavours to fill this gap.

Fennelly structures the book by reference to the main sources of international law. The opening sections consider the implementation of international agreements in both the Irish and EU legal systems by highlighting the relevant Irish constitutional provisions allied to the evolving role of the EU. The author also focuses on the role of customary international law (or rules

based on the practice of states) in the EU and Irish legal orders.

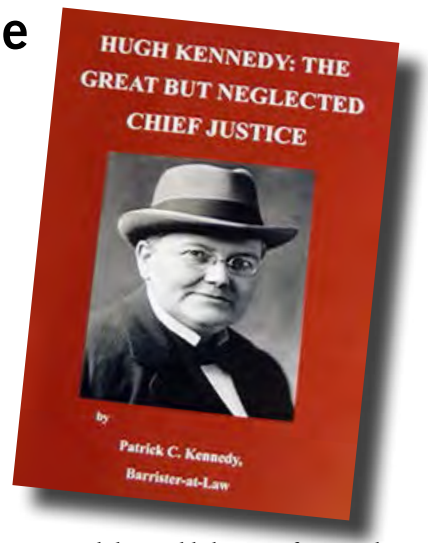
The book also examines the role of acts of international organisations (a relatively new phenomenon in international law), placing particular emphasis on the role of the UN Security Council. In addition, Fennelly examines the potential constitutional problems posed by Ireland's membership of the UN in the context of the growing influence of the EU – the only international organisation specifically recognised in the Constitution.

The latter parts of the book offer an insight into the effects of the decisions of international courts/tribunals, such as the Strasbourg-based European Court of Human Rights and the World Trade Organisation, on the Irish/EU legal system. (Fennelly acknowledges the growing influence of the decisions of the Strasbourg court on the domestic legal order, notwithstanding their lack of binding effect.) The final chapter contains a useful analysis of the impact of Ireland's international obligations on specialised areas of practice, such as commercial, criminal, environmental, human rights and family laws.

Fennelly's guide to an area of legal practice that has until now been largely neglected is a welcome addition that will appeal to relevant practitioners, academics and diplomats, in addition to those working in the relevant branches of the civil service.

Cormac Little is partner and head of the competition and regulation department at William Fry.

Hugh Kennedy: The Great but Neglected Chief Justice



Patrick C Kennedy. (2015). ISBN: 978-0-9934-272-20. Price: €10 paperback (incl VAT).

Hugh Kennedy (1879-1936) was a significant lawyer, jurist, and judge who played a notable role in the foundation of the State and in the early decades of its existence. Born in Dublin, educated privately and at University College Dublin, he was called to the Bar in 1902 and took silk in 1920. He was the honorary secretary of the Gaelic League, and his fellow officers included Patrick Pearse, Eoin Mac Neill and Éamonn Ceannt, all leading figures in nationalist Ireland at the turn of the 20th century.

Kennedy was a member of the committee that drafted the Constitution of the Irish Free State, was the law officer of the government in 1922, attorney general (1923-1924), TD for Dublin South City in 1923, and was appointed Chief Justice in 1924 – a position he held until his sudden death in December 1936 at the age of 57.

I take issue with an aspect of the author's title. Hugh Kennedy may be considered 'great', but he has not been neglected, although it is now nearly 80 years since his death. Mr Justice Gerard Hogan, judge of the Court of Appeal, has written on Chief Justice Kennedy in the *Irish Jurist* (1989); Alisa C Holland (UCD School of History and Archives) also wrote in the *Irish Jurist* on the papers of Hugh Kennedy, with the sub-heading 'A research legacy for the foundation of the State' (1989). There are several references to Chief Justice Kennedy's 'famous dissent' in *The State (Ryan) v Lennon* ([1935] IR 170), a case that related to an amendment of the Constitution of 1922, dealing with the repression of political violence and subversion and the establishment of a special tribunal, in Hogan's and Whyte's *JM Kelly: The Irish Constitution*.

The author, Patrick C Kennedy is a barrister, was twice mayor of Limerick, and was a member of the Seanad for 12 years.

I consider that any published material that adds to our knowledge of significant individuals and events is, generally, to be welcomed. So, I welcome this publication – which is in paperback and contains only 75 pages without any index or table of cases. In a booklet of this nature, the topics put forward by the author, such as Kennedy as attorney general, chief justice, and the Kennedy papers lodged in UCD deserve fuller treatment. The 'bolding' in black type of words and phrases in the text by the author is without justification and jars on the reader. Hugh Kennedy awaits a biography.

Dr Eamonn G Hall is director of the Institute of Notarial Studies, Dublin.

council report

6 November 2015

The president extended a warm welcome to all newly elected and newly nominated Council members: Aisling Meehan, Aaron McKenna, Terence O'Sullivan and Greg Ryan.

Taking of office

The outgoing president, Kevin O'Higgins, said that it had been his great privilege to serve as president of the Society for the previous 12 months. In the course of the year, he had been fortified by the support of the Council, the past-presidents, the director general, the deputy director general and all of the staff within the Law Society. He knew that Simon Murphy would be a fantastic president and would do the Council and the profession proud.

Simon Murphy was then formally appointed as president. He thanked the Council for electing him and paid tribute to Mr O'Higgins, who had represented the profession with an inclusiveness and all-embracing style. He also extended the Council's appreciation to Kevin's wife, Gaye, and his family for their support and commitment during the past year.

Mr Murphy said that he had been influenced in his decision to become a solicitor by his late father and was delighted that his mother, wife and daughter could witness his election as president of the Law Society. His former master, the late John O'Meara, and his former partner, the late Jack Phelan, had both played an important part in his career as a solicitor. He paid tribute to his three hard-working partners, John Purcell, Crona Hughes and Emer O'Callaghan, whose generosity would enable him to serve as president for the next 12 months, and to all of his colleagues in the Southern Law Association who, when called upon, had stood by him. He was delighted that his first official engagement on the following Tuesday would be to attend at the Southern Law Association's AGM.

To his fellow Council members, Mr Murphy expressed his appreciation for their work as volunteers on the Society's Council and committees over many years, of which they should be truly proud.

While the work of all of the Society's committees, task forces and working groups were very important for the Society and the profession, he wanted to particularly mention the *Legal Services Regulation Act* Task Force, under the chairmanship of Paul Keane, and the Practice Management Standard Working Group, under the chairmanship of Valerie Peart, both of which would undertake hugely important work on behalf of the profession during the coming year.

The senior vice-president Stuart Gilhooly and the junior vice-president Michele O'Boyle then took office and expressed their commitment to the Council and the president for the coming year.

Legal Services Regulation Bill

The director general reported that there had been a considerable amount of activity on the bill in recent weeks, and it appeared clear that it would be passed by both Houses of the Oireachtas before Christmas.

Setanta case

Stuart Gilhooly reported that an appeal had been lodged against the judgment of Hedigan J in the High Court. A directions hearing was scheduled for that morning, and it was hoped that the appeal would be heard quickly. Mr Justice Hedigan had decided to make no order for costs.

Report on AGM

As required by the bye-laws, the Council adopted the three motions approved by the AGM on the previous evening relating to (a) funding to replace, modernise and greatly enhance the Society's IT systems, (b) an investigation into the provision of insurance to cover defence costs in cases before the Complaints and Client Relations Committee, the Solicitors Disciplinary Tribunal and the High Court, and (c) an investigation into the creation of a graphic for use by solicitors for marketing and promotional purposes.

BUSINESS LAW COMMITTEE

Priority and registration of charges

The *Companies Act 2014* has introduced:

- New rules governing what security needs to be registered,
- A new regime governing priority of charges, and
- A new filing process for submission and registration of charges with effect from 1 June 2015 (the 'effective date').

The provisions relating to charges and debentures are contained in part 7 of the act.

Historically, particulars of only certain charges listed in legislation (section 99 of the *Companies Act 1963*) were required to be delivered to the Companies Registration Office (CRO) in order to ensure the charge was valid. One of the changes in the act is a broadening of what needs to be registered in the CRO. The registration rules are contained in sections 408 and 409 of the act and provide that charges over all categories of assets are now registerable save for certain specific exclusions (including, for example, a charge created over an interest in cash or in shares in an Irish company). Thus, particulars of every charge created by a company over any property need to be delivered to the CRO, save for charges over non-registerable assets. The new rules relating to what needs to be registered apply to all company types from the effective date, including companies that have yet to convert to a designated activity company or LTD under the act. Failure to register a charge has the effect of making the charge void against a liquidator or any creditor of the company.

Priority of charges is now determined by the date and time of receipt by the registrar of a filed charge submission and is no longer governed by the date of creation of the charge itself. The new priority provisions are contained in section 412(3) of the act. The priority rules remain subject to any specific priority rules applicable to certain assets, for example, land under PRA/Registry of Deeds rules and/or any agreement governing priority between lenders.

In addition to retaining the one-stage procedure of filing a Form C1 within 21 days of creation of the charge, section 409 of the act introduces a new optional two-stage filing procedure, whereby a notice of intention to create a charge (Form C1A), followed within 21 days by a confirmation of creation of that charge (Form C1B), can be filed. The act does not contain any equivalent to section 99(3) of the *Companies Act 1963*, under which it used to be possible to file a Form C1 outside of the 21-day period where the charge was created over property situated outside of the State.

Priority under the two-stage procedure is determined by the time and date of the filing of Form C1A. Priority under the one-stage procedure is determined by the date and time of filing of the Form C1. Thus, the two-stage procedure is accorded priority.

Both parties must sign the Form C1 if using the one-stage procedure. Under the two-stage procedure, if either party has not signed the Form C1A, then that party must sign the Form C1B so that both parties sign one or other of the forms. It is no longer possible to register a charge by having just one party sign the form and filing a certified copy of the relevant security document.

The committee is aware that certain lenders have indicated a preference for adopting the one-stage procedure for reasons of confidentiality and non-disclosure of impending charges against a company. A further concern raised by lenders is the requirement for charge forms (C1/C1A C1B) to be executed by both parties. A solution that has been adopted in practice is that the firm of solicitors acting for the lender may sign the form on behalf of both chargor (if so authorised) and lender. The CRO have stipulated that two different solicitors in a firm must sign if this approach is followed. In these circumstances, a lender's solicitor will require the appropriate authorisation from the chargor in favour of the lender's solicitor authorising the lender's solicitor to (a) sign or complete all security related registration forms, and (b) file same in the CRO. The lender's solicitor may also require an indemnity (often contained in the body of the relevant security document) for acting on foot of such authorisation, combined with an acknowledgment that the chargor has not been advised by the lender's solicitor, nor does the lender's solicitor have any liability or responsibility to the chargor for failure to comply with the requirements.

Some lenders are being prescriptive about those procedures that should be followed when acting on their behalf in taking security. Accordingly, practitioners should consult with the guidance and instructions issued from their client in all instances.

All filings under sections 408 and 409 of the act are now required to be made online using the www.core.ie e-filing system. This is to facilitate the CRO in determining priority of filings. All practitioners should register for this system. The charge forms are signed by solicitors using a ROS certificate or sub-certificate, which must be applied for in advance with the Revenue Commissioners and issued to individual users within a firm.

Furthermore, as mentioned in a recent article from the Law Society *eZine*, from 5 December 2015, the only login method available from ROS will be JavaScript. It is recommended that solicitors change their login to JavaScript well in advance of the deadline to ensure that the time limits for filing, among other things, Forms C1 and C1A/C1B are not missed.

The committee is aware that certain practitioners have encountered some technical difficulties in implementing the new e-filing procedure and application for ROS signatures. The CRO have been helpful to date in assisting the profession and created a new contact specifically for e-filing issues – tel: 01 804 5374, 01 804 5307, 01 804 5355, or email: electronic.filing@djei.ie – and have uploaded an explanatory video outlining the steps to be followed (see www.cro.ie/Annual-Return/Filing).

CONVEYANCING COMMITTEE

Record of clients' instructions on stamp duty

As stamp duty certificates are no longer required in deeds, the committee recommends that solicitors obtain a written record of instructions as to stamp duty. A suggested precedent record sheet is available on the precedents page in the members' area of the website (www.lawsociety.ie/Solicitors/Practising/Precedents). This may then be retained on file by way of a future record, in addition to the copy printout available from the Revenue e-stamping system.

CONVEYANCING COMMITTEE

Water charges: what conveyancing solicitors need to know

The Conveyancing Committee has been advised by the Department of Environment, Community and Local Government that it is proposed to commence section 48 of the *Environment (Miscellaneous Provisions) Act 2015* on 1 January 2016.

Following a recent meeting between representatives of the committee and representatives of the department and Irish Water, it has been confirmed with the committee how subsections (4) and (5) of section 48 of the act will affect conveyancing practice and procedure and how these matters will be dealt with on an operational basis by Irish Water. It has been confirmed to the committee that Irish Water will also be advising its customers of these requirements.

It is clear to the committee that, given the obligation placed by this legislation on a vendor's solicitor, it will be necessary for vendors' solicitors to notify vendors at the initial instructions stage of a sale transaction that they will have difficulty acting in the sale if the vendor does not wish (whether as a matter of principle or otherwise) to pay any charges due to Irish Water in respect of the property.

Practitioners should also note that the definition of 'sale' includes a voluntary transfer.

The committee sets out below a note of the effect of various subsections of section 48, including the two subsections dealt with by recent correspondence from the department.

Obligation of vendor

Section 48(2)(a) provides that the owner of a dwelling proposing to sell that dwelling shall pay to Irish Water any charge under section 21 of the *Water Services (No 2) Act 2013* in respect of the dwelling payable by the owner to Irish Water, including any such charge payable by the owner by virtue of section 23A(4) (as inserted by section 47 of the 2015 act) of the 2013 act (where the owner has failed to notify Irish Water of the name of the occupier of the dwelling).

Section 48(2)(b) provides that the owner (as above) shall provide to his or her solicitor a certificate of discharge from Irish Water confirming that any such charge has been paid, or a statement from Irish Water that any such charge is not the liability of the owner.

Obligation of vendor's solicitor

Section 48(3) provides that, where the vendor fails to provide the certificate or statement as referred to above before the completion of the sale, the vendor's solicitor shall, before completing the sale, request from the vendor a statement from Irish Water setting out the amount of the charge (if any) under section 21 of the no 2 act of 2013.

Section 48(4) provides that, where a vendor of a dwelling has not provided the solicitor with a statement from Irish Water setting out the amount of charge (if any) payable to Irish Water, the vendor's solicitor shall, before completing the sale, request such a statement from Irish Water. Where this arises, the solicitor should submit a request on headed notepaper to Irish Water setting out the name of the vendor and the address of the property. A scanned signed copy of this letter may also be submitted electronically to Irish Water.

Irish Water will aim to issue any certificate to the solicitor within five working days of receiving the request.

Irish Water says it will issue any relevant documents in the post for data protection reasons, as email would not be a secure method of communicating personal data (that is, outstanding arrears).

Section 48(5) provides that the vendor's solicitor shall withhold from the net proceeds of sale remaining (if any), after the discharge of all mortgages and other liabilities relating to the sale, the amount (if any) set out in the statement provided to the solicitor under subsections (3) or (4), as the case may be, and remit that amount to Irish Water within 20 working days of the completion of the sale of the dwelling.

Section 48(7) provides that Irish Water shall provide a receipt to the vendor's solicitor in respect of any amount remitted to it under subsection (5).

Section 48(8) provides that a receipt provided to the vendor's solicitor under subsection (7) shall be in full and final settlement of any obligation imposed on the vendor's solicitor under this section.

No net proceeds of sale

In the event that there are no 'net proceeds' available to pay the water charges, the vendor's solicitor should notify Irish Water of this within 20 working days. The department has advised that Irish Water will acknowledge receipt of such a notification and that no further action is required by the solicitor. The department has confirmed in recent correspondence what it and Irish Water said at the meeting with the committee – that is, that where this situation arises, there are no implications for the purchaser of the property (that is, there is no provision for a charge on the property), insofar as the liability for unpaid charges would remain with the vendor. It would remain open to Irish Water to pursue the vendor for these unpaid charges by other means.

- By phone: solicitors can request the documents by calling LoCall 1890 448 448 or 01 707 2824 (8am-8pm, Monday to Friday, and 9am-5.30pm on Saturday) with the account number and WPRN relating to the property (found on the top-right corner of the Irish Water bill),
- By post: solicitors can send a letter on their headed notepaper setting out the name of the vendor and the address of the property and requesting the documents to Irish Water, Request for Statement of Charges/Certificate of Discharge, PO Box 860, South City Delivery Office, Cork City, Cork,
- By email: solicitors can send a scanned signed letter on their headed notepaper requesting the documents to customer services@water.ie. (Irish Water says this will be received and processed sooner than postal correspondence).

The committee continues to monitor this matter, and members are asked to keep the committee advised of any operational difficulties they encounter.

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 Elizabeth M Cazabon, a solicitor of Cazabon Solicitors, Gray Office Park, Galway Retail Park, Headford, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [8142/DT05/14, 8142/DT22/14, 8142/DT30/14, 8142/ DT78/14, 8142/DT45/14 and High Court record 2015 no 63 SA]
Law Society of Ireland (applicant)
Elizabeth Cazabon (respondent solicitor)

On 14 April 2015, the Solicitors Disciplinary Tribunal heard five complaints against the respondent solicitor and found her guilty of misconduct in her practice as a solicitor in the following matters:

8142/DT05/14

1) Failed to comply with three undertakings furnished to the complainant on 8 August 2002, 29 November 2004, and 28 April 2005 in respect of a named property in Galway and her client and borrower in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters to her of 8 November 2012, 29 November 2012, 4 January 2013, 22 January 2013, 12 February 2013, and 20 February 2013 within the time provided in a timely manner or at all,
3) Failed to comply with the direction of the Complaints and Client Relations Committee at its meeting on 19 February 2013 that she pay a contribution of €500 towards the costs of the Society.

8142/DT22/14

1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2013 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421/2001),
2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

8142/DT30/14

1) Failed to comply with an undertaking furnished to the complainants on 22 January 2007 in respect of a property at Tuam, Co Galway, and her clients and borrowers in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 12 May 2013, 19 April 2013, 2 May 2013, 22 May 2013, 5 June 2013, 9 July 2013 and 25 October 2013 in a timely manner, within the time prescribed in the letter, or at all.

8142/DT78/14

1) Failed to respond to her client's request for information in connection with the registration of lands transferred to him some years previously,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 10 July 2013, 1 August 2013, 28 August 2013, 26 September 2013, 31 October 2013, 19 November 2013, and 17 December 2013 in a timely manner, within the time provided, or at all,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at their meeting of 12 December 2013 that she pay a contribution of €500 towards the Society's costs,
4) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting of 17 December 2013 that she furnish a full written response to the complainant no later than 31 January 2014,
5) Failed to attend the meeting of the Complaints and Client Relations Committee on 27 February 2014, despite being required to do so.

8142/DT45/14

1) Failed to hand over her former clients' files to the complainant, their new solicitor, despite being requested to do so, in a timely manner or at all,
2) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 11 October 2011, 6 December 2011, 3 January 2012, 13 January 2012, 23 February 2012, and 18 September 2012 in a timely manner, within the time provided in those letters, or at all.

Having made findings of misconduct in respect of the five matters, the tribunal referred the matter forward to the High Court and, on 20 July 2015, the President of the High Court ordered that:

1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The Society recover the costs of the proceedings in the High Court and the costs of the proceedings before the disciplinary tribunal, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Peter Kenny, a solicitor formerly practising as Kenny Associates, College Street, Carlow, Co Carlow, and in the matter of the *Solicitors Acts 1954-2011* [8864/DT61/14 and High Court record 2015 no 71 SA]

NOTICES: THE HIGH COURT

In the matter of Robert Sweeney, a solicitor previously practising as Robert Sweeney, First Floor, Crossview House, High Road, Letterkenny, Co Donegal, and in the matter of the *Solicitors Acts 1954-2011* [2014 no 131SA; 2015 no 117SA]
Take notice that, by orders of the High Court made on Monday 2 November 2015, it was ordered that the name of Robert Sweeney, previously practising as Robert Sweeney, First Floor, Crossview House, High Road, Letterkenny, Co Donegal, be struck off the Roll of Solicitors.
12 November 2015

In the matter of Michael Quinn, a solicitor practising as Michael Quinn & Co, Solicitors, at Gray Office Park, Galway Retail Park, Headford Road, Galway, and in the matter of the *Solicitors Acts 1954-2011* [2015 no 58SA]
Take notice that, by order of the High Court made on Wednesday 26 August 2015, it was ordered that Michael Quinn, solicitor, of Michael Quinn & Co, Solicitors, at Gray Office Park, Galway Retail Park, Headford Road, Galway, be suspended from practice until further order of the court.

In the matter of Aine Feeney McTigue, a solicitor practising as Feeney Solicitors, 1st Floor, Lismoyle House, Merchants Road, Galway, and in the matter of the *Solicitors Acts 1954-2011* [2015 no 96SA]
Take notice that, by order of the High Court made on Monday 12 October 2015, it was ordered that Aine Feeney McTigue, solicitor, of Feeney Solicitors, 1st Floor, Lismoyle House, Merchants Road, Galway, be suspended from practice until further order of the court.
20 October 2015

John Elliot,
Registrar of Solicitors,
Law Society of Ireland

Law Society of Ireland (applicant)
Peter Kenny (respondent solicitor)
On 4 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed expeditiously, within a reasonable time, or at all to discharge fees properly due to the complainant in respect of his work carried out on behalf of the respondent solicitor's former named clients,
2) Improperly transferred fees and outlays received from third-party solicitors from the client account, which were properly due to the complainant, to the respondent solicitor's office account,
3) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 17 December 2013, 14 January 2014, 31 January 2014, 7 February 2014 and 10 March 2014 respectively.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the President of the High Court ordered that:

1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor pay the sum of €4,600 to the complainant,
3) The Society recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

In the matter of Peter Kenny, a solicitor formerly practising as Kenny Associates, College Street, Carlow, Co Carlow, and in the matter of the *Solicitors Acts 1954-2011* [8864/DT109/14 and High Court record 2015 no 70 SA]
Law Society of Ireland (applicant)
Peter Kenny (respondent solicitor)
On 4 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Caused or allowed a deficit on the client account totalling €369,460 as at 18 October 2013,
2) Breached regulation (7)(1)(a) of the *Solicitors Accounts Regulations*, as amended, by creating debit balances of €124,665.36 as at 18 October 2013,
3) Breached regulation 7(1) of the *Solicitors Accounts Regulations* by withdrawing moneys on account of fees without the consent of the client,
4) Breached regulation 11 of the *Solicitors Accounts Regulations* by failing to furnish bills of costs to clients and by the withdrawal of moneys not due to the respondent solicitor,
5) Breached regulation 10(5) of the *Solicitors Accounts Regulations* by the creation of credit balances on the office account of €274,042 as at 18 October 2013,
6) Breached regulation 12 of the *Solicitors Accounts Regulations* by the failure to maintain such relevant supporting documents that could vouch moneys taken as solicitor/client fees,
7) Breached regulation 12 of the *Solicitors Accounts Regulations* in that the client ledger listing did not properly detail the full liabilities to clients because of the entries made for fee notes that had not been delivered to the client or agreed with them,
8) Had substantial noncompliance with section 68 of the *Solicitors (Amendment) Act 1994*, in that clients were not informed of the party-and-party costs recovered, nor were they given full account details of all moneys spent on their behalf.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the President of the High Court ordered that:

1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The Society recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent when taxed or ascertained.

In the matter of Brendan MacNamara, solicitor, Mountrath Road, Portlaoise, Co Laois, and in the matter of the *Solicitors Acts 1954-2011* [10447/DT131/11 and High Court record 2015 no 69 SA]
Law Society of Ireland (applicant)
Brendan MacNamara
(respondent solicitor)
On 4 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Permitted client ledger debit balances of €4,200 and €1,512 to arise on the client account, resulting in a deficit of €5,712, in breach of regulation 7(2),
2) Updated a deed to 1 May 2006 instead of December 2004 and then presented the updated deed to Revenue for stamping,
3) Received party-and-party costs in a personal injuries action but failed to pay third-party outlays until after the Society's investigation.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the High Court made the following orders on consent:

1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent solicitor pay the whole of the applicant's costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, with taxation in default of agreement,
3) That the respondent solicitor pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Brendan MacNamara, solicitor, Mountrath Road, Portlaoise, Co Laois, and in the matter of the *Solicitors Acts 1954-2011* [10447/DT134/11 and High Court record 2015 no 64 SA]
Law Society of Ireland (applicant)
Brendan MacNamara
(respondent solicitor)
On 4 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with a solicitor's undertaking to Bank of Ireland dated 7 January 2007 in respect of a named client, so that the bank was left with no security in respect of an advance of €170,000 to the said client.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the High Court made the following orders on consent:

4) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
5) That the respondent solicitor pay the whole of the applicant's costs of the proceedings before the Solicitors Disciplinary Tribunal, to include witness expenses, with taxation in default of agreement,
6) That the respondent solicitor pay to the applicant the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of John C O'Toole, solicitor, practising as principal of John C O'Toole & Co, Solicitors, formerly of 111A Old County Road, Crumlin, Dublin 12, and now 29 Templeville Road, Templeogue, Dublin 6W, and in the matter of the *Solicitors Acts 1954-2011* [5090/DT181/12, 5090/DT182/12, 5090/DT183/12, 5090/DT35/13, 5090/DT36/13, 5090/DT173/13, 5090/DT174/13, and High Court record 2015 no 65 SA]
Law Society of Ireland (applicant)
John C O'Toole (respondent solicitor)
On 20 March 2014 and 30 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

5090/DT181/12

1) Failed to comply with his undertaking dated 20 August 2001 to the lender in a timely manner, insofar as it relates to the property,
2) Failed to comply with the directions of the committee made on 14 December 2011,
3) On one or more occasions, failed to reply to the lender's correspondence,
4) On one or more occasions, failed to respond to the Society's correspondence.

5090/DT182/12

1) Failed to comply with his undertaking dated 20 August 2001 to the lender in a timely manner, insofar as it relates to the property,
2) Failed to comply with the directions of the committee made on 14 December 2011,
3) On one or more occasions, failed to reply to the lender's correspondence,
4) On one or more occasions, failed to respond to the Society's correspondence.

5090/DT183/12

1) Failed to comply with his undertaking dated 28 January 2008 to the lender in a timely manner, insofar as it relates to the property,
2) Failed to comply with the directions of the committee made on 14 December 2011,
3) On one or more occasions, failed to reply to the lender's correspondence,
4) On one or more occasions, failed to respond to the Society's correspondence.

5090/DT35/13

1) Failed, as at the date of the swearing of this affidavit, to comply with his undertaking dated 24 September 2004 to the lender, insofar as it relates to the property,
2) On one or more occasions, failed to provide any or any adequate response to the lender's correspondence,
3) On one or more occasions, failed to provide any or any adequate response to the Society's correspondence.

5090/DT36/13

1) Failed to comply with the directions made by the committee at the meeting on 5 June 2012 in a timely manner or at all,
2) On one or more occasions, failed to provide any or any adequate response to the complainant's correspondence,
3) On one or more occasions, failed to provide any or any adequate response to the Society's correspondence,
4) Failed to account satisfactorily to his client for moneys received by him on her behalf.

5090/DT173/13

1) Failed to comply with an undertaking dated 15 October 2009, given to a lending institution, up to the date of the swearing of the Society's affidavit,
2) Failed to reply to correspondence from the Society, being letters of 11 May 2012, 20 June 2012, 1 August 2012, 21 September 2010, and 4 December 2012,
3) Failed to respond to letters from the lending institution concerned, respectively dated 16 August 2010, 2 December 2010, 11 March 2011, 21 June 2011, 5 October 2011, 25 January 2012, and 30 January 2012.

5090/DT174/13

1) Failed to comply with a solicitor's undertaking dated 27 July 2009, given to a lending institution, up to the date of the swearing of the Society's affidavit,
2) Failed to respond to letters from the lending institution concerned, respectively dated 8 July 2010, 8 December 2010, 18 March 2011, 27 June 2011, 7 October 2011, 27 January 2012, and 30 January 2012,
3) Failed to reply to correspondence from the Society, being letters dated 11 May 2012, 18 July 2012, 21 August 2012, and 8 November 2012.

The tribunal ordered that the matter go forward to the High Court and, on 20 July 2015, the President of the High Court ordered that:

1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment of and under the direct control and supervision of a solicitor of at least ten years' standing, to be approved in advance by the Society,
2) The respondent solicitor pay the Society the costs of the Solicitors Disciplinary Tribunal proceedings when taxed or ascertained,
3) The respondent solicitor pay the Society the costs of the High Court proceedings when taxed or ascertained.

In the matter of Kevin O'Gorman, a solicitor practising under the style and title of Kevin O'Gorman & Company, Solicitors, 5 Main Street, Lucan, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [6863/DT204/13]

Law Society of Ireland (applicant)
Kevin O'Gorman (respondent solicitor)

The Solicitors Disciplinary Tribunal considered a complaint against the respondent solicitor on 22 July 2015. The tribunal found the solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to ACC Bank on 2 September 2002 on behalf of his client and a named borrower and property in St Margaret's, Co Dublin, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

1) Do stand censured,
2) Pay a sum of €3,000 to the compensation fund,
3) Pay the whole of the costs of the Law Society of Ireland, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Thomas O'Dwyer, solicitor, previously practising as Thomas O'Dwyer & Co, Solicitors, 133 Walkinstown Road, Dublin 12, and in the matter of the *Solicitors Acts 1954-2011* [3422/DT79/13 and High Court record 2014/152 SA]

Law Society of Ireland (applicant)
Thomas O'Dwyer (respondent solicitor)

On the 28 October 2014, the Solicitors Disciplinary Tribunal sat to consider a case against the respondent solicitor and found him guilty of misconduct in his practice as a solicitor in that he:

1) Failed to ensure that there was furnished to the Society a closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001) in a timely manner or at all, having ceased practice on 11 April 2011,
2) Failed to respond to the Society's request for confirmation as to what happened to the bank draft of €8,155.46 that had been written to clear the solicitor's client bank account on 26 September 2011 in a timely manner or at all,
3) Through his conduct, showed disregard for his statutory obligation 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.

The tribunal referred the matter forward to the President of the High Court and, on 12 October 2015, the High Court ordered, by consent:

1) That the respondent solicitor be suspended from practice until such time as he furnishes the Law Society with his closing accountant's report, as required by regulation 26(2) of the *Solicitors Accounts Regulations*, and forwards information to the Law Society in respect of clients' closing balances, and
2) The court makes no order as to costs.

eurlegal

News from the EU and International Affairs Committee
Edited by TP Kennedy, Director of Education, Law Society of Ireland

WHEN IS A SAFE HARBOUR NOT A SAFE HARBOUR?

It is highly likely that the quality of sleep experienced by the CEOs of large US technology firms on the night of 6 October 2015 was not the best. Earlier that day, the EU's highest court, the CJEU, handed down a landmark judgment in the field of data protection law. The ruling in Case C-362/14, *Maximillian Schrems v Data Protection Commissioner*, invalidated the 15-year-old *Safe Harbour Agreement* between the EU and US that facilitated large data transfers between the two.

This key court ruling will have reverberations across a number of distinct domains for the foreseeable future. It has undoubted implications for large technology companies (particularly US ones with a strong presence in the EU), their chief data officers, national data protection supervisory authorities in the 28 EU member states and, arguably most important of all, for EU citizens who have been creating personal data and handing it over to large (often American) tech companies for many years now. From a political perspective, the judgment will certainly strain EU/US relations and probably add a degree of complexity to ongoing EU/US negotiations on the *Transatlantic Trade and Investment Partnership*.

The judgment contains two important points. Firstly, it bolsters the independence (and independent decision-making powers) of the national data protection supervisory authorities in the 28 member states.

Secondly, it holds that European Commission Decision 2000/520/EC is invalid. This decision is commonly called the *Safe Harbour Agreement* and was adopted in July 2000.

The preliminary ruling concerned the interpretation by the CJEU of certain provisions of the *Charter of Fundamental Rights of the EU* and Directive 95/46/EC on the processing of individuals' personal data and the free movement of such data. In addition, the CJEU also examined the validity of the *Safe Harbour Agreement* and the adequacy of the protection provided by the *Safe Harbour* privacy principles therein and related frequently asked questions issued by the US Department of Commerce (OJ 2000 L215, 7).

Legal uncertainty prevails

While the CJEU ruling certainly creates significant legal uncertainty, it has to be said that the European Commission) is endeavouring to calm nerves and to craft a way forward. This is evidenced by its communication to the European Parliament and council (dated 6 November) "on the transfer of personal data from the EU to the United States of America under Directive 95/46/EC following the judgment of the Court of Justice in Case C-362/14 (*Schrems*)" (COM (2015) 566 final). In it, the commission states its objective to conclude negotiations with the US government regarding the so-called *Safe Harbour 2.0* within three months. The commission also confirms that companies need to rely on alternative transfer tools until such time as a new transatlantic data framework is in place. Such alternatives would include: standard contractual clauses

FOCAL POINT

what is the *safe harbour agreement*?

Simply put, the *Safe Harbour Agreement* was the legal basis for the transfer of personal data from the EU to the US. The transfers were only legal if the recipient US company had adhered to the *Safe Harbour* privacy principles contained in the agreement itself. Given the increasing relevance of personal data flows and the development of the digital economy, the agreement was frequently relied on by large American tech companies such as Facebook, Google and Amazon.

Article 1 of Decision 2000/520 is illuminating, in that it states that the *Safe Harbour* privacy principles implemented in accordance with frequently asked questions issued by the US Department of Commerce are considered to "ensure an adequate level of protection for personal data transferred from the community to organisations established in the United States". Article 1(2) makes it clear that transatlantic data transfers can only occur if the recipient US company has unambiguously and publicly disclosed it commitment to the principles. Article 1(3) confirms that recipient companies must self-certify their adherence to the principles. The rationale behind the principles is stated in annex I to the *Safe Harbour Agreement* as "to facilitate trade and commerce between the United States and the European Union". Further, "they are intended for use solely by US organisations receiving personal data from the European Union for the purpose of qualifying for the safe harbour and the presumption of 'adequacy' it creates".

The CJEU ruling stated that the commission observed weaknesses in the application of the *Safe Harbour Agreement* as early as two years before the CJEU judgment. These views were contained in two official commission communications, issued on 27 November 2013. Perhaps the more compelling of the two – the communication to the European Parliament and the council entitled *Rebuilding Trust in EU-US Data Flows* (COM (2013) 846 final) – states at point 2 that the commission observed that "concerns about the level of protection of personal data of union citizens transferred to the US under the *Safe Harbour* scheme have grown" and that "the voluntary and declaratory nature of the scheme has sharpened focus on its transparency and enforcement".

Point 3.2 of the same communication confirmed that the commission noted a number of weaknesses in the application of the *Safe Harbour Agreement*: for example, some certified US companies did not comply with the Safe Harbour principles and that improvements had to be made to the agreement regarding "structural shortcomings related to transparency and enforcement, the substantive safe harbour principles and the operation of the national security exception". The commission concludes in point 3.2 of the communication that "given the weaknesses identified, the current implementation of *Safe Harbour* cannot be maintained" and then states that it would engage with the US authorities to discuss the shortcomings identified.

(SCCs), binding corporate rules (BCRs) and various other mechanisms, known as derogations, such as contractual necessity and free, informed and unambiguous consent of the data subject.

The Irish angle

There is a strong Irish angle to this preliminary ruling, as the main proceedings took place in the Irish High Court. The action before the High Court was commenced by Maximillian Schrems (an Austrian law student and privacy activist), who challenged a decision of the Irish Data Protection Commissioner not to investigate a complaint made by him regarding the fact that Facebook Ireland transfers the personal data of its users to the US and keeps it on servers in that country. Schrems's complaint was linked to his contention that the law and practice in force in the US did not ensure adequate protection of his personal data held on US territory against the surveillance activities that were engaged in there by the public authorities. In that regard, Schrems referred to the Snowden revelations concerning the activities of the US intelligence services, particularly the NSA.

High Court proceedings

Part of the CJEU judgment describes the main proceedings in Dublin. There, Mr Schrems brought an action before the High Court challenging the decision of the Data Protection Commissioner. The High Court found that there was a "significant overreach" on the part of the NSA and FBI when it came to electronic surveillance and interception of personal data transferred from the EU to the US. The court stated that Irish law precluded the transfer of personal data outside the national territory save where the third country ensures an adequate level of protection for privacy and fundamental rights and freedoms. The court also stated that the importance of the rights to privacy and to inviolability of the dwelling, which are guaranteed by the Irish Constitution, required that any interference with those rights be proportionate and in accordance with the law.

As regards "mass and undifferentiated access of personal data", the High Court found such a process to be contrary to the principle of proportionality and the fundamental values protected by the Constitution. An interception of electronic communications would only be consistent with the Constitution if it were targeted, objectively justified in the interests of national security, and where there were appropriate and verifiable safeguards. Tellingly, the High Court stated that, if the main proceedings were to be disposed of on the basis of Irish law alone, then the courts would find in favour of Schrems. Such a finding would be based on the existence of a serious doubt about whether the US ensures an adequate level of protection of personal data and the commissioner's failure to investigate the matter raised by Mr Schrems.

Reasons for preliminary reference

The preliminary reference to the CJEU in Luxembourg arose from the fact that the High Court considered that the case concerned the implementation of EU law and that the legality of the commissioner's decision (in the main proceedings) had to be assessed in the light of EU law. Furthermore, the High Court was of the view that Decision 2000/520/EC (the *Safe Harbour Agreement*) did not satisfy the requirements flowing from both articles 7 (respect for private life) and 8 (protection of personal data) of the *Charter of Fundamental Rights* and the principles set out by the CJEU in the judgment in C-293/12 and C-594/12 *Digital Rights Ireland and Others*. A further observation of the High Court was that Mr Schrems's action against the commissioner was, in effect, an informal contesting of the validity of Decision 2000/520/EC.

The High Court referred two questions to the CJEU for a preliminary ruling:

1) Whether in the course of determining a complaint that has been made to an independent office holder who has been vested by statute with the functions of administering and enforcing data protection legislation (in this case, the commissioner) that personal data is being transferred to another third country (in this case, the US) the laws and practices of which, it is claimed, do not contain adequate protections for the data subject, that office holder (the commissioner) is absolutely bound by the community finding to the contrary contained in Decision 2000/520/EC ?
2) Or, alternatively, may and/or must the office holder conduct his or her own investigation of the matter in the light of factual developments in the meantime since Decision 2000/520/EC was first published?

Part 2 of this article will appear in the January/February issue.

Dr Mark Hyland (solicitor, Bangor University Law School, Wales) has strong research interests in the related fields of intellectual property law and information technology law.

legislation update

13 October – 9 November 2015

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

ACTS

Marriage Act 2015
Number: 35/2015
Amends the *Civil Registration Act 2004* to remove the impediment to marriage of the parties being of the same sex; repeals certain provisions of part 7A of that act relating to registration of civil partnerships; makes provision in relation to religious bodies; provides for the recognition of marriages under the law of a place other than the State; and amends the *Succession Act 1965*, the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, the *Gender Recognition Act 2015*, and other enactments, and provides for matters connected therewith.
Commencement: Commencement order(s) required as per s1(2) of the act

SELECTED STATUTORY INSTRUMENTS

Road Traffic Act 2010 (Section 13) (Prescribed Form and Manner of Statements) Regulations 2015
Number: SI 398/2015
Prescribe the form and manner of the statements to be produced in the English language or in the Irish language by an apparatus for determining the concentration of alcohol in the breath pursuant to section 13(2) of the *Road Traffic Act 2010* and prescribe the manner in which the statements are to be duly completed by a member of the Garda Síochána.
Commencement: 22/9/2015

Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2015
Number: SI 403/2015
Commencement: 1/12/2015

Rules of the Superior Courts (Order 70A) 2015
Number: SI 469/2015
Amend order 70A of the *Rules of the Superior Courts* to facilitate the operation of the *Adoption Act 2010* and part 2 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, which amends the *Civil Liability and Courts Act 2004*, permitting reporting by *bona fide* representatives of the press of various categories of family and other proceedings.
Commencement: 23/11/2015

Rules of the Superior Courts (Bail Hearings) 2015
Number: SI 470/2015
Amend order 84, rule 15 of the *Rules of the Superior Courts* to provide for (a) an application for bail to the High Court, (b) an appeal from an order made on such an application, and (c) an application for bail directly to the Court of Appeal in criminal proceedings and military proceedings to be conducted by videolink.
Commencement: 23/11/2015

Circuit Court Rules (Companies Act 2014) 2015
Number: SI 471/2014
Amend the *Circuit Court Rules* by the substitution of order 53 and 53A and forms numbered 41 and 53A, and the insertion of a new order 53B and Form 53D to prescribe procedures to facilitate the operation of the *Companies Act 2014*.
Commencement: 9/11/2015

Solicitors (Continuing Professional Development) Regulations 2015
Number: SI 480/2015.
Provide for a two-year cycle of continuing professional development requirements in respect of 2016 and 2017, operative from 1 January 2016.
Commencement: 1/1/2016; see also text of SI

Housing (Sale of Local Authority Houses) Regulations 2015
Number: SI 484/2015
Prescribe the detailed terms and conditions of the new tenant purchase scheme for existing local authority houses under part 3 of the *Housing (Miscellaneous Provisions) Act 2014*, including the classes of dwellings excluded from sale, the minimum annual tenant income required in order to apply to purchase, the information that a tenant must supply when applying to purchase, the determination of the purchase price and the discount and the period for which a charging order shall apply, and the form of the combined transfer and charging order to be used by housing authorities.
Commencement: 1/1/2016

A list of all recent acts and statutory instruments is published in the free weekly electronic newsletter LawWatch. *Members and trainees who wish to subscribe, please contact Mary Gaynor at m.gaynor@lawsociety.ie.*

professional notices

WILLS

Bradford, Angela (deceased), who died on 19 January 2015, and **William (Liam) (deceased),** late of Kilquane, Mourne Abbey, Mallow, Co Cork, who died on 31 October 2015. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Jeremiah Healy, Healy Crowley & Company, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066, email: info@healycrowleysolrs.com

Cahill, Thomas (deceased), late of Killenure, Tullow, Co Carlow, who died on 14 November 2010. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact James Cody & Sons, Solicitors, Centaur Street, Carlow; tel: 059 914 2494, email: ecass@jamescody.ie

Colin, Norman Edward (deceased), late of 'The Bungalow', Glencormac, Kilmacanogue, in the county of Wicklow, who died on 19 September 2015. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Emma Lynch, solicitor, of MD O'Loughlin & Company, Solicitors, Suite 11, Parklands Office Park, Southern Cross Road, Bray, in the county of Wicklow; tel: 01 286 2909, email: emma@mdol.ie

Donnellan, Anne (deceased), late of 15 The Close, Cypress Downs, Templeogue, Dublin 6W, who died on 29 June 2015. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact BP O'Reilly & Co, Solicitors, Coric House, Main Street, Tallaght, Dublin 24; tel: 01 452 5211, email: linda.omara@bporco.ie or patrick.mcmahon@bporco.ie

Fraine, Mary (deceased), late of 16 Clare Court, Ballyhaunis, Co Mayo, and formerly of 43 Leinster Road, Rathmines, Dublin 6. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact O'Dwyer, Solicitors, Bridge Street, Ballyhaunis, Co Mayo; tel: 094 963 0011, fax: 094 963 0575, email: info@odwyersolicitors.ie

Hackett, Noel (deceased), late of 71 Delford Drive, Rochestown, Cork, formerly of Castlejordan, Edenderry, Co Meath. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Dermot F Murphy

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 2016 *Gazette*: 20 January 2016. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877).

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*.

professional notices

of Brian P Adams & Company, Solicitors, Cormac Street, Tullamore, Co Offaly; tel: 057 932 1866, email: dmurphy@brianpadams.ie

Kiely, Mary (deceased), late of Curradoon, Ballinamult, Co Waterford, who died on 5 January 2015. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Niall King, solicitor, of JF Williams & Company, Solicitors, Main Street, Dungarvan, Co Waterford; tel: 058 75024, email: reception@jfwilliams.ie

O'Riordan, Matthew (deceased), late of Lackabawn, Millstreet, Co Cork, who died on 13 September 2015. Would any person having knowledge of a will made by the above-named deceased please contact Sheila Brennan, 'Elsloo', Newtown, Bantry, Co Cork

MISCELLANEOUS

Dublin: strong long-established general practice. Excellent portfolio/location. High growth potential. Busy WIP. Suit ambitious young solicitor. Flexible transition phase. Reply in strictest confidence to **box no 01/10/15**

TITLE DEEDS

Estate of Norman Watson (deceased), who died on 2 July 2014. Would anybody having knowledge of the whereabouts of title documents for 18 Fort Mary Park, North Circular Road, Limerick, please contact David Scott & Co, 56 O'Connell St, Limerick; tel: 061 204 070, 061 409 717; email: info@scottssolicitors.ie

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenants (Ground Rents) (No 2) Act 1978* and in the matter of number 90 Manor Street, Dublin 7

Take notice any person having any interest in the freehold estate of the following property: 90 Manor Street, in the parish of Grangegorman, in the county of Dublin.

Take notice that Catherine Carroll intends to submit an application to the county registrar sitting at Áras Uí Dhálaigh, Inns Quay, Dublin 7, for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Catherine Carroll 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 sitting at Áras Uí Dhálaigh, Inns Quay, Dublin 7, 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.

Date: 4 December 2015

Signed: Whitaker & Co (solicitors for the applicant), Mews One, 4 Dartmouth Place, Dublin 6

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property known as 6 St Ignatius Road, Drumcondra, Dublin 9, and in the matter of an application by Austin Kelly

Any person having a freehold interest or any intermediate interest in all that and those the premises no 6 St Ignatius Road, Drumcondra, Dublin 9, being part of the premises demised by lease dated 14 October 1879 between Maurice Butterly of the one part and William Marmion of the other part for the term of 194 years from 29 September 1879, subject to the entire yearly rent of £6, but primarily liable for an apportioned yearly rent of £3 and subject to the covenants on the part of the lessee and the conditions therein contained, which entire premises demised by the said lease was therein described as "all that and those the piece or plot of ground at the rear of the west side of Drumcondra Road, containing in front to a proposed new road 40 feet, in the rear a like number of feet, and from front to rear on the east, 69 feet, and from front to rear on the west, 66 feet, bounded on the south by the said proposed new road, on the north by the boundary of the Royal Canal, and on the east by land now in possession of the said Maurice Butterly, and on the west by houses now in the course of erection belonging to the late Mrs Maria Armstrong, which said piece or plot of ground is more particularly delineated on the map or terchart in the margin hereof and is situate in the parish of St George and county of the city of Dublin", which said premises became known as 6 St Ignatius's Road, Drumcondra, city of Dublin, and are now commonly known as 6 St Ignatius Road, Drumcondra, Dublin 9. The property is also known as 6 Ignatius Road, Drumcondra, Dublin 9.

Take notice that Austin Kelly, of 13 Brompton Road, Castleknock, Dublin 15, intends to submit an application to the country registrar for the city of Dublin for the acquisition of the freehold interest (and any intermediate interest, if any) in the said premises, 6 St Ignatius Road, Drumcondra, Dublin 9, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin 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.

Date: 4 December 2015

Signed: Noel Smyth & Partners (solicitors for the applicant), 12 Ely Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Piaras Clarke Sario and in the matter of property situate at 332 North Circular Road, Dublin 7

Take notice that any person having any interest in the freehold estate of the following property: 332 North Circular Road, Dublin 7; all that and those the hereditaments and premises known as 332 North Circular Road in the parish of Grangegorman in the county of the city of Dublin, held under an indenture of lease dated 25 August 1877 between Sir Francis William Brady of Upper Pembroke Street in the county of the city of Dublin, baronet, of the one part and William Martin of Oak Lodge, North Circular Road in the county of the city of Dublin of the other part for a term of 200 years from 25 March 1874, subject to the yearly rent of £10 sterling and to the covenants and conditions therein contained.

Take notice that the applicant intends to submit an application to the county registrar for the county of the city of Dublin for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior

interest in the aforesaid premises (or any of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of the city of Dublin 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.

Date: 4 December 2015
Signed T. Sheridan & Co (solicitors for the applicant), Bailieborough, Co Cavan

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and in the matter of the property comprising the first-floor apartment at 8 Malahide Road, Fairview, Dublin 3, with this application made by Patrick Keane and Paul Keane, acting in their capacity as the personal representatives of Margaret Sherry, deceased

Take notice any person having any interest in the freehold estate of the following property: first-floor apartment, 8 Malahide Road, Fairview, Dublin 3, held by Thomas J Anderson of the one part and Margaret Sherry of the other part for a term of 96 years from 1 January 1985, subject to the rent therein reserved and to the covenants and conditions therein contained.

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

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

Date: 4 December 2015
Signed: Malone and Martin Solicitors (solicitors for the applicants), Market Street, Trim, Co Meath

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Brian M Durkan & Co, Limited

Any person having a freehold interest or any intermediate interest in all that and those the premises known as 14 and 15 Mountjoy Street, Dublin 1, and 4-8 St Mary's Place, Dublin 1, more particularly set out in the map annexed to an indenture of lease dated 24 October 1870 made between the Right Hon Cowper Temple and Alexander Carlisle Buchanan of the one part and John Arnott, James Fitzgerald Lombard and Edward McMahon for a term of 500 years, subject to the yearly rent of £15 per annum.

Take notice that the applicant intends submitting an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the said property is called upon to furnish evidence of title to the same to the below signed within 21 days from the date of this notice. In default of any such 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 then apply to the county registrar for the county of Dublin for such directions as may be appropriate on the basis that each person or persons beneficially entitled to the superior interest including the freehold reversion in the said property are unknown or ascertained.

Date: 4 December 2015
Signed: Gaffney Halligan & Co (solicitors for the applicant), 413 Howth Road, Raheny, Dublin 5

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 Double Diamond Sports Limited to purchase the fee simple and any intermediate interests in portion of the yard situate at the rear of 44 Capel Street, Dublin 1

Take notice any person having any interest in the freehold estate of the following property: all that and those the premises the subject of a lease dated 21 November 1977 between Ann Eastwood of the one part and DOD Limited

professional notices

of the other part for a term of 99 years from 5 April 1977 at a rent of £14.50 per annum, and therein described as "the portion of the yard situate at the rear of the premises known as 44 Capel Street, situate in the parish of St Mary and city of Dublin, measuring 20 feet from face of wall on purchasers' adjoining property to new boundary across the demised premises, as more particularly delineated on the map or plan thereof hereto annexed and thereon edged in red". Take note that Double Diamond Sports Limited, being the person currently entitled to the leasehold interest in the entirety of the property that is the subject of the said lease, intends to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

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

Date: 4 December 2015

Signed: Smith Foy & Partners (solicitors for the applicant), 59 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of an application by Therese Whelan of 2 Racefield Cottage, Mounttown Road Lower, Dun Laoghaire, Co Dublin

Take notice that any person having an interest in the freehold estate of the following property: Main Street, Stradbally, Co Laois, held under tenancy agreement made on 8 June 1915 between Catherine M Nolan, Ballinrush House, Co Carlow (wife of William F Nolan) and James Dowling, Main Street, Stradbally, Co Laois, from year to year at a yearly rent of £6.

Take notice that the applicant, Therese Whelan, intends to submit an application to the county registrar for the county of Laois for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Laois 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.

Date: 4 December 2015

Signed: Bolger White Egan Flanagan (solicitors for the applicants), 8 Lismard Court, Portlaoise, Co Laois

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of an application by Joseph Malone Junior and Mary Pattwell of Oldtown, Portlaoise, Co Laois

Take notice that any person having an interest in the freehold estate of the following property: 'Cumbria', Green Road, Portlaoise, Co Laois, held under indenture of lease made on 29 January 1937 between Joseph Bannon and Joseph Malone for a term of 99 years at a yearly rent of £5.

Take notice that the applicants, Joseph Malone Junior and Mary Pattwell, intend to submit an application to the county registrar for the county of Laois for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) is called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of such notice being received, the applicants intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county of Laois 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.

Date: 4 December 2015

Signed: Bolger White Egan Flanagan (solicitors for the applicants), 8 Lismard Court, Portlaoise, Co Laois

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: notice of intention to acquire fee simple (section 4) – an application by KW Real Estate plc ('the applicant')

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises at the rear of the house and premises known as no 23 Kildare Street in the city of Dublin, held under a lease dated 12 May 1934 between (1) Mary Agnes Macaura and (2) Thomas Robert McCullough for a term of 99 years from 1 November 1933 (the '1933 lease'), subject to the payment of the yearly rent of £70 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Kennedy Wilson Europe Limited, being the person currently entitled to the lessee's interest in the 1933 lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Kennedy Wilson Europe Limited intends to proceed with an application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown and unascertained.

Date: 4 December 2015

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: notice of intention to acquire fee simple (section 4) – an application by KW Real Estate plc ('the applicant')

Notice to any person having any interest in the freehold interest of the following property: all that and singular that piece or parcel of ground at the rear of the house and premises no 19 Kildare Street in the parish of St Anne and city of Dublin, measuring 21 feet in breadth and 41 feet in depth from front to rear, held under a lease dated 19 June 1945 between (1) George M Meares and Alice M Rae and (2) the Shelbourne Motor Company Limited (the '1945 lease') for a term of 100 years from 25 March 1945, subject to the payment of the yearly rent of £35 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Kennedy Wilson Europe Limited, being the person currently entitled to the lessee's interest in the 1945 lease,

intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Kennedy Wilson Europe Limited intends to proceed with an application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown and unascertained.

Date: 4 December 2015

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Act 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: notice of intention to acquire fee simple (section 4) – an application by KW Real Estate plc ('the applicant')

Notice to any person having any interest in the freehold interest of the following property: all that and those the premises more particularly described in and demised by an indenture of assignment dated 18 December 1951 between (1) Clifford Dermot O'Farrell and (2) Shelbourne Motor Company Limited (the '1951 assignment') as the cottage at the rear of 17 Kildare Street in the city of Dublin and now known as 17A Kildare Street, with a portion of the yard at the rear of the said premises 17 Kildare Street aforesaid, and being a portion of the premises comprised in and demised by a lease dated 18 June 1752 between (1) John Seymor and (2) the Honourable Bysse Molesworth for a term of 999 years from 24 June 1752 (the '1752 lease') subject to the payment of the yearly rent of £32 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Kennedy Wilson Europe Limited, being the person entitled to the interest of the lessee under the 1752 lease in respect of the property, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Kennedy Wilson Europe Limited intend to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest (including the freehold reversion) in the aforesaid premises are unknown and unascertained.

Date: 4 December 2015

Signed: Arthur Cox (solicitors for the applicant), Earlsfort Centre, Earlsfort Terrace, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of Vaughan's Eagle House, 105-107 Terenure Road North, Terenure, Dublin 6W, with the application made by Kieran Wallace and Shane McCarthy, as joint receivers over certain assets of Marius Catering Limited of KPMG of 1 Stokes Place, St Stephen's Green, Dublin 2

Take notice that any person having a freehold interest or any intermediate interest in all that and those the premises known as Vaughan's Eagle House, 105-107 Terenure Road North, Terenure, Dublin 6W, held under (a) a lease dated 30 November 1895 between (1) Annie T Harmon and (2) The National Bank Limited and (3) Thomas Farrelly for a term of 150 years from 1 December 1895, subject to the yearly rent of £80 and to the covenants and conditions therein contained and (b) a lease dated 12 April 1933 between (1) William Egan, (2) Julia Ann Temple, Rita Fleming, William Temple, Eileen Quigley, and (3) James Vaughan for a term of 112 years, six months, from 1 June 1933, subject to the rent of £15 and to the covenants and conditions therein contained.

Take notice that the applicants, Kieran Wallace and Shane McCarthy, as joint receivers over certain assets of Marius Catering Limited, of KPMG, 1 Stokes Place, St Stephen's Green, Dublin 2, intend to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or either of them) is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of such notice being received, the applicants intend 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 city of Dublin 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 aforesaid premises are unknown or unascertained.

Date: 4 December 2015

Signed: AMOSS (solicitors for the applicants), Warrington House, Mount Street Crescent, Dublin 2

ita erat quando hic adveni

Back to the future for 170-year-old law

British police look set to start issuing charges to people for driving so-called 'hoverboards' on paths, after reminding the public that they are breaking the law by doing so, reports the *Independent*.

The *Highway Act 1835* bans the riding of vehicles on pavements – offenders can be fined up to stg£500 plus any damage done while riding, though, in practice, the fine is likely to be lower.

Former Liberal Democrat MP Lembit Opik has complained that the law is outdated and shouldn't be used to prosecute people for using an invention that followed 170 years later.

The first person prosecuted for riding a Segway on a path was a 51-year-old Barnsley man, Phillip Coates. He was fined £75, with £265 costs, in what is being regarded as a test case for the use of such vehicles on pavements.

Driving the small vehicle on roads could lead to the enforcement of more stringent penalties. Users face two possible offences: driving a vehicle without the necessary approvals, and using a vehicle without insurance.

Self-driving car attracts wrong sort of attention

One of Google's self-driving cars has been pulled over by a police officer in California, who reckoned that it posed a safety risk because it was travelling too slowly, CNN reports.

According to the Mountain View Police Department, the self-driving vehicle was travelling at 24mph in a 35mph zone. An officer spotted traffic building up behind the car and pulled it over.

The officer made contact with the vehicle's operators and came to the conclusion that Google's car didn't actually break any road-traffic laws, but warned of possible safety risks.

Police spokespersons say that the officer asked how the car was determining what speed to drive at and pointed to the California law that says: "No person shall drive upon a highway at such a slow speed as to impede or block the normal and reasonable movement of traffic, unless the reduced speed is necessary for safe operation, because of a grade, or in compliance with law."

The incident ended with a warning from the police officer, though Google remains steadfastly proud of its road-safety record, saying: "After 1.2 million miles of autonomous driving (that's the human equivalent of 90 years of driving experience), we're proud to say we've never been ticketed!"

We're heading back to bed, so

A research team at the Sleep and Circadian Institute at Oxford University has stated that 'normal' 8am and 9am start times for workers and students are inhumane, sciencealert.com reports.

This is because the human body runs on biological timers called circadian rhythms – genetically preprogrammed cycles that regulate human energy levels, brainwave activity, and hormone production.

Dr Paul Kelley said: "We cannot change our 24-hour rhythms. You cannot learn to get up at a certain time. Your liver and your heart have different patterns, and you're asking them to shift two or three hours."

This is because natural human rhythms evolved around sunlight – not 'business hours'. In the late 18th century, the eight-hour work day was designed to maximise efficiency. But factory owners didn't consider the body's natural clock; they only thought about a 24/7 production schedule.

Kelley told the British Science Festival in Bradford: "We've got a sleep-deprived society." His prescription is to move start times back to 10am. To test his theory, he trialled the start time of a British school, moving it from 8.30am to 10am. He wasn't surprised when he saw grades improve by an average of 19%.

"This is an international issue," says Kelley. "Everybody is suffering and they don't have to."

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A specialist data protection and technology lawyer is required to join a global technology organisation. The successful candidate will advise on a wide variety of issues including product development, privacy compliance, input to litigation and analysis. Reporting to Head of Data Protection, the successful candidate will work on novel issues in an exciting and fast-paced environment. The position will have a data protection and technology law focus. The successful candidate will have experience advising on Irish and EU data protection and privacy law, whether as an IT law specialist or as a dedicated privacy lawyer.

IN-HOUSE COMMERCIAL CONTRACT COUNSEL |ASSOCIATE – SENIOR ASSOCIATE LEVEL | DUBLIN €75-85k

This US MNC is building a large multi-functional legal team in Dublin South. The successful candidate will ensure all contracting processes and procedures are followed with respect to the negotiation and execution of commercial contracts. Ideal for a Practice Solicitor looking to move in-house or somebody already working in commercial contracts.

COMMERCIAL PROPERTY SOLICITOR | | JUNIOR – ASSOCIATE LEVEL | DUBLIN | €60-70k

A Top Tier Law Firm is seeking to recruit a number of commercial Property Solicitors. This Law Firm boasts a wide range of clients including private equity funds, developers, investors and financial institutions. This position is suitable for candidates currently working within a top 10 firm or someone in a smaller practice with extensive property experience looking to make the jump.

JUNIOR EMPLOYMENT SOLICITOR | DUBLIN

A Top Five Practice and a Boutique Practice based in Dublin 4 are looking to recruit a Junior Solicitor with experience in employment law. The successful candidate will gain exposure to contracts of employment to ensure it clearly specifies the agreed terms and conditions and industrial relations matters. Competitive salary and excellent work/life balance on offer.

cpl. the best people for the job

To apply for any of the above vacancies or for a strictly confidential discussion, please contact Seán Fitzpatrick on +353 1 5005916 or sean.fitzpatrick@cpl.ie or Tony Glynn on +353 1 500 5918 or tony.glynn@cpl.ie

CORLYTICS

Boston Dublin London New York

Head of Regulatory & Legal Affairs

Our Client

As the premier Global Financial Regulatory Risk Intelligence company, Corlytics aids financial businesses, regulators and their professional advisers in uncovering and predicting regulatory risk worldwide.

Corlytics' international team of forensic intelligence specialists boasts a unique combination of legal and regulatory analysts, proven securities and risk practitioners, data scientists and seasoned technologists.

Corlytics has developed a global Financial Fines Database, which delivers a forensic analysis of global regulatory fines, currently running in excess of $100 Billion per annum. The Database also provides strategic regulatory insights empowering Corlytics' clients to understand and quantify regulatory risk, (the finesdatabase.com).

The Role

This is a pivotal leadership position in a newly established, well-funded, high-growth company with a global reach.

Reporting to the CEO, the successful candidate will be responsible for:

- Managing the team that oversees the design, content and quality of the Database in addition to recruiting and training the best available legal analysts.
- Managing and further developing global legal and regulatory policies and processes for the Database and other regulatory databases that Corlytics plans to develop.
- Liaising with key clients at senior level and ensuring that quality standards and commercial and operational goals are achieved.
- Dealing with all legal and copyright issues associated with the databases.
- Working with the head of analytics and software development regarding future technology developments.

The Candidate

The key attributes are:

- A solicitor/barrister with first rate experience in Financial Regulatory & Compliance law and/or Banking practice, gained at a senior level in private practice or in-house.
- A solution-focused and commercially astute lawyer who will set parametres, ensure that tasks are achieved in a timely manner, and require absolute commitment to maintenance of the highest professional standards.
- First-rate management skills and leadership ability. This will, of necessity, require an individual who is people focused and totally committed to the welfare and career development of all members of his/her team.
- A very strong academic background.

An excellent salary and performance-based bonus will be provided.

The position may require regular travel to the UK and Continental Europe.

www.corlytics.net

Want to find out more?

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

A: Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

T: +353 (0) 1 670 3997 mbenson@benasso.com www.benasso.com

Benson & Associates
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