The bee's knees
The *Gazette* talks to Business Law Committee Chairman Paul Keane

False dawn?
Government proposals on periodic payment orders leave a lot to be desired

Rights and wrongs
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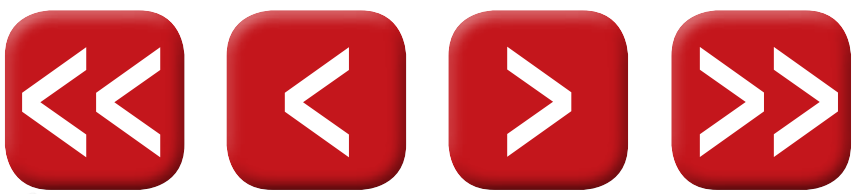

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TIME TO REFLECT

LAW SOCIETY OF IRELAND

We have all been affected by the tragic loss of life and injury to young Irish students participating in the J1 visa programme in Berkeley in the United States. We are a small country and will all have some sort of awareness or connection with those students who lost their lives or who were injured.

Two days after the tragedy, I was officiating at a parchment ceremony for 61 young solicitors and was conscious that many of them had probably participated on J1 visa programmes and possibly knew personally, or through close connections, some of the dead, the injured, their families or their friends. The opening paragraph in *The Irish Times*' editorial on the day following the tragedy quoted the words of the taoiseach in the Dáil: "When you look at the papers this morning, don't you see the faces of your own children, sons and daughters, at the start of a great adventure in life?"

These tragic deaths in Berkeley have touched us all, and I want to record, on behalf of everyone in the Law Society, that our hearts and deepest sympathies go out to everyone who has been affected by this tragedy.

> I think these tragic deaths in Berkeley have touched us all, and our hearts and deepest sympathies go out to everyone who has been affected by this catastrophe

Huge regard

I was delighted to meet William Hubbard, the president of the American Bar Association, when he honoured us by stopping over in Dublin en route to the *Magna Carta* celebrations outside London. He was appointed president of the ABA last August and has a genuine affection for this country. We were joined during a business session by US Ambassador to Ireland Kevin O'Malley (himself a trial lawyer). I was struck by the huge regard they both had for the quality of advocacy skills apparent to them from their interaction with Irish lawyers and from Ambassador O'Malley's personal observations as an inveterate spectator of the courts during his time in Ireland.

CPD clusters

The CPD cluster events are in full swing, with Ennis and Donegal being held in recent weeks. Although I couldn't make Donegal, which was ably chaired in my absence by Council member Brendan Twomey, I attended the Ennis event and met with a good number of our colleagues from Clare and Limerick.

I would like to express also my great appreciation to the bar associations of Donegal, Roscommon, Leitrim and Sligo for the warm welcome they extended to me and the director general during visits at the end of June. I will be travelling to a number of other bar associations soon and can honestly say it is one of the most satisfying aspects of being president.

Focus on Setanta

Many colleagues have clients affected by the collapse of the Setanta insurance company. In mid July, the Law Society hopes that the High Court, sitting in Kilkenny, will be in a position to clarify the law and indicate where the liability rests. There are at least 1,700 claimants, valued at up to €90 million.

The Law Society has been acutely conscious of the importance of this issue for the profession and took the decision to join in the proceedings, where the Law Society's position has been excellently marshalled by Stuart Gilhooly in particular, who has given unstinting attention to this matter from the outset. Hopefully, I will be able to advise of a positive outcome following the hearing.

I was delighted to host a recent midsummer lunch for esteemed past-presidents of the Law Society. We were fortunate in being able to mark the service of past-presidents spanning a 40-year period, with Tony Osborne from Naas being the earliest serving. The event was conceived by Adrian Bourke with the enthusiastic support of director general Ken Murphy, who has served with more than a score of them. While not all could attend, we were delighted with the great number who did and were struck at how well they are all faring.

As we pass the midsummer mark, our minds turn to holidays. Whatever you do and wherever you go, I wish you much enjoyment, tranquillity and the opportunity to make the very most of it.

Kevin O'Higgins
President

gazette
LAW SOCIETY

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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

MEATH

Amen to that!

Attending the presentations were *(front, l to r)*: Stephen Murphy (committee member, MSBA), Peter D Higgins (president, MSBA), Deirdre Murphy (manager, Meath Women's Refuge), Aoife McGrath (Amen) and Declan Brooks (MSBA committee member); *(back, l to r)*: Nicola Dowling (Amen) and Elaine Byrne (honorary secretary/treasurer, MSBA)

The Meath Solicitors' Bar Association (MSBA) organised a donation presentation for Amen Support Services Ltd and the Meath Women's Refuge on 12 June. Amen is a voluntary group that provides a confidential helpline, support, and information service for male victims of domestic abuse. The Meath Women's Refuge and Support Services provides information, crisis accommodation, and counselling to women and children who experience abuse.

Separately, the MSBA held its AGM on 6 May. The new committee is Peter D Higgins (president), Paul Moore (vice-president), Elaine Byrne (secretary), Teresa Coyle (vice-secretary) and members Declan Brooks, Michael Keaveny, Stephen Murphy and Maurice Regan.

LOUTH

Just not the retiring type

Stories of judges gracefully moving towards superannuation appear on this page from time to time, but this is the first occasion when we have covered a story where a judge is not retiring.

It puts this reader of detective fiction in mind of the curious case of the incident of the dog in the night time – although, unlike the dog that didn't bark, the case of the judge who didn't retire is much more straightforward and does not require the deductive skills of Sherlock Holmes.

However, in its enquiries with the usual suspects, 'Nationwide' has been met with a wall of silence, though the news was confirmed by Dundalk Court Office. Rumours of scenes of jubilation (unmatched among the Louth legal fraternity since Sainsbury's in Newry announced their now infamous duty-free sale in the late 1970s) allegedly took place in Dundalk at the news that Judge Flann Brennan had withdrawn his resignation, planned for 30 June, and to continue to occupy the bench in District No 6.

DUBLIN

The kids are all write

DSBA president Aaron McKenna hosted the Annual Dinner and Law Book Awards at the Double Tree by Hilton on 26 June 2015. Justice Minister Frances Fitzgerald presented the awards for the second year running. Prof John Wylie won the overall 'Law Book of the Year Award' for *Landlord and Tenant Law* (published by Bloomsbury), while the employment law unit of Arthur Cox claimed the 'Legal Cost Accountants Practical Law Book of the Year Award'. The outstanding contribution to legal scholarship award went to *Law and Government*, a tribute to Rory Brady, edited by Bláthna Ruane, Jim O'Callaghan and David Barniville.

Over 200 guests attended, including representatives of the legal publishers, the Law Society and bar associations from around the country.

Who you going to call?

The Dublin Dispute Resolution Centre was the appropriate venue for a Chartered Institute of Arbitrators CPD event on 22 June, which dealt with the important issue of getting paid as the dispute resolver. David Dodd BL (author of *Statutory Interpretation in Ireland*) chaired the event. Gerry Monaghan (vice-chair of the Chartered Institute of Arbitrators, Irish Branch) introduced the speakers, John Tackaberry, London QC (described as "one of the doyens of international arbitration") and Bill Holohan, who needs no introduction to *Gazette* readers.

GALWAY

Go on, let yourself go

The Galway Solicitors' Bar Association's annual day at the races takes place on Monday 27 July 2015. Tickets are now on sale at a reduced rate of €25 for members of the association, which covers admission to the racecourse and reserved seating in the Millennium Stand (tel: Galway Races at 091 753 870 or visit the GSBA website www.gsba.ie).

Eugene Regan SC nominated for the ECJ

The Government has nominated Eugene Regan SC for appointment as a judge of the Court of Justice of the European Union (ECJ). The nomination of Mr Regan is to replace the current Irish representative on the ECJ, Judge Aindrias Ó Caoimh, whose term of office will expire in October 2015. Minister for Justice Frances Fitzgerald paid tribute to Judge Ó Caoimh, who has served as a judge of the ECJ since his appointment in October 2004.

Appointments to the court are for a period of six years and are renewable. Before the appointment can be made by the member states, Mr Regan will be assessed by the panel set up under article 255 of the *Treaty on the Functioning of the European Union* to confirm his suitability for the post.

PIC: COLLINS PHOTOS

Eugene Regan SC

Mr Regan was educated at University College Dublin, Vrije Universiteit Brussels, Belgium, the King's Inns and the Irish Management Institute. He was called to the Bar in 1985 and to the Inner Bar in 2005. He was a member of the cabinet of European commissioner Peter Sutherland (1985 to 1988) and served as a Fine Gael member of Seanad Eireann (2007 to 2011).

New judicial appointments announced

At its meeting on 26 May 2015, the Government formally made a decision to assign Judge Denis McLoughlin to District No 5 (Cavan/Monaghan), with effect from that date.

Separately, the Government has nominated two solicitors, Marie Keane and John King, for appointment by the President to the District Court. The vacancies arose from the elevation to the Circuit Court of Judge Eugene O'Kelly in November 2014 and the retirement of Judge Eamon O'Brien in January 2015. The President has been advised of the nominations in accordance with constitutional procedure.

Marie Keane qualified as a solicitor in 1994. She was educated at the National University of Ireland, Galway, where she received a BA (1988) and LLB (1991). She has qualifications in commercial property, mental health law, and in mediation and alternative dispute resolution. She is a partner in Callinan Keane in Ennis, Co Clare. Ms Keane is a member of the Law Society's Family Law Committee, a founding member of the Family Law Mediation Group, and a member of the panel for the Mental Health Commission.

PIC: COLLINS PHOTOS

Judge Denis McLoughlin

John King qualified as a solicitor in 1993. He was educated at the National University of Ireland, Galway (receiving a BA in 1987 and LLB in 1989).

He has extensive experience in civil litigation in the District, Circuit and High Courts, as well as in criminal and family law litigation. He is a partner in Hennessy & Co, Solicitors, in Bantry, Co Cork, and has wide experience in conveyancing, probate, revenue law, personal injury and criminal law.

Irish Supreme Court pays visit to Germany

The Supreme Court accepted an invitation from the Federal Constitutional Court of Germany to a bilateral meeting in Karlsruhe, Germany. A delegation of the Supreme Court, led by Chief Justice Susan Denham, visited the Federal Constitutional Court from 10 to 12 June 2015.

Also present was Irish Ambassador to Germany Michael Collins. The Irish group was received by President Andreas Voßkuhle, Vice-President Ferdinand Kirchhof and other members of the Constitutional Court.

The themes in the expert discussions included the relationship of the national courts with the European Court of Justice and the European Court of Human Rights, the importance of the guarantee of human dignity in the respective constitutions, and a comparative consideration of procedural law.

Leman Solicitors breaks the mould

Leman Solicitors launched a new 'affiliate lawyers' initiative on 18 June 2015. The programme – a first for Ireland – will appeal to qualified solicitors who wish to work part-time from home, on their own terms and with flexible hours. It follows a similar model already in operation in Britain among several law firms.

Says managing partner Larry Fenelon: "We have always encouraged a healthy work/life balance. We feel our affiliate lawyers initiative is an excellent opportunity for us to grow the firm with experienced professionals, while also providing the employees with that precious 'gift of time'."

Hundreds of solicitors leave their positions each year (see p6), representing an untapped source of experienced legal professionals with a wealth of knowledge and expertise.

Qualified lawyers with more than seven years of experience who want to work from home will now have the opportunity to remain in employment with a guarantee of five hours' work minimum per week.

For further details on the Leman Affiliate Lawyers programme, visit http://leman.ie/affiliates-team.

LAW SOCIETY OF IRELAND

representation

News from the Society's committees and task forces

HUMAN RIGHTS COMMITTEE

Successful annual Human Rights Lecture

The annual Human Rights Lecture, organised by the Human Rights Committee and Law Society Professional Training, was held on 5 June. European Ombudsman Emily O'Reilly delivered an inspiring lecture (see this *Gazette*, p26).

The committee wishes to thank all who attended the event, as well as Professional Training for its assistance.

PIC: LENSMEN

The speakers and committee members included *(front, l to r)*: Simon Murphy (senior vice-president), Mr Justice Nicolas Kearns (president of the High Court), Emily O'Reilly (European Ombudsman), Mr Justice Sean Ryan (President of the Court of Appeal) and Ken Murphy (director general); *(back, l to r)*: Áine Flynn, Barbara Joyce, Hilkka Becker, Michelle Lynch (incoming committee secretary), Alma Clissmann, Kieran Cummins, Shane McCarthy, Michael Farrell, Michelle Nolan (Law Society Professional Training), Noeline Blackwell and Helen Kehoe (committee secretary)

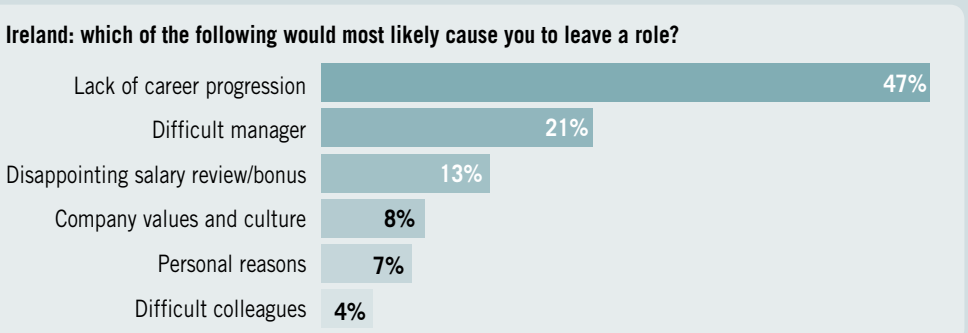
Lack of career progression compels lawyers to leave

Lack of career progression is the main reason for professionals leaving their roles in all countries surveyed throughout Europe. According to a recent Robert Walters survey of almost 6,700 professionals across Belgium, France, Germany, Ireland, Luxembourg, The Netherlands, Spain, and Switzerland, 44% cited lack of career progression as the main reason for leaving a role.

Ireland mirrored these results, with 47% of professionals prepared to move jobs as a result of poor career progression. A total of 21% cited a 'difficult manager', while only 13% mentioned 'poor salary review/bonus' as a reason for leaving.

"Contrary to popular belief, salary is not the main factor in retaining staff," says Louise Campbell (managing director, Robert Walters Ireland). "If people feel there is little or no progression in their current company, they will look elsewhere, in spite of a generous remuneration package."

In order to attract and retain top talent, she said it was essential for organisations to have a defined career path for individuals in order to improve their employer brand and become an employer of choice. "As market conditions improve and career opportunities open up, employees will be far less inclined to stay in a role that does not offer clear and measurable progression."



US lawyers rendezvous on the road to Runnymede

The president of the 400,000-member American Bar Association (ABA), the largest voluntary association in the world, visited Blackhall Place on 9 June 2015. With him were some of the more than 500 American lawyers who travelled over to the celebration of the 800th anniversary of the sealing of the *Magna Carta*, by King John of England, at Runnymede on the Thames on 15 June.

The event was given added prestige by the presence of the US Ambassador to Ireland Kevin O'Malley, who until his appointment by President Obama was a practising trial lawyer in St Louis, Missouri, and an active member of the ABA. The ambassador joked that he was attending the business session in the afternoon "as I need the hours to keep up my ABA credits".

A softly-spoken Southerner from Charleston, South Carolina, ABA President William C Hubbard was warmly appreciative of the lunch hosted for him and some of his most senior colleagues by President of the Law Society Kevin O'Higgins. His wife is of Irish descent and he is very aware that the ties, based on shared values, between the Irish and United States' legal professions are long and deep. He learned that, as far back as the year preceding the centenary year of the Law Society of Ireland's Charter in 1951, the then President of the Law Society of Ireland, Roger Green, had been a guest of the ABA at its annual conference in New York.

The Law Society of Ireland remains very appreciative of the very active, public and important support it received from then ABA President Bill Robinson in late 2011, in defending the independence of the Irish legal profession following the publication of the *Legal Services Regulation Bill*.

On the afternoon of 9 June in Blackhall place, the American lawyers were given an introduction to the Irish legal system and legal profession by director general Ken Murphy. He also provided some insights on the significance of the *Magna Carta*, which they would be celebrating at the only physical memorial on the historic field at Runnymede – the memorial constructed there by the ABA in 1957.

A high-level discussion followed on the greatest challenges facing the legal profession worldwide today, which enthralled both the Irish and American colleagues who were present.

Ambassador O'Malley subsequently honoured everyone involved by hosting a reception in the US Ambassador's official residence at Deerfield in the Phoenix Park, where he invited Ken Murphy to commemorate another anniversary, the 150th of the birth of WB Yeats, by reciting *The Song of Wandering Aengus* for his guests.

ALL PICS: LENSMEN

(Seated, l to r): Former President of the ABA Thomas Welles, US Ambassador Kevin O'Malley, Law Society President Kevin O'Higgins and President of the ABA William C Hubbard, with some of the American visitors

Ken Murphy (director general), William C Hubbard (President of the ABA), Kevin O'Higgins (president) and US Ambassador Kevin O'Malley

Magna Carta revisited

Not to be outdone by the Americans, the British Ambassador to Ireland, Dominick Chilcott, very graciously hosted a dinner at his official residence, Glencairn, on 16 June to chime with the *Magna Carta* 800 celebrations at Runnymede. His guests were senior members of Ireland's judiciary, barristers and solicitors, including the managing partners of a number of the largest firms.

Before dinner, at the request of the ambassador, director general Ken Murphy delivered an address to all the guests on the history and significance for the rule of law, throughout the world, of the *Magna Carta* – a subject on which he had given radio interviews the previous day to both George Hook on Newstalk and Mary Wilson on RTÉ's *Drivetime*.

FOCUS ON MEMBER SERVICES

Library services – between the covers

The Law Society Library has a stock of over 40,000 print titles, including textbooks, legislation, law reports and journals. In addition, the library has access to vast online libraries and databases, the content of which can be explored to provide up-to-date information for members, trainees and diploma students.

Online catalogue

For the last 15 years, the library has provided members and trainees access to the catalogue via the internet. In recent years, the online catalogue database has been enhanced to include PDFs of all reserved written court judgments. Other features have been improved – for instance, it is possible to request loans online and to renew books. The online catalogue can be accessed via the Law Society website or the *BookMyne* app. Login and password are required. Contact the library for these details at libraryenquire@lawsociety.ie.

Other services include the following:

- *Book loans*: we lend almost 500 books per month – books are dispatched by DX-tracked courier service or may be collected. We are always ready to listen to members and trainees and are happy to consider any purchase suggestions put to them.
- *Enquiry service/document delivery*: this is one of the library's most popular services. The preferred method of document delivery is by email. If requested, and for a charge, copies of documents can also be sent by fax, post and DX. The library has arrangements in place with other law libraries in Ireland and abroad to supply materials not held in stock.
- *LawWatch* is a free weekly email alerter containing details of recent court judgments, recent legislation and topical journal articles. To subscribe, members and trainees should contact Mary Gaynor (head of library and information services), m.gaynor@lawsociety.ie.
- *Precedent service*: as well as a range of precedents in PDF format from textbooks and manuals, the library is licensed to supply electronic documents in MS *Word* format from *Laffoy's Irish Conveyancing Precedents* and LexisNexis's *Encyclopaedia of Forms and Precedents*.
- *Databases*: the library subscribes to LexisNexis, Justis, Bloomsbury Professional Online Property, Casetrack, and Legal Journal Index (Westlaw UK).

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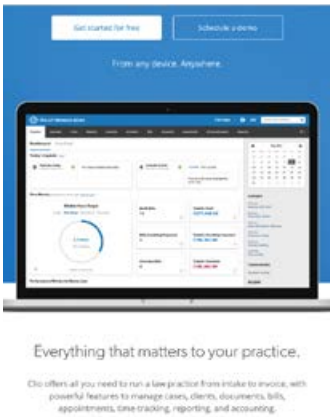
Top-notch practice management from Clio

If you're not familiar with the benefits of cloud computing and how it can help your law firm, Clio Practice Management Software is offering a comprehensive practice management system for the legal industry. Servicing over 40,000 law firms globally, it claims to be the leader in practice management for solo to medium-sized firms.

Cloud-based, mobile-friendly and built specifically for the legal profession, Clio delivers all of the tools modern law firms need to run a successful practice: calendaring, time tracking, note-taking, document management (featuring unlimited storage), task management and work-flow creation, legal accounting, bookkeeping and billing. And it claims it can offer a level of security and data protection equal or superior to on-premises solutions.

Its software integrates seamlessly with popular applications such as *Outlook*, Google apps, *Xero*, *Quickbooks*, *Bundledocs*, *Dropbox* and many more. Your software and data are available on any device with an internet connection – allowing you to access your key practice data anytime, anywhere. This means that you can access your practice's data from your law office, from



home, from court or even while on holiday, if the need arises.

By the end of 2014, Clio was servicing over 100 firms in Britain and Ireland, establishing itself as a key player in both regions. Early in 2015, it secured an 'approved supplier' listing from the Law Society of Scotland.

Originally hailing from Canada, Clio made the decision to expand to Ireland and Britain two years ago, setting up their EU office in Dublin along with their European server, to facilitate their European database.

Clio is offering a price of €65 per user/month when billed annually, or €72 from month-to-month. For more information, visit www.goclio.eu or email: info-eu@clio.com.

NLI web archiving project

The National Library of Ireland (NLI) is working on archiving websites related to the recent marriage referendum, as well as the Carlow Kilkenny by-election. The project aims to ensure that permanent records are kept of all referenda and election materials.

The NLI has been carrying out "selective and thematic web archiving" since 2011 in order to ensure that a permanent record is kept of websites of cultural and historical importance. The library began the web archiving project with the 2011 general election followed by the 2011 presidential election. The collection will feature sites documenting both sides of the debate, official sites like that of the Referendum Commission, commentary sites, and political party websites.

The NLI says that these sites have been selected in order to provide as complete a picture as possible of how the referendum has been documented online, for future research, and to complement the library's existing newspaper and ephemera collections.

Become an Advanced Legal Practice Master

Practitioners can now use their solicitor qualification as a springboard to a Master's. In an innovative first for the Law Society, its Diploma Centre is offering a new Advanced Legal Practice LLM in partnership with the law school of Northumbria University.

In order to be awarded the degree, students are required to attain 180 credits. Members' existing solicitor qualification is recognised as equivalent to 120 points (or two-thirds) of the Master's programme. A research project will make up the remaining 60 points required.

Building on the foundation of a solicitor's legal qualification, the programme will provide a wonderful opportunity for practitioners to achieve a Master's in a specialised area of law. Candidates will undertake in-depth study of an agreed legal topic under individual tutor supervision.

Beginning in September 2015, the programme will be taught primarily through distance learning, with supervisors predominantly based in the Law Society. The timescale for the two-year programme has been designed to take account of the need for students to be able to complete the LLM while meeting their work commitments.

Discussing the launch of the LLM in Advanced Legal Practice were *(l to r)*: TP Kennedy (director of education, Law Society), Dr Mark Brewer (teaching and learning fellow, Northumbria University) and Rory O'Boyle (programme leader, Law Society)

Kick-off

The programme will focus primarily on the coherent presentation of legal research in a written form. It will kick-off with a legal research and study skills module for students at Blackhall Place on 26 September 2015. This module will not be assessed, but will assist students with updating their writing and research skills and introduce the programme generally.

The remainder of the programme will consist of completing a project of between 15,000-17,000 words – the sole assessed element of the LLM programme. Students will choose their topic of study but, generally, will be expected to focus on an area of Irish law. An appropriate Law Society tutor must be available to supervise the work.

Students will be free to choose a topic relating to international jurisdictions if there is sufficient internal expertise available to them in the Law Society or Northumbria University to supervise the topic.

International reputation

The Diploma Centre is pleased to be able to offer this Master's course with Northumbria, which boasts one of the largest law schools in Britain and has a national and international reputation for excellence in legal education, particularly in clinical legal education.

The Advanced Legal Practice LLM will provide career benefits that are directly relevant to the needs of modern legal practice, including:

- The development of existing expertise and knowledge,
- The opportunity to gain expertise in a new area,
- Enhanced skills in research, analysis, and problem solving, and
- Enhanced understanding of the wider context in which the law is developed and implemented.

Fee and entry requirements

The fee for the LLM is €2,900. Applicants must either be:

- Qualified as a solicitor in this jurisdiction, or
- Enrolled on the PPC2 at the same time as they enrol to the LLM. They will be expected to complete their training within the academic year. Any student enrolled on the PPC2 at the same time as the LLM must satisfactorily complete the PPC2 before they can be awarded the LLM.

For further information, contact the programme leader, Rory O'Boyle, at the Diploma Centre; tel: 01 881 5774, email: r.oboyle@lawsociety.ie, or visit www.lawsociety.ie/diplomacentre.

Working the room

Former dragon, broadcaster and management consultant Gavan Duffy will share the benefit of his considerable communication and management experience when delivering a seminar for the Younger Members' Committee titled 'Working the room – how to network effectively' on Thursday 9 July 2015 at 6.30pm in the offices of William Fry, 2 Grand Canal Square, Dublin 2. The event (costs €20) is restricted to solicitors qualified less than eight years and numbers are limited. For details, visit www.dsba.ie.

Clare cluster contributes to a cracking collaboration!

ALL PICS: LOUISE BROOKS PHOTOGRAPHY

(Front, l to r): Sinead Kenny (Clare Bar Association), Attracta O'Regan (head, Law Society Skillnet), Kevin O'Higgins (president, Law Society), Teri Kelly (director, Representation and Member Services) and Colette Reid (course manager and skills leader, Law Society); *(back, l to r)*: Angela Byrne (Clare Bar Association), Marina Keane (Michael Houlihan & Partners), Aisling Meehan (Agricultural Solicitors), Anne Stephenson (Stephenson Solicitors), John Elliot (director, Regulation Department, Law Society), Katherine Kane (Law Society), Niamh White (Limerick Solicitors' Bar Association) and Dr Geoffrey Shannon (Special Rapporteur on Child Protection)

The Law Society of Ireland Skillnet, in partnership with the Clare Bar Association and the Limerick Solicitors' Bar Association, hosted the Essential Solicitor Update 2015 for over 150 local solicitors at the Temple Gate Hotel in Ennis on 19 June. The cluster event is part of a nationwide programme planned throughout the country this year.

Dr Geoffrey Shannon (Special Rapporteur on Child Protection), Suzanne Bainton (chair of the Conveyancing Committee), and John Elliot (director of Regulation) were among eight speakers who delivered a programme designed for the Clare and Limerick audience based on feedback from their bar associations.

Teri Kelly (director of Representation and Member Services) said: "It is important that the Law Society reaches out to our members around the country, and the cluster events with local bar associations are the perfect way to do that.

"In consultation with members in each area, we tailor each seminar for the particular needs of local practising solicitors and the communities they serve. Members love these events and are coming out in large numbers. In 2015, there will be clusters in Donegal, Kerry, Monaghan, Mayo, Dublin, Cork and Kilkenny."

To attend an upcoming cluster, sign up online at www.lawsociety.ie/cpdclusters.

China-EU Access to Justice Programme visits Blackhall Place

The China-EU Access to Justice Programme recently visited the Law Society to gain practitioner insights into how legal aid operates in Ireland. The programme aims to support China's effort in strengthening access to justice for disadvantaged groups in regions with less developed legal infrastructure and in less economically developed areas. Director general Ken Murphy led the Law Society team, which included practitioners Joan O'Mahony and Shalom Binchy. Ms Bai Ping (director general, National Legal Aid Centre, Ministry of Justice) led the Chinese delegation. Attending from the China-EU Access to Justice Project Implementation Team were members Paul Dalton and Ni Jing

Professional training seminar on *Companies Act* in Cork

Law Society Professional Training hosted 'The *Companies Act 2014* – the key provisions', in the Clarion Hotel, Cork. All proceeds from the 10 June event went to Irish Rule of Law International. *(From l to r)*: Robert Heron (Dunnes Stores), William Johnston (Arthur Cox), Attracta O'Regan (head, Law Society Professional Training), Paul Keane (Reddy Charlton), Emma Dwyer (Irish Rule of Law International), Neil Keenan (LKG Solicitors) and David Mangan (Mason, Hayes & Curran)

PIC: LENSMEN

Solicitor and Minister for Foreign Affairs Charles Flanagan was the special guest at the Law Society on 30 April. *(Front, l to r)*: Patrick Dorgan (junior vice-president), Ken Murphy (director general), Minister Charles Flanagan, Kevin O'Higgins (president) and Mary Keane (deputy director general); *(back, l to r)*: Frank Callanan SC, Michael Quinlan (Council member), John White, Pat Quinn SC, James McCourt, Sarah Kavanagh, Tony O'Connor SC, Gerard Lambe and John P Shaw

Moot court champs are sitting on top of the world

A Law Society team has been crowned champion at the international finals of the prestigious Stetson International Environmental Moot Court Competition in Gulfport, Florida. The team comprised three trainees: Aoife MacArdle (McCann FitzGerald), Michelle Ryan (Arthur Cox) and Mark Thuillier (A&L Goodbody), who were selected during PPC1 last September by team coach TP Kennedy.

The team submitted detailed written arguments before Christmas on the legality of shark-finning and the use of public morality as a justification for international trade restrictions. From January to April, they honed their advocacy skills with Law School lecturers and previous Law School competitors.

PIC: JASON CLARKE PHOTOGRAPHY

Environmental dream team *(l to r)*: Mark Thuillier, Aoife MacArdle, Michelle Ryan and TP Kennedy (team coach)

Teams from around the world, including the Philippines, China, the United States and India, participated in the international finals held at the Stetson University College of Law.

The Law Society progressed out of the preliminary rounds with three out of four victories against teams from the United States and India. In the quarter-final and semi-final stages, the Irish team defeated teams from West Bengal and Manila.

In the final, the Law Society team faced the University of the Philippines' College of Law. The panel of expert judges included the current executive secretary of the Convention on Migratory Species, Bradnee Chambers.

on the move

New partners at A&L

A&L Goodbody has announced the appointment of three new partners, bringing its total number to 87. Pictured are *(l to r)*: Charlie Carroll, Stephen Carson, Julian Yarr (managing partner), and Ciara McLoughlin.

Charlie Carroll has been appointed partner in the M&A and corporate group. He joined in 2004 as a trainee. He has a strong track record in equity capital markets, public and private company transactional work, and corporate finance activity.

Stephen Carson is the new partner in the asset management and investment funds group. He joined in 2010 as an associate. He advises international asset management firms and investment banks on the establishment and authorisation of investment funds.

Ciara McLoughlin has been named partner in the employment law group. She joined A&L in 2006. She provides strategic human resources advice to international and domestic clients. A fluent German speaker, she is a founding member of the firm's German group.

The firm has also appointed 19 new associates.

Five new appointments at Leman Solicitors

The financial services disputes team at Leman Solicitors has been bolstered by the arrival of Laura Daly

Grainne Jolley has been named as business development and marketing manager

Eoin O'Cinneide has joined Leman Solicitors in the corporate and commercial department

Ursula McMahon has been appointed as partner and head of the corporate structuring group

Leman Solicitors has appointed Dominic Conlon as partner and head of its corporate department

letters

Solicitors must replace improperly withdrawn client funds

From: Garry Clarke, Lanigan Clarke Solicitors, Pearse Road, Letterkenny, Co Donegal

Following the May *Gazette* article on cybercrime, I would like to draw colleagues' attention to a recent reported incident in Britain. A conveyancing client, Mr Lupton, emailed his solicitor, Perry Hay and Co, with the account details to which he required his balance purchase money in the sum of £333,000 to be sent.

The email was intercepted by fraudsters who, posing as the client, emailed the solicitor from the same email address and instructed the solicitor to disregard the previous email and send the money to a different account, which they did. The fraud was discovered some days later and, despite the relevant bank accounts being frozen, the client was left out of pocket to the tune of £62,000.

The client felt the solicitor was at fault and complained to the Solicitors Regulatory Authority (SRA), who took the view that solicitors' firms were responsible for safeguarding client funds and must replace funds that were "improperly withheld or withdrawn from a client account".

The SRA has said that criminals are increasingly targeting solicitors' firms and the theft of client funds. Notably, of the 20 scam alerts issued by the SRA this year, 13 have involved emails pretending to be from clients. The advice is that account details should never be sent by email.

In a reverse technological twist, it now appears that firms worried about fraud cases involving email are resorting to faxes where confidential and sensitive information is being transmitted.

'Completely lopsided' cover story on admissible evidence

From: Ciaran O'Mara, O'Mara Geraghty McCourt, Solicitors, Northumberland Road, Dublin 4

I have just read the cover story in the latest issue of the *Gazette* ('Love/Hate', p26, June) on the recent Supreme Court decision on unconstitutionally obtained evidence.

I thought that the article was completely lopsided. I say this as somebody who does not practise at all in the area and did not have a view on this issue before the Supreme Court's decision.

Ms McGeever, in her article, quoted extensively from previous judgments, and also from the minority judgments of the Supreme Court in April, but hardly mentioned the majority viewpoint. There was a reference to what Mr Justice Clarke said, but quite briefly.

I took the trouble to look up the Supreme Court's judgments, and I have to say that the judgment of Mr Justice O'Donnell is of extraordinary erudition and forensically analyses the reasons why virtually every other common law country has abandoned the absolute rule that the Irish Supreme Court has applied since 1990. But not a mention of a judicial *tour de force* in this article.

I find it extraordinary that your contributor could not have seen fit to mention any of this, and you would get the impression from the article that the Supreme Court simply plucked its decision out of the air.

I think that the readers of the *Gazette* deserve a better and a more balanced attempt at coverage of what is one of the most important decisions of the year. I am completely in favour of Ms McGeever giving her own views and arguing for them, but your readership deserves much better than this. There are two sides to this story.

NPPR anomaly 'ridiculous and grotesquely unjust'

From: Sara McDonnell, Richard H McDonnell Solicitors, Market Square, Ardee, Co Louth

I wonder are all members of the profession aware of a dangerous anomaly in the NPPR legislation arising out of section 4(5) of the *Local Government (Charges) Act 2009*, as amended by the *Local Government (Household Charge) Act 2011*, section 4(6)?

This section results in the ludicrous situation whereby, unless a person has been certified by a medical practitioner as having suffered from a long-term mental or physical infirmity for a continuous period of more than 12 months, the local authority will not give a certificate of exemption from NPPR, even though the fact that it cannot be proved that the person was infirm enough to have to go to a hospital/nursing home for the full 12 months clearly means that they were residing in their principal private residence during that period.

When we objected to this interpretation of the act during a recent sale of property for a client, we were advised that ministerial guidance had confirmed this literal interpretation of the section – and that, we were firmly told, was the end of the matter.

Some solicitor who may have given an undertaking to furnish a certificate of exemption from NPPR, in the certain knowledge that the local authority would have to give it to them, may end up being liable to pay thousands of euro to get such a certificate.

The section is clearly ridiculous and grotesquely unjust and needs to be challenged, but section 8 of the act does not provide for costs to be awarded in the event of successful litigation, so no solicitor is likely to want to take this on on behalf of a client. This is, sadly, yet another example of the legislature obdurately passing legislation in the teeth of warnings from the Law Society (often ignored presumably on the erroneous assumption that all submissions made by lawyers can only be self-serving) and then leaving it to us to bear the brunt of their mess.

Perhaps the Law Society would consider sponsoring a judicial review of the matter?

viewpoint

WHERE'S THE BEEF?

It is imperative that, during the current negotiations on the Transatlantic Trade and Investment Partnership, EU negotiators insist on comparable food standards for the sake of consumer health, the environment and the Irish red-meat industry, argues Helen Dillon

Helen Dillon is a solicitor in the commercial and regulatory department of McKeever Rowan Solicitors. She is the author of The Regulation of the Red Meat Industry in Europe, *which formed part of her LLM in Trinity College Dublin*

A proposed free-trade agreement between the European Union and the United States, the Transatlantic Trade and Investment Partnership (TTIP), aims to increase trade and investment between the EU and US through the elimination of restrictions on trade in goods and services, including customs duties and tariffs where possible. The bilateral trade and investment deal will be the biggest in the world, once finalised. Currently, the EU and US trade goods and services worth €2 billion every day, and the TTIP aims to create further growth and opportunities and open up new markets.

Negotiations with the US were formally launched by the EU Trade Council on 14 July 2013 and are still ongoing with the European Commission, which most recently presented negotiated texts in January 2015. It is anticipated that the agreement will be finalised by the end of 2015 or early 2016 – however, a long negotiation process still lies ahead. It is imperative in negotiating this agreement – while bringing the US and EU standards and regulations together – that consumer health and environmental standards are not lowered.

> **'The dioxin crisis in Ireland in 2008 and the well-documented BSE crisis clearly demonstrate that the food chain is only as secure as its weakest link'**

The benefits of TTIP, according to the EU Commission, would include a boost to the EU economy by €120 billion, the US economy by €90 billion, and the rest of the world by €100 billion. However, criticisms that it will increase corporate power and make it more difficult for governments to regulate markets for public benefit must be considered in developing a formula to bring standards and regulations in line with each other.

A successful strategy (according to Thomas Bollyky at the Council on Foreign Relations and Anu Bradford of Columbia Law School) will focus on business sectors for which transatlantic trade laws and local regulations can often overlap – for example, pharmaceutical, agricultural, and financial trading. This will ensure that the US and Europe remain "standard makers, rather than standard takers" in the global economy, subsequently ensuring that producers worldwide continue to gravitate toward joint US/EU standards. However, the question that should be raised is whether an overlap can exist in the regulations. The high levels of regulation in Ireland and the EU add a significant cost to primary Irish beef production and processing – a cost that is not borne in the US system.

High standards

According to Irish Farmers' Association president Eddie Downey, EU negotiators must insist on the fundamental principle of the equivalence of standards. That is, all US imports must meet the same animal health, welfare, traceability, and environmental standards as are required of EU producers.

The US government raised concerns in the 1990s with regard to European beef imports when the BSE scare arose, with fear that harm could be caused to the health of American citizens. Almost 16 years after the US banned imports of EU beef, the ban was formally lifted in March 2014, with Ireland becoming the first EU state to regain access to the US market. The heavy EU food regulations imposed following the BSE crisis and the stringent standards that are now required on a pan-European level finally reaped their benefits on the reopening of the EU/US beef market.

The primary legislation governing the food industry in Europe is the *General Food Law Regulation* (178/2000), adopted following the BSE crisis. The aim of this legislation is to:

- Outline the general principles and requirements of food law,
- Establish the European Food Safety Authority, and
- Provide procedures in matter of food safety, including, among other things, the traceability systems in the food and feed-supply chains in Europe.

The beef industry in Europe is one that is heavily regulated compared with the US. Concerns have now arisen in negotiations on the TTIP that a potential threat could be posed, not only on an economic level (in the sense that US beef can be produced at a much cheaper cost than Irish beef due to the different regulatory approach at federal level), but also in the sense that, if the US cannot provide guarantees on origin or that animals have come from a hormone-free herd, then quality might be sacrificed.

Ever since the first days of integration, the EU has invested substantial time and effort into regulating meat safety. It has had to deal with complex food-risk issues, which have been further complicated by international pressures and consumer concerns.

The beef industry provides key linkages to the international market and thus, with the TTIP agreement, it is anticipated that we will increase these linkages further. Quality standards, branding, and reputation are extremely important factors in this industry. It takes generations to build a good reputation, but this reputation could plausibly be destroyed overnight by being associated with a food scare, such as the dioxin crisis we experienced in Ireland in 2008 or the well-documented BSE crisis. Both

PIC: ISTOCK

of these crises clearly demonstrate that the food chain is only as secure as its weakest link. It highlights the consequences for the entire food chain if something untoward happens with animal feed.

Farm-to-fork traceability

Traceability is a particularly important element that is not provided for in US legislation. It provides key concerns for the IFA in the negotiations process of the TTIP agreement.

Product liability and product safety have become more significant in modern society, particularly with the various food dioxin crises across Europe. This clearly demonstrated that general food traceability was a prerequisite for enabling food operators and public authorities to withdraw all the food products involved from the market within a reasonable period of time.

The stringent legislation in place in the EU has created a system where one can obtain a sufficient amount of evidence to proceed to litigation against any food company that might be deemed liable in such instances.

By comparison, in the US (depending on the state), the same stringent regulations are not imposed on US beef with regard to tagging, traceability, and movement-control systems. In negotiating the TTIP, the EU Commission must insist that all imports of beef from the US conform with the same 'farm-to-fork' traceability system that exists in the EU.

Following the BSE crisis, the EU heavily increased regulations, creating production and quality standards at a much higher level than beef produced elsewhere. The US relies heavily on the use of growth enhancers, including hormones such as beta-agonists (for example, ractopamine), to speed up muscle growth. In accordance with stringent EU legislation (Directive 96/22/EC as amended by Directive 2003/74/EC), all such growth-enhancing hormones are banned in the EU. The current position with regard to imports of US beef to the EU is that they are limited by high EU tariffs and by the ban on hormone-treated beef. The US has long refused to segregate a hormone-free supply chain, given that high EU tariffs make the operation largely uneconomical. This was discussed in the EU paper on the market opportunities for the EU agri-food sector in a possible EU/US trade agreement, and is one of the key elements of contention in negotiating the TTIP.

Unique selling point

The primary aim of the TTIP is to open agricultural markets and negotiate the reduction of high tariffs, such as the 139% imposed on dairy products from the EU into the US. As with all aspects of the discussions, the European Commission, in ensuring regulatory alignment is met, must ensure that mutual recognition should only be possible if safety and environmental concerns are guaranteed.

Key concerns for the US in negotiating the TTIP include the requirement that they abolish the 'Buy American' campaign. This campaign stipulates that government procurement operations should, as the name states, buy American, and clauses are inserted into procurement contracts that act as trade barriers. A further concern in the US is that, having recovered from the 2008 financial crisis, the TTIP may further affect the country's economic stability, with competition from EU produce.

The red-meat industry in Ireland is one that is heavily regulated in order to protect our consumers – a unique selling point for Irish beef.

Apart from the health concerns associated with the chemicals and hormones allowed in US beef production, the competitive advantage for the US would mean that Ireland, as the largest beef exporter within the EU, would be exposed to the downward price pressure arising from a large increase in lower-cost imports. The beef industry in Ireland provides vital economic activity in every part of the country. Downward price pressure could lead to a significant reduction in Irish prices and, therefore, affect Irish production decisions that might ultimately have a negative economic impact on the sector.

It is not a standards issue in itself, but it is worth noting that Copenhagen Economics (which undertook the analysis of the impact of the TTIP on the overall Irish economy for the Department of Enterprise) specifically identified the vulnerable position of the Irish beef sector. Fundamentally, a large increase in lower-cost US imports of beef into the European market would have a negative economic impact on the Irish beef industry.

viewpoint

CATASTROPHICALLY INJURED PLAINTIFFS – A FALSE DAWN?

The recently proposed legislation on periodic payment orders may not meet with approval from plaintiff practitioners nor address the fundamental problem that exists, argues Michael Boylan

Michael Boylan is a partner and head of medical negligence at Augustus Cullen Law. He is a member of the Working Group on Medical Negligence and a member of the Law Society's Litigation Committee

The recently published *Civil Liability (Amendment) Bill 2015* relating to periodic payment orders has been eagerly awaited by many practitioners for the last five years, since the publication of the *Report of the Working Group on Medical Negligence and Periodic Payments*. However, I fear that the proposed legislation is unlikely to meet with approval from plaintiff practitioners and is unlikely to address the fundamental problem that exists – namely, linking future annual payments to an appropriate inflation index of future care costs. Few would seriously argue that compensating a seriously injured plaintiff for a lifetime of care costs on a once-off lump-sum basis would be an inaccurate exercise prone to serious error. As one senior English judge stated more than 35 years ago: "Knowledge of the future being denied to mankind, so much of the award as is to be attributed to future loss and suffering – in many cases the major part of the award – will almost surely be wrong. There is really only one certainty – the future will prove the award to be either too high or too low."

However, will the proposed new scheme as set out in the heads of bill really make the situation any better? I have serious personal doubts. The origin of the problem is in the index of future inflation that is proposed to be adopted and used in the proposed statutory scheme.

Unanimous recommendation

It is worth recalling what was proposed in the first *Report of the Working Group on Medical Negligence,* published in October 2010. The group – which was made up of senior judges, along with stakeholders from all of the concerned parties, including senior representatives of the insurance industry, senior civil servants, the State Claims Agency, the Bar Council, the Law Society, the Society of Actuaries, and patient advocates – unanimously recommended that: "Provision within the legislation must be made for adequate and appropriate indexation of periodic payments as an essential prerequisite for their introduction as an appropriate form of compensation.

In particular, the group recommends the introduction of earnings and cost-related indices, which will allow periodic payments to be index-linked to the levels of earnings of treatment and care personnel and to changes in costs of medical and assisted aids and appliances. This will ensure that plaintiffs will be able to afford the cost of treatment and care into the future."

> **It is very regrettable that the Government has spurned the opportunity to provide certainty for catastrophically injured plaintiffs and has rejected the best option for achieving accurate and equitable compensation**

However, rather than follow the advice of the working group, the Government has decided to introduce an inferior indexation of future payments. The draft heads of bill states that: "The index used to calculate the revision shall be the annual rate of Irish Harmonised Index of Consumer Prices (HICP) index as published by the Central Statistics Office."

And further: "The rate attributable to indexation under this part shall be subject to an initial review within five years after coming into operation of this act and, thereafter, every five years. Any changes to be prospective only and not retrospective."

In the explanatory memorandum with the draft heads of bill, the plan to link the index to general inflation and prices is justified by reference to recommendations received in a report prepared for the Government by actuaries Towers Watson (report not yet published). The explanatory memorandum states that the Government "was conscious of the need to use an index which offered long-term stability in terms of price changes and which assessed changes of costs across a broad range of goods and services. It considered that the index chosen should be as stable as possible and provide certainty for all parties."

Thus it would appear that the Government, in its wisdom, has decided to reject the advice of the working group in favour of its own internal departmental advice, apparently based on an internal report prepared for it by Towers Watson. Put simply, the index that the Government has decided to use will measure prices over a broad range of consumer goods and will not accurately reflect the likely greater increase in wage inflation for carers' salaries or for medical services. This is precisely the opposite of what the working group recommended. It is ignoring the unanimous recommendation made.

Problem remains

This will leave open the entire problem of the difference between general increases in consumer prices compared with the much greater increase in wage costs. It is conventional economic

PIC: ISTOCK

Is it possible that the powerful insurance lobby has had its say and brought about a change in the proposed legislation?

wisdom that, in the long term, over a period of decades, wages will inevitably rise at a rate greater than the increase in consumer prices. The Society of Actuaries, for example, accepts that earnings will increase at an average of 1.5% per annum greater than the general increase in consumer price. The practical effect of the Government plan to link the annual payment to general price inflation rather than wage inflation will condemn seriously injured plaintiffs with lifetime care needs to under-compensation in their later years. It is thus likely that plaintiffs will run out of funds to meet care needs in their later years, at a time when they are most in need of care and support and likely to be without any gratuitous care from family members.

Actuaries tell me that, if the current care costs were assessed at €100,000 per annum and increased in line with general price inflation, the real value of that payment in 30 years (if wage inflation increased at 1.5% per annum greater than general prices) would leave the plaintiff with the equivalent of approximately €65,000 per annum in real terms. Thus it would cost €271,000 per year in 30 years' time to purchase the same care as could be bought with €100,000 per annum today. However, linking the annual payment to general price inflation would only result in a payment of €177,000 per year in 30 years. Thus, over time, the plaintiff will face a gradual erosion in his/her ability to pay for vital care, so that at the end of three decades, they would have the funds to pay for only approximately two-thirds of the vital care needed. Surely this would be an unjust result?

Restitutio in integrum

It is hard to imagine that the Government is not aware of the problem they are potentially creating. All of these issues were fully discussed in the working group's report. For example, it was highlighted that when the British law was changed in 1996 by the introduction of their system of periodic payment orders, they initially linked the payment to a retail price index that was their equivalent to the Irish HICP Index. Because of this deficiency, periodic payment orders in Britain were rarely, if ever, availed of by plaintiffs for the reasons set out above. It was not until the Court of Appeal decision in a group of cases, commonly referred to as *Thompstone v Tameside and Glossop Acute Services* ([2008] EWCA CIV 5), that the situation changed.

As a result of that litigation, the court decided to link the annual payment order to an index of inflation in carers' earnings (ASHE

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6115). Since PPOs were linked to carers' earnings, practically every catastrophically injured plaintiff in Britain will avail of such a method of compensation. As was stated by Lord Justice Waller in *Thompstone*: "If the annual uplifts do not properly reflect the actual increases in the relevant costs, the claimant will have no means of protecting himself against the consequences of the shortfall. You will not have the option of pursuing an investment policy aimed at achieving capital growth in order to meet shortfalls in the future. The transfer of risk away from him results also in a loss of opportunity for gain. He could be caught in a situation whereby his annual payments fall further and further below the level which, at the time the periodic payment order was made, was agreed or assessed as being required to meet his needs."

Similarly, in the House of Lords in *Wells v Wells*, Lord Hutton stated: "Unlike the great majority of persons who invest their capital, it is vital for the plaintiffs so that they receive a constant and costly nursing care for the remainder of their lives and that they should be able to pay for it, and any fall in income or depreciation in the capital value of their investments will affect them much more severely than persons in better health who depend on their investments for support."

Thus it seems to me that we are in danger of making exactly the same mistake that was made by the British government in 1996, which had to be remedied in *Thompstone*. If the Government proceeds with the proposed legislation and introduces indexation to an inferior form of index that doesn't accurately reflect inflation in care costs, we will end up with 'satellite' litigation.

In my view, this is not a proper compensation scheme for catastrophically injured patients.

It is not providing a proper hedge against inflation in care costs.

It is not a just way to treat such vulnerable persons or their families.

It does not satisfy the requirement of *restitutio in integrum* and does not put the plaintiff back as near as possible as money can do in the position they were in prior to their injury.

Spurned opportunity

The question must be asked as to why the Government is deciding to ignore the unanimous recommendations of the Working Group on Medical Negligence. Surely it would be more appropriate to link the annual payment to the CSO's Index of Average Household Earnings? Is it possible that the powerful insurance lobby has had its say and brought about a change in the proposed legislation? If the Government introduces the legislation as outlined in the draft bill, it is my view that most plaintiffs will still seek to recover lump-sum compensation. A lump sum is likely to be more attractive, more flexible, and allow plaintiffs to pursue an investment strategy that might enable them to meet inflation in future earnings/care costs, as pointed out by Lord Justice Waller. In any event, lump-sum damages are now a more attractive option following the High Court decision in *Russell v HSE*, although whether this will remain so will depend on the ultimate outcome of the appeal currently before the Court of Appeal.

It is very regrettable that the Government has spurned the opportunity to provide certainty for catastrophically injured plaintiffs and has rejected the best option for achieving accurate and equitable compensation, which would be an annual payment for life index-linked to inflation in earnings and care costs. Hopefully, the Government will have a change of heart.

news in depth

MILESTONE FOR LAW SOCIETY'S eCONVEYANCING PROJECT

The Law Society is teaming up with a leading Canadian provider of land-information systems to deliver an efficient, advanced and modern e-conveyancing system for solicitors in Ireland, writes Michael Kelly

Michael Kelly is head of eConveyancing Implementation at the Law Society of Ireland

Members will know from previous *Gazette* articles and bar association CPD seminars that the Law Society is forging ahead with its eConveyancing Project. One of the more significant milestones on the road was reached recently when the Society signed heads of terms with Teranet to design and build an electronic conveyancing system for Ireland. Teranet is based in Toronto, Canada, and owns and operates Ontario's electronic land registration system – one of the most advanced land registration systems in the world.

Teranet is in the process of incorporating an Irish subsidiary – Teranet Ireland eConveyancing Limited – to take the project through its next stages. This Irish subsidiary will own and operate the system over a projected 20-year term, under licence from the Law Society. Its success will depend to a great extent on practitioners using it as it is phased in over the next two years. The Society's expectation is that it will quickly become the *de facto* conveyancing system for all practising solicitors.

Director general Ken Murphy says: "The system will enable improved speed, predictability and efficiency, significantly reducing the time it will take to complete a residential and commercial property conveyance. The administrative costs will also decrease, while opportunities for fraud or errors will be virtually eliminated. We have been active supporters of this project since it was first proposed by the Law Reform Commission in 2006 and are delighted to announce this significant milestone to making e-conveyancing a reality for Ireland."

> **'The system will, in short, remove or simplify many of the routine and time-consuming tasks associated with conveyancing today'**

Teranet president and CEO Elgin Farewell adds: "We have been working with the Law Society since 2010 to prepare for this announcement. We have developed an excellent relationship and are truly excited about the opportunity to leverage Teranet's property search and registration, and its e-conveyancing experience and expertise, to benefit all Irish stakeholders and to improve conveyancing for the businesses and citizens of the Republic of Ireland. When completed, the Irish system will be the most efficient, advanced and modern e-conveyancing system in the world."

The e-conveyancing programme was the subject of two public meetings of the Joint Committee on Justice, Defence and Equality on 25 June 2014 and 1 October 2014. Submissions were made by the Law Society, the Property Registration Authority (PRA), Banking and Payments Federation Ireland (BPFI), Tailte Éireann and by Teranet.

On both occasions, the joint committee members displayed great interest, with challenging questions being posed and addressed. The overall tenor of the meetings is best expressed in the closing remarks of its chairman, Deputy David Staunton: "We are anxious that the initiative is moved on as quickly as possible … we will do anything that we can to help as a committee – and [as] an Oireachtas – because this initiative is a win-win. People have rolled up their sleeves, but I urge them to roll them up further to get the initiative moving."

The contribution from Noel Brett (chief executive of BPFI) was particularly encouraging when he said that his member banks were "fully committed to the introduction of e-conveyancing" and that they would "make the necessary investment in internal bank systems, work-flows and staffing to enable lenders to participate fully in e-conveyancing".

Even those who are not familiar with the Society's e-conveyancing objectives will appreciate that secure and swift system links between solicitors acting

Dennis Barnhart (chief strategy and integration officer, Teranet), Elgin Farewell (CEO, Teranet), Ken Murphy (director general) and Kevin O'Higgins (president) at the signing of the heads of terms to design and build an e-conveyancing system for Ireland

(Front, l to r): Dennis Barhart (Teranet), Elgin Farewell (CEO Teranet), Ken Murphy and Kevin O'Higgins; *(back, l to r)*: Patrick Dorgan, Gabriel Brennan, Agostino Russo (Teranet), Eamonn Keenan, Steve Brackenbury (Teranet), Mary Keane and Michael Kelly

for purchasers and vendors, and the lending banks, will be hugely beneficial. These will simplify what can be a difficult part of the conveyancing process at present.

Key change

A key change for practitioners will be the move from *caveat emptor* to full vendor disclosure. Negotiation and resolution of any title issues will be done pre-contract, and the e-conveyancing system will facilitate the production of the contract for sale. The contracts will be digitally signed and securely stored within the new system.

Once solicitors for both sides are ready to close, the lender will issue loan proceeds by electronic funds transfer directly to a system-controlled escrow account. On closing, sale proceeds will be disbursed from this account according to a predetermined sequence, including guaranteed payment of the discharge figure to the outgoing lender. This will activate an e-discharge, which was pre-approved by the lender when the discharge figure was agreed.

As part of the closing sequence, the system will discharge stamp duties and any other outlays, and immediately send the documents and appropriate fees to the PRA, reducing the existing gap between completion and registration. Consequently, there will be no need for solicitors' undertakings for residential property transactions. Also, while inherent time delays will reduce dramatically, there will be a continued reliance on the solicitors on both sides to engage swiftly and professionally through the system communications channel to keep delays to a minimum.

The system will, in short, remove or simplify many of the routine and time-consuming tasks associated with conveyancing today. However, as director general Ken Murphy puts it: "Practitioners will appreciate that core legal skills of careful investigation of title and title-related matters, evaluation of the overall transaction, including title disclosures, and the provision of sound legal advice will continue to apply."

> **Practitioners will appreciate that core legal skills of careful investigation of title and title-related matters, evaluation of the overall transaction, including title disclosures, and the provision of sound legal advice will continue to apply**

High-level design

Given the enthusiasm for the project following the joint committee meetings, the Society's project team, together with members of the eConveyancing Task Force and Teranet, had further engagements with the lenders to progress the high-level design of the system. These provided further proof (if it were needed) that system links between solicitors and lenders will result in the removal of many delays and much of the risk associated with conveyancing in Ireland.

Engagements with other stakeholders such as the PRA, the Revenue Commissioners, auctioneers, the Department of Justice and Equality, law searchers, and case-management providers have taken place. This process of engagement will continue, and we will be scheduling engagements with others, such as the Companies Registration Office and local authorities in the coming months.

The multiple system changes that lenders may face during the development of the system will present certain technical challenges. When the appropriate project phase is reached, the lenders will put formal information technology and business project teams in place to assist in finalising the design, so that development of the system changes can begin. The target is to launch this phase by autumn of this year.

In conclusion, there is considerable work yet to be done to deliver this new system for practitioners. However, there is a growing realisation that the project objectives are achievable, given the support of key stakeholders and provided that, in the words of Deputy Staunton, people continue to "roll up their sleeves".

The Society's eConveyancing Team will keep you posted on progress over the coming months. We have set up an email address, econveyancing@lawsociety.ie, and would be delighted to hear your views, comments or questions.

Also, if you would like us to make a presentation to your bar association, we would be happy to oblige – just let us know.

news in depth

SALVO OF SUPERIOR ENTRIES TAKES 'JAMMIES' BY STORM

The Justice Media Awards – the longest-running media awards in the country – showcased, once again, the remarkable journalistic talent in Ireland. Mark McDermott reports

Mark McDermott is editor of the Law Society Gazette

'When love breaks down – relationship law in Ireland' was the big winner at this year's Justice Media Awards, sponsored by the Law Society. The family law series by Cork-based journalist Ann Murphy (*Evening Echo*) took the 'Overall Winner' award, as well as the 'Regional Newspapers' title for the same article.

The article examined waiting times for legal aid in family law cases, divorce and annulment law, assessed alternative solutions to family law conflicts, and investigated the complex issues surrounding domestic violence.

The judges described Ann's article as "a standout piece from a journalist who has proven herself to be an excellent contributor to the public discourse on law and the legal system".

They also congratulated the *Evening Echo* for allowing her the freedom to produce the week-long series, which featured expert opinion, explanations of the complex legal topics involved, salient statistics, and shocking insights into the plight of domestic violence victims.

Now in its 23rd year, the Justice Media Awards (JMA) on 4 June 2015 produced the usual salvo of superior entries in all categories. The judges expressed their delight with the the overall quality of entries in the 'Daily Newspapers', 'Court Reporting' and TV categories.

This year's overall winner was Ann Murphy (*Evening Echo*)

Awards were presented in all categories. The judges were glowing in their praise of the 'Court Reporting – Broadcast Media' class, in which a JMA as well as four merit prizes were awarded. The winners here were Siobhan Bastible, Aisling Ni Choisdealbha, Colette Fitzpatrick and Brian Daly of *The 5.30* on TV3 for their special TV news report, 'Graham Dwyer trial – the verdict'. In challenging and high-pressure circumstances, two court reporters surrounded by city life outside the courthouse delivered top-class analysis pieces that gave detailed reactions from the key stakeholders. Combined with assured contributions from the studio team, they delivered a compelling, clear report on one of the most anticipated murder trial verdicts in the history of the State.

Commenting at the awards, Law Society President Kevin O'Higgins said: "To my mind, anything that contributes to a greater understanding of the law and the Irish legal system is to be recommended. In that respect, the Justice Media Awards have made – and continue to make – a valuable contribution to that process of understanding.

"The depth and variety of the entries submitted this year is remarkable. It seems to me that, in almost all cases where the work of the journalist is of a high standard, there invariably is a sense of balance and proportion about the work.

"This, if I might suggest it, is the essence of good journalism – to present us with the relevant information in the appropriate context, which allows the audience to more fully understand the issue and reach an informed opinion on the matter."

ALL PICS: LENSMEN

Category and merit winners at the Justice Media Awards 2015 celebrate at Blackhall Place on 4 June

justice media awards – results

Overall award

Ann Murphy (*Evening Echo*) for her family law series 'When love breaks down – relationship law in Ireland'.

Daily newspapers

The winner was Cormac O'Keeffe (*Irish Examiner*), 'When life doesn't really mean life'.

Merit awards were presented to Conor Gallagher (*The Irish Times*) for his article 'Untangling the vexed question of anonymity in sex cases' and to Carl O'Brien and Sinead O'Shea (*The Irish Times*) for their article 'Lives in limbo'.

Sunday newspapers

The winner was Alison O'Reilly (*Irish Mail on Sunday*) for her feature '2,000 children up for adoption'.

A Merit award was presented to Niall Brady (*Sunday Times*) for his 'A question of money' series.

Regional newspapers

The winner was Ann Murphy (*Evening Echo*) for her series 'When love breaks down – relationship law in Ireland'.

A Merit award was presented to Nicola Donnelly (*Fingal Independent*) for her article 'Campaign to keep Swords and Balbriggan District Courts open'.

Court reporting – print media

For the second year running, the winner was Helen Bruce (*Irish Daily Mail*), this time for her superb series 'Closing speeches in the Graham Dwyer murder trial'.

Merit awards were presented to Catherine Fegan (*Irish Daily Mail*) for her series 'View from the gallery – the Graham Dwyer trial' and to Mark Tighe (*Sunday Times*) for his article 'Ian Bailey trial'.

Court reporting for broadcast media

The winners were Siobhan Bastible, Aisling Ní Choisdealbha, Colette Fitzpatrick and Brian Daly (*The 5.30*, TV3) for their television news report, 'Graham Dwyer – the verdict'.

Four Merit awards were presented to Philip Boucher-Hayes (*Drivetime*, RTÉ Radio 1) for his radio reports 'Ian Bailey v Ireland', to Conor Gallagher and Declan Brennan (*The Last Word*, Today FM) for 'The courts round-up', to Vivienne Traynor (*RTÉ News*) for her report 'Key moments in the Ian Bailey case', and to Radio Kerry news for 'The Killorglin double murder trial'.

National radio

The winner was Francesca Comyn (*Newstalk Breakfast*, Newstalk) for her report 'District Court childcare proceedings'.

A Merit award went to Sarah Carey (*Talking Point*, Newstalk) for her 'Gender identity – Lydia Foy'.

Local radio

The winner was Niall Delaney (*North West Today*, Ocean FM) for his insightful report, 'The prison of direct provision'.

A Merit award was presented to Ciara Plunkett and Susan Webster (*Kildare Focus*, KFM) for their 'Mini-series on family law'.

Television news

The winner was Vivienne Traynor (*Nine O'Clock News*, RTÉ1) for her outstanding reports on 'The Anglo Trial'.

Merit awards were presented to Stephanie Grogan (*Ireland Live*, UTV Ireland) for her report 'Gender Equality Bill' and to Caitriona Perry (*Nine O'Clock News*, RTÉ1) for her report 'Drumm: in his own words'.

Television features and documentaries

The winners were Barry Cummins, Denise O'Connor and John Cunningham (*Prime Time*, RTÉ1) for their feature 'Missing in Mayo'.

Merit awards went to Lisa Marie Berry (*Tonight with Vincent Brown*, TV3) for 'Search for justice – death in Bray' and Rita O'Reilly (*Prime Time*, RTÉ1) for 'The torture files'.

news in depth

HUMAN RIGHTS – THE ELEPHANT IN THE ROOM

European Ombudsman Emily O'Reilly shared her unique perspective on human rights at the annual Human Rights Lecture at Blackhall Place on 5 June. Helen Kehoe reports

Helen Kehoe is a solicitor and a policy development executive at the Law Society

The world meeting of the International Ombudsman Institute in Canada in 2003 provided a moment of inspiration for European Ombudsman Emily O'Reilly, when she was asked how she engaged with human rights in her work as national ombudsman. At that stage, Ms O'Reilly had just been appointed to her role as national ombudsman and considered herself a "neophyte in the legal and human rights world" – although she had experienced "the practical realities through [her] former life as a journalist".

She had a sudden insight. "At that point in my life, I was also knee-deep in small children and so, in a flash of multitasking thought-processing, I said that an ombudsman deals with human rights as a parent deals with feeding vegetables to their two-year-olds: they cut them up into funny shapes, they smother them in ketchup, and they do not, on any account, call them 'vegetables'. So neither, I concluded, should an ombudsman let on to a government that the stuff it deals with really is the stuff of human rights.

"As an ombudsman, therefore, I dealt with poor or maladministration. When someone was wrongly denied a local authority house, this was not a breach of their human rights, but rather a procedural error. When an elderly person was abused through neglect in a nursing home, this was a failure to develop adequate protocols around nursing care. When a person with a disability failed to secure a grant to build a downstairs bathroom, this was a failure to add up the sums properly.

"I instinctively knew that governments – not always and not everywhere, but in a vague generalised way – are uncomfortable about human rights, particularly when the granting of them costs money or gets in the way of their preferred legislative agenda."

This perceptiveness continues to serve her well in her work as European Ombudsman.

Traumatic origins

Ms O'Reilly explored this theme of government and public suspicion of human rights during her thought-provoking lecture. "It is remarkable, nonetheless, that the two words 'human rights' should generate such high degrees of suspicion, hostility, cynicism, even apathy – particularly when we live in a Europe essentially created from the ashes of one of the greatest human rights abuses in modern history and which expanded – through the European Union – to encompass countries whose peoples lived through their own more up-to-date periods of appalling human rights denial."

She reflected in detail on what it means for the EU to trace its roots as an institution to the horrific aftermath of the Second World War. She discussed how these traumatic origins should underpin the need for the recognition and protection of the human rights of all people – more so than ever, given the context of the deep-seated scepticism of human rights and the ongoing humanitarian and human rights crises facing Europe.

She stated: "The human rights world is derided as an industry, bent on mission creep, finding within the ECHR and other instruments – according to its critics – the type of social and economic rights so far removed from the rights denied in

Sharing a lighter moment during the Q&A were *(l to r)*: Mr Justice Sean Ryan (President of the Court of Appeal), Emily O'Reilly (European Ombudsman) and Shane McCarthy (vice-chair, Human Rights Committee)

European Ombudsman Emily O'Reilly at the annual Human Rights Lecture

Nazi Germany and the Soviet Union as to be unrecognisable as human rights at all.

"I have heard even human rights practitioners clash, for example, over whether the right to water is a human right or not. Add to that the EU-wide struggle to find a way to deal humanely with the migrants fleeing their own particular horrors in the Middle East and Africa and one can see how the HR 'brand' has its issues.

"So I struggle, and everyone who thinks about what is in plain sight of all of us must also struggle, to understand the contradictions in the playing out of our human rights systems and sympathies. Why do we choose to see some events, some people, some categories of people as worthy of inclusion in our human rights framework – and others barely or not at all?

"Why do our eyes well up at the sight of child's body floating dead under a blue sky inches from a member state shore even as we settle back, indifferently, and let our governments haggle over the numbers of the still living we may grant asylum to?"

Irish context

In the Irish context, O'Reilly looked to the recent results in the marriage referendum and contrasted the treatment of that issue with another pressing human rights concern: "Still basking in the glow of our league-topping performance on the gay-marriage front, we continue to dance around another human rights elephant in our nation's room – direct provision."

> **'In order to be most effective, I have targeted my resources on issues of systematic maladministration and in lending my analysis to issues of significant public concern'**

She explored how human rights issues can often divide public and political opinion – and how many of these issues are treated inconsistently or arbitrarily, the effect being that society as a whole tends to segregate certain individuals as being deserving of protection, but designates 'others' as being undeserving or somehow lacking a common humanity.

"So how do we pick and choose those whom we wish to embrace as worthy of human rights protection or inclusion? The failure to accept the gaze of the other is what triggers, as we know, the neglect of, indifference towards, or abuse of the other."

She described her visit to the Auschwitz-Birkenau extermination camp in Poland. She spoke movingly of how the end of the museum is dedicated to sets of family photographs of nine of the families who were deported to the camp – photos of ordinary and happy family life.

"We are shown those photographs, explains the guide, because so many of our fixed images of the camp are of shaven-headed, near skeletal men and women, indistinguishable virtually one from the other, barely recognisable as human beings.

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Here, in these photographs, their humanity is returned, their gaze alights on us, we see them as we see ourselves and, in many ways, those photographs – as they are intended to be – are the most moving and the most shocking part of that visit."

The ombudsman stressed that, by failing to recognise the myriad of acts and omissions (both individual and collective) that ultimately led to the creation of the Nazi camps, we risk recreating such horrors. She observed: "But when we are faced with the simplicity of the message of Auschwitz, perhaps therein lies the problem. Maybe it's just too simple. We see it starkly, but what we don't see from this distance are all the messy moral and political compromises, phoney rationalisations and false assumptions that led to the Holocaust, and which continue to deliver dead bodies on to European shores, and which contribute to the web of conflict in the Middle East and in Africa from where those bodies come. Because it is precisely in the messy, complex, and myriad interstices of events that the dust that blinds us to actual horror is cocooned."

Rapt audience: Simon Murphy, Mr Justice Nicolas Kearns (President of the High Court), Judge Marie Quirke (District Court) and Noeline Blackwell (member of the Human Rights Committee)

Importance of transparency

She discussed her work as ombudsman and how her engagement with the human rights of EU citizens is limited, to the extent that many issues are dealt with at national level: "Therefore, in order to be most effective, I have targeted my resources on issues of systematic maladministration and in lending my analysis to issues of significant public concern."

She highlighted recent examples of the type of work undertaken by her office, with investigations regarding:

- The EU's border agency Frontex (and its role in the ongoing migrant crisis in the Mediterranean),
- The transparency of negotiations around the Transatlantic Trade and Investment Partnership,
- The appointment of experts to advise the European Commission on proposed laws and, most recently,
- The transparency of law-making within the EU in the specific context of informal inter-institutional "negotiations called trilogues".

Mr Justice Sean Ryan chaired the lecture

Ms O'Reilly concluded her lecture by reflecting on the importance of transparency in promoting good governance and accountability and protecting the public interest.

"Good freedom-of-information regimes, allied to a legal system and a judiciary that recognises and defends the public interest, ultimately support the human rights of millions of people rendered otherwise powerless by secrecy, by their lack of financial clout, and by their exclusion from the real power centres of governments, of corporations, and of powerful institutions.

"Recent events should cause us all to reflect on this and to strengthen our resolve as ombudsmen, judges, and lawyers to continue to recognise and accept our role in protecting the public interest, in truly becoming frontline human rights defenders."

The annual Human Rights Lecture is organised by the Human Rights Committee with the assistance of Law Society Professional Training. The committee wishes to express its thanks to Mr Justice Sean Ryan (President of the Court of Appeal) for chairing the event.

COMPANY bee

Lorcan Roche is a freelance journalist and award-winning writer

Under chair Paul Keane, the Law Society's Business Law Committee has embarked on a programme of education and support for the profession on the mammoth new *Companies Act*. Lorcan Roche meets the boogie-woogie bugle boy

Bees, like business, follow certain general and scientific rules. A lot of it is 'feel' and reacting to developments. Bees are well organised – and companies have to be well organised too, in order to deal with unexpected developments.

It comes as no surprise, then, to learn that one of Ireland's foremost business lawyers is a bee-keeper who, in his work as a company lawyer, does his utmost to encourage clients to follow those "general and scientific rules" so important to the good functioning of companies.

In late 1979, while undertaking his Master's at the London School of Economics, Paul Keane heard a lecturer, one Lord Wedderburn of Charlton, argue passionately the distinctions between the concept of *ultra vires* and that of companies acting beyond the powers of their directors. Essentially, says Keane, Wedderburn took established principles and overturned them utterly; in doing so, the Labour peer fired the imagination of the young Dublin solicitor in training: "It was the only time where I had been at a law lecture where I felt a sense – and I can still remember it – of acute excitement. The brilliance of what was on display really affected me. I remember walking out of that lecture hall, saying 'This is fantastic, I want to know more'."

> **'Good Lord! Nowadays a 25-year-old solicitor wouldn't be allowed sign a letter that pertained to such an undertaking. It was a different time, a different world'**

The fable of the bees

More than three decades later, as chair of the Business Law Committee and with his enthusiasm for business law seemingly undimmed, Keane was able to apply his experience of company and labour law and his still extant passion for the *ultra vires* distinctions to the drafting of the largest piece of legislation ever to come before the Oireachtas – the 2014 *Companies Act*. In fact, he was able to address indirectly many of Wedderburn's concerns, something he regards as a ''delightful irony".

Keane's a good interviewee. He has a relaxed presence, an affable manner, and easily gets away with the colourful dicky-bows that have become his trademarks. He is fastidious – it is worth noting that bee-keeping is not a hobby for the distracted or disengaged. He is also a classic car enthusiast (a 1960s Mercedes 'Pagoda', will, he says, become an "heirloom" over which his children can argue when he "snuffs it"). Keane uses humour effectively but is also a serious practitioner, highly respected among his peers. It is no accident that he has served as chair of the Business Law Committee for three years at such a critical juncture – as the vital, long-overdue *Companies Act* was being drafted. Keane likes to talk, certainly. But he gets things done.

He grew up in Mulhuddart, then a "tiny village on the borderlands of Meath and Dublin", whose residents, he says with a wry smile, were "not trusted by the Dubliners because they were too close to the Meath men, and reviled by the latter because they were 'filthy Dubs'." He survived, attending first the local primary school (then a two-teacher establishment, and afterwards St Vincent's CBS in Glasnevin, which he describes as a "wonderful experience". The principal, Brother Burke, was "an absolutely inspired teacher". Keane then studied law at TCD, where his tutor was "the great Kader Asmal".

It was Asmal's influence, in particular his impressive understanding of and real enthusiasm for labour law, that persuaded Keane to attend the LSE, despite having been offered places at Oxford and Cambridge. Upon earning his Master's, he joined the firm of Reddy Charlton, where he has remained. He did his first major acquisition at the age of 25, acting on behalf of Armando Diego Mota, a Portuguese stowaway who had made his fortune in America and who

PICS: DAVID MURPHY

at a glance

- The bee all and end all
- Inspired by legal heroes
- First major acquisition at only 25
- The *Companies Act* and the work of the Business Law Committee

FOCAL POINT

the grumbling hive

What, quite simply, does the new *Companies Act* do?
"Quite simply, it introduces important consolidation and simplification of the law."

Does it then behove company law solicitors to familiarise themselves with, at the very least, the fundamentals of the act?
"It is not going to be possible for everyone to read it, clearly, but yes: it is important that solicitors be aware of the significant changes that arise and of the significant features."

What are the benefits of the act?
"It brings important benefits to private companies. There is a now a simplified form of constitution. A number of unnecessary formalities have been done away with. And significant traps that were part of the law have now been overcome."

Is the world going to change as a result of it?
"No, it is not. But it *is* going to make business – particularly because it focuses on the smaller type of company – easier to run. It is not revolutionary; it is not going to add 10% to our GNP. But it is evolutionary and it is vital. We now have a world-class, structured company law that offers that most important factor – clarity. Before, if you wanted to establish what the law was on a particular point, you would have to go back to the 1963 act and would then have to go through 30 – that's 30! – major pieces of legislation that have amended it since."

So, essentially, it was a mess.
"Our company law was previously based on the requirements of a PLC. So it asked itself 'What do we need to run a PLC?' and then drew up those laws, and then found it had arrived at a place where it had to admit 'Gosh, these are not really appropriate to a small private company – how will we change it?', and so on until what we had was not just messy, it was utterly disproportionate to reality, because PLCs make up 1% of the total number of companies in Ireland."

So this act is long overdue?
"Yes."

was persuaded by the IDA to invest in Ireland. "Mota, God rest him, bought the subsidiary of a UK multinational, and I acted for him… extraordinary really."

How so?

"Good Lord! Nowadays, a 25-year-old solicitor wouldn't be allowed sign a letter that pertained to such an undertaking. It was a different time, a different world."

Characteristically, Keane still has the pen (in his breast pocket) that Armando Mota's widow presented him. He keeps more than bees, this one.

Division of labour

The *Companies Act 2014* is 1,200 pages long. Keane is concerned that some solicitors may "recoil from the task of digesting such a mammoth". He says that the profession "must not concede this important area to others who will not hesitate to seize it" and that the act represents an "excellent opportunity" to demonstrate to clients "our interest and expertise in company law, and by inference, business law in general".

Under his stewardship, the Business Law Committee has embarked on a programme of education, advice, and support for the profession (the most recent conference was in Cork on June 10, with proceeds going to Rule of Law International). "Essentially, this act is very important for anyone in business, or anyone running a business, or anyone dealing with either of the above" (see panel, above).

The role of solicitors in the preparation of the bill, and later the act, has been "absolutely vital". A large number of solicitors served on the Company Law Review Group (CLRG), which was chaired by Tom Courtney. "Tom obviously deserves a great deal of credit, as do so many others, including some solicitors who have been on the CLRG since back in 2000. That is 15 years of service. An enormous effort. Something our profession should be really proud of, in that we have been instrumental in bringing forward such an important and impressive piece of law reform and consolidation."

Keane, who also acts as honorary consul for the Swedish Embassy (and who has sipped coffee in the cafés that fictional TV detective Kurt Wallander sat in) is imbued with an old world sense of service to his profession. He is, of course, aware that some will serve on committees simply because it is, as he says, "good for the CV". There is, he says, no harm in that. It is the nature of the beast. "When you serve, you are mixing with the top-ranked business solicitors in the country on a monthly basis, so of course you gain expertise, you gain insights, and there is enormous personal benefit as well as benefit to one's firm. But the reality of the situation is that, if you were to do a balance sheet between the time you put into it and what you get out of it, you'd be more than likely to end up saying 'Mmm, I think I'd be better off playing golf'! But as the old saying has it, 'doers do'. And people who get involved, get fully involved, very often achieve, as is the case with this piece of legislation, very impressive results."

FOCAL POINT

the invisible hand

The Business Law Committee has five major areas of concern: business organisation and partnerships; regulation (for example, competition law, consumer law and regulatory environment); financial services and securities; commercial law; and insolvency law (both corporate and personal).

"Obviously," says Keane, "these represent an extraordinarily broad range of topics, so we have assembled experts in relation to each of the areas."

Keane is unstinting in his praise of the committee. "You do not continue on a committee like this unless you are very active, because there are others who will take your place – it is a fact that, if people are not pulling their weight, they will be moved along."

He says that, on his committee, the greater part of the top firms nationwide are represented by senior practitioners – "men and women with real, tangible expertise".

Committee members are Philip Andrews, Joy Compton, Maire Cunningham, Eleanor Daly, Philip Daly, Mark Homan, Mark Kavanagh, Neil Keenan, Conor Lupton, Sean Nolan, Jack O'Farrell, John Olden, Daragh O'Shea, Deirdre O'Sullivan, Mark Pery-Knox-Gore, Alvin Price, Noeleen Redmond, Paul Robinson, Mark Ryan, Robert Ryan, Seán Ryan and Lorcan Tiernan.

Paul Keane is standing down as chairman next year. The current vice-chair is Robert Herron. Consultants are Paul Egan and Patricia McGovern, and the secretary is Joanne Cox.

PIECE by piece

It is disappointing to note that the Department of Justice project to consolidate the criminal law has completely stalled since 2013, argue Dara Robinson and Donough Molloy, because the case for it to proceed is now unanswerable

Dara Robinson and Donough Molloy are joint senior partners in the Dublin criminal law and human rights firm of Sheehan and Partners

In 2010, the Department of Justice announced with some fanfare that a major project would begin in order to update and codify the criminal law statutes. As any criminal lawyer who practises in this jurisdiction knows, the wholesale, seemingly haphazard process of updating statutes, particularly procedural ones, has created a minefield. The news that a relatively simple point could be researched without having six different statutes open at once was very welcome.

The need for consolidation of the criminal law is now at a critical stage. Procedural statutes are famously problematic: we have had major *Criminal Justice Acts* in, for example, 2006, 2007, 2011 and 2013, as well as the *Criminal Justice (Miscellaneous Provisions) Act 2009* and the *Criminal Procedure Act 2010*. But it is not only procedural law that has become difficult to interpret and to clarify. The *Road Traffic Acts*, for example, are an absurd minefield of amending, often byzantine, legislation. One might say that at least the *Road Traffic Acts* deal with, on the whole, minor offending and, indeed, are often seen as 'regulatory' rather than criminal law. However, there are many areas of substantive criminal law afflicted by the same piecemeal, seemingly random, approach to law-making. This is particularly so in the area of alleged sexual offending, and it is disappointing to note that, according to the website of the Department of Justice, the consolidation project has stalled completely since 2013.

One would think, for example, that establishing the 'age of consent' for sexual offending would be a straightforward exercise. Not so. In fact, there is no single such age of consent – merely a series of sexual acts that will constitute an offence if carried out with some members of the population, but no offence if carried out with others – the age of the second party being the defining consideration.

People can be prosecuted for 'indecent assault'

at a glance

- The need for consolidation of the criminal law is now at a critical stage
- There are many areas of substantive criminal law afflicted by a piecemeal, seemingly random, approach to law-making
- There have been many instances where experienced counsel and judges are required to review a number of statutory provisions in order to establish what is, at the time of sentence, the relevant penalty

PIC: GAZETTE STUDIO

contrary to the *Offences Against the Person Act 1861* if on a male person, or contrary to the *Criminal Law Amendment Act 1935* if on a female person, or 'sexual assault' if committed after the commencement of the *Criminal Law (Rape) (Amendment) Act 1990*. Rape itself can be prosecuted either 'at common law' (strictly now codified as section 2 of the *Criminal Law (Rape) Act 1981*, as amended) or alternatively by reference to section 4 of the *Criminal Law (Rape) (Amendment) Act 1990*. There is huge definitional overlap between such offences, and also between them and buggery, itself now only an offence depending either on the complainant being under 17 or asserting lack of consent, or in exceptionally rare cases involving sexual intercourse with an animal. Further overlap exists between such offences and 'aggravated sexual assault', introduced by the 1990 act and carrying a maximum sentence of life imprisonment.

> **'This vast array of legislation gives to the DPP a huge discretion in deciding which offences to charge and where they should be tried'**

As if all this were not enough, the *Criminal Law (Sexual Offences) Act 1993* addressed issues as varied as sex with a mentally impaired person and a variety of offences related to prostitution. After a decade or so, along came the *Criminal Law (Sexual Offences) Act 2006*, introducing the concept of 'defilement' of persons respectively under 15 and under 17, although not creating an offence of defilement as such, all the while unhealthily mandating a gender-discriminatory offence of sexual intercourse with an under 17-year-old. The latter occupied the minds of the Supreme Court in the well-known *MD* case, the court ultimately justifying gender discrimination whereby a young male might be prosecuted for sexual intercourse with a girl, but she could not be prosecuted for the same offence, largely on the basis of the risk of pregnancy and the concomitant need for the protection of young girls.

A consolidated *Sexual Offences Act* might also incorporate the *Child Trafficking and Pornography Act 1998*, incest offences (still prosecuted under an Edwardian statute

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and within surprisingly narrow bounds of consanguinity), indecent exposure (whose statutory basis was outlawed by the High Court in 2014), and child sex tourism, to name but a few.

Navigating a minefield

None of this should be thought of as mere nit-picking. If the relevant offence presents prosecutors, defence lawyers and judges with a minefield, the question of penalty is even more complicated. Both the authors, experienced criminal lawyers, have seen many instances where equally experienced counsel and judges are required to review a number of statutory provisions in order to establish what is, at the time of sentence, the relevant penalty, bearing in mind the date of the commission of the alleged offence, the respective age of offender and victim, and other considerations. Leaving aside entirely the other complaints set out here, this alone warrants consolidation of sex offences legislation.

Take the recent case of *DPP v Maher*, where counsel for the DPP urged one penalty on the trial judge and quite another on the appellate court. Indeed, the court, in its judgment, took some time to analyse legislative developments and the effect of the decision of Ms Justice Laffoy in *DPP v S(M) (No 2)*, suggesting that the "possible further implications of the decision of Judge Laffoy could be pursued into interesting byways of constitutional theory, but such explorations and speculations are unnecessary for the purpose of this appeal".

It beggars belief that, as recently as a few months ago, the senior appellate judges of the land had to unpick a mass of law to find the correct answer to the question of penalty for a commonly prosecuted crime. As an interesting side effect of all this, there is now genuine doubt in many cases as to whether or not allegations made against a suspect amount to an 'arrestable offence', with significant consequences for the manner in which the matter may be investigated by gardaí, who may believe they are not entitled to arrest and detain the suspect for questioning, DNA sampling, and fingerprinting.

It should also be noted that this vast array of legislation gives a huge discretion to the DPP in deciding which offences to charge and where they should be tried. Rape, attempted rape, and aggravated sexual assault must necessarily be tried in the Central Criminal Court, but all practising criminal lawyers will have seen cases brought for lesser charges, and tried in the Circuit Court, that fully warranted a trial in the Central. This discretion can, of course, be exercised both ways, so that cases of seeming less seriousness might be sent to the Central for no obvious reason. The potential difference in penalty in the event of conviction is extremely significant. While there can be no suggestion that the DPP exercises this discretion improperly, the mere fact that it can arise may not be a good thing.

Non-statutory term of art

Oddly enough, there is no offence known to law of 'child sexual abuse', although it is a non-statutory term of art in the civil arena and is frequently used in Child and Family Agency (CFA) investigations. The Law Reform Commission in 1990, in a recommendation echoed by Thomas O'Malley in his seminal work *Sexual Offences* (Round Hall, second edition, 2013), called for the creation of such a statutory offence. It is, meanwhile, a singular curiosity that the CFA can conduct an 'investigation' into an adult's entirely consensual relationship with a 17-year-old, where no criminal offending has been alleged and no wrongdoing has been committed, and find such causes for concern in the behaviour of the adult so as to necessitate alerting employers, church authorities, youth clubs, and so on, to the 'risk posed' by the adult.

> It beggars belief that, as recently as a few months ago, the senior appellate judges of the land had to unpick a mass of law to find the correct answer to the question of penalty for a commonly prosecuted crime

This anomaly arises from the statutory duty imposed on the CFA by the *Child Care Act 1991* and from the definition of 'child' contained in section 2 of that act, as being a person, not married, under the age of 18 – a direct contrast to the criminal law, which provides that all sexual acts can be consented to by a person on the attainment of their 17th birthday. The existence of this statutory anomaly presents the very real risk of a person being branded as a 'child sexual abuser', notwithstanding that the person has, in the context of the criminal law, committed no wrong of any kind.

New consolidated legislation might also look at and review the *Sex Offenders Act 2001*. This provides for the establishment of a sex offenders' register, whereby convicted offenders are obliged to furnish certain information to the gardaí, such as notification of changes of address or absences from the jurisdiction. The notification period depends on the severity of the sentence imposed. Any person serving a sentence of over two years in prison or more is deemed to be subject to the register for life, although application can be made to the Circuit Court for a review of the requirement to remain on the register. Arguably, this offends against the *European Convention on Human Rights*, and the right to private life therein, in the absence of some sort of review mechanism as to the continuing need for registration of any given individual, and it seems, as a matter of principle, to militate against the reintegration into society of an offender. Even if the offence is reckoned by a court as being of sufficiently minor nature to warrant a non-custodial disposal, such as a fine, the accused is subject to the provisions of the act for a period of five years. This is, of course, in addition to being publicly labelled as a 'sex offender'. It was, no doubt, in recognition of these swingeing provisions that the District Court struck out (and so recorded no conviction, thereby bypassing the provisions of the act) a charge of sexual assault following a guilty plea and payment to charity, in the *CP* case, a decision challenged in the High Court by the DPP and upheld as a valid practice by Kearns P.

Unanswerable case

As can be seen from the foregoing, the plethora of statutory provisions touching on sexual offending behaviour, often overlapping with one another while at the same time omitting certain important aspects completely, does not serve either the legal community or broader society as might be expected, based on the need for certainty and precision in the criminal law.

The case for consolidation and codification was strong in 2010, and with the passage of time is becoming unanswerable. There seems no good reason why the continuing piecemeal amendment of criminal law provisions should persist – and it may be time that it ceased.

look it up

Cases:

- *DPP v Judge Ryan and CP* [2011] IEHC 280
- *DPP v Maher* [2015] IECA 43
- *DPP v S(M) (No 2)* [2007] IEHC 280
- *MD (a minor) v Ireland & ors* [2012] IESC 10

SUMMONS *to watch over me*

David Boughton is a Dublin-based barrister

Some recent decisions may herald a revised approach in relation to the burden of proof in renewal of summons applications, what constitutes a 'good reason' to permit renewal, and the test to be applied. David Boughton beckons you forth

In the event that a summons is permitted to expire without being served upon a defendant within the prescribed time (no more than 12 months), a plaintiff may bring an application to renew the summons pursuant to order 8 of the *Rules of the Superior Courts*. The application to renew is made *ex parte* and will be granted if the plaintiff successfully establishes that reasonable efforts have been made to effect service, or for other good reason. Of course, if the limitation period has not expired, a plaintiff may simply issue a new summons. However, if the case would otherwise be statute-barred, renewal of the summons will be the only option. A defendant served with a renewed summons may apply, before entering an appearance, to have the renewal set aside.

All or nothing at all

The approach traditionally taken by the High Court in relation to an application to set aside renewal was to place an onerous obligation on a defendant. In *Behan v Bank of Ireland* (1995), Morris J stated: "It is clear, in my view beyond dispute, that this application is not to be dealt with on the basis that it is an appeal from the original order and, accordingly, it is incumbent upon the moving party to demonstrate that facts exist which significantly alter the nature of the plaintiff's application to the extent of satisfying the court that, had these facts been known at the original hearing, the order would not have been made." This requirement undoubtedly placed a burden upon a defendant to adduce new evidence, notwithstanding that the defendant had no opportunity to make submissions in the original application to renew.

The strict requirement appears to have been abandoned, however, in light of the 2005 decision of Finlay Geoghegan J in *Chambers v Kenefick*, in which it was held that *Behan* did not encompass the entirety of the position, and "it is open to a defendant, by submission, to seek to demonstrate to the court that, even on the facts before the judge hearing the *ex parte* application, upon a proper application of the relevant legal principles, the order for renewal should not be made". The expanded approach received approval from Feeney in *Bingham v Crowley* (2008), Clarke J in *Moloney v Lacey Building and Civil Engineering Ltd* (2010), and Hogan J in *Doyle v Gibney* (2011). In the latter, Hogan J noted that the traditional approach had "fallen into disfavour".

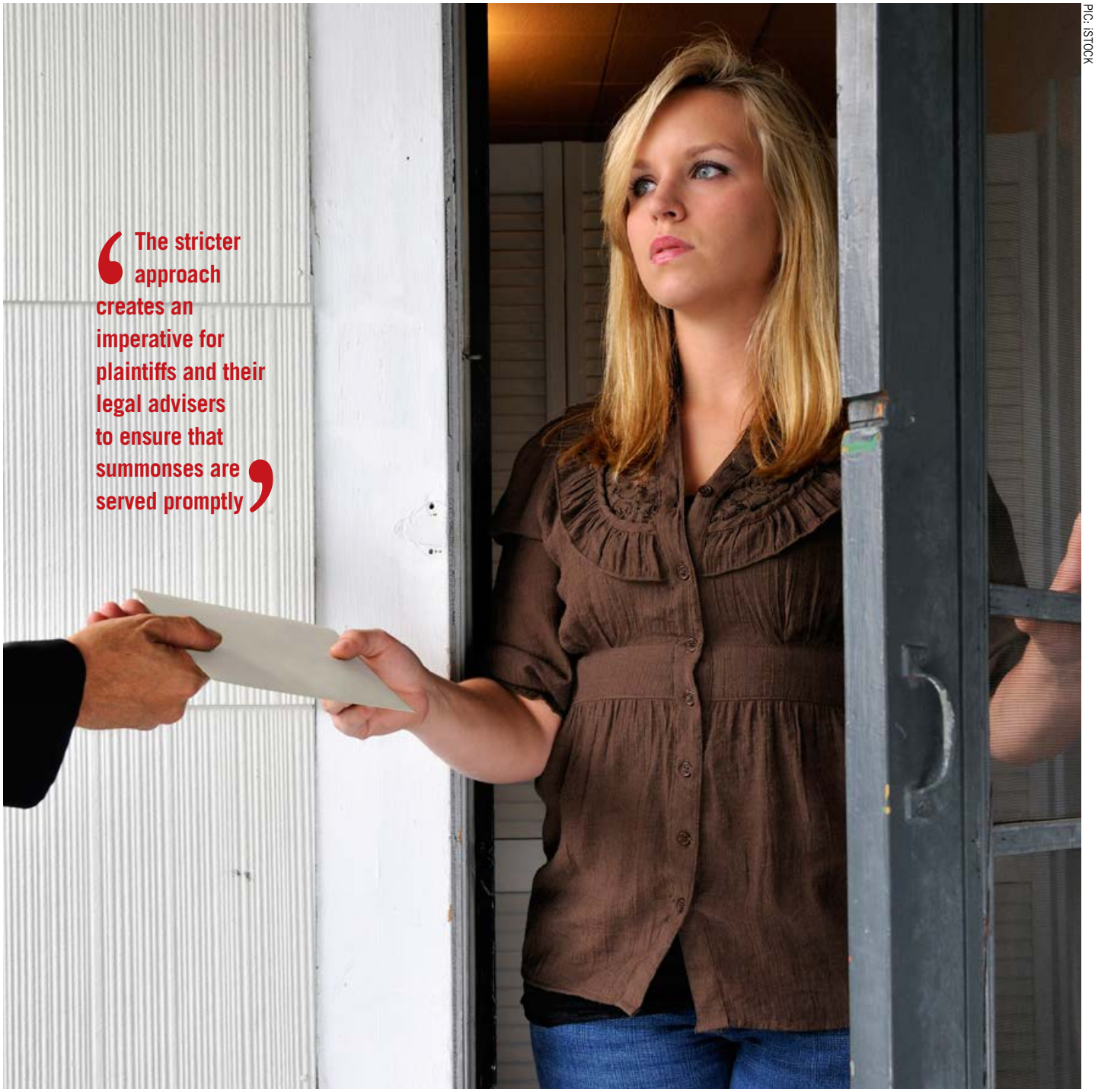
Finlay Geoghegan J in *Chambers* was of the view that an *ex parte* application deprived a defendant of the opportunity to make submissions and, thus, fair procedures should afford the right to do so subsequently. Indeed, Hogan J in *Doyle* was of the opinion that the traditional approach would likely fall foul of constitutional considerations. As a result, it is now quite clear that there is no obligation on a defendant to raise new matters in an application to set aside renewal.

High hopes

Insofar as the *ex parte* application for renewal is concerned, the test to be applied has three aspects. First, the court should consider whether there is a good reason to renew the summons. Second, if the facts or circumstances constitute a good reason, the court should

at a glance

- Where a summons has expired, a plaintiff must show either attempts at service within 12 months or some other good reason to renew it
- That good reason can no longer simply be that new proceedings would now be statute-barred
- There must be some additional factor, such as prior awareness of the defendant that proceedings were in being or contemplated, or the absence of prejudice to the defendant



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consider whether it is in the interests of justice to make the renewal. Finally, the court should assess the balance of hardship for each of the parties that would follow from granting or refusing the renewal. This was the approach taken in *Chambers* and explicitly endorsed in *Moloney*.

The judicial analysis of what constitutes a 'good reason' has largely concerned the providence of expert reports and the fact that, without renewal, a plaintiff's case would be statute-barred. In *Bingham v Crowley*, the plaintiffs claimed that the summons had not been served due to an outstanding expert medical opinion, which was awaited. It was not averred that the absence of the opinion affected the ability to serve the summons – this point led Feeney J to set aside the renewal. In *Moloney*, Clarke J accepted, on the basis of the judgment in *Bingham*, that the absence of an expert report could constitute a 'good reason' but went on to state that this would only be the case where the report concerned was

reasonably necessary in order to justify the commencement of proceedings in the first place. In any proceedings in which negligence is alleged against a professional, an expert report in relation to liability is required before proceedings can be issued. However, the judgment of Clarke J can be seen as an endorsement of the practice of issuing a 'protective writ' in the absence of such a report, where the proceedings would become statute-barred. Moreover, if the summons expires due to the fact that the report is not forthcoming, an application for renewal can be grounded upon the absence of the report. Clarke J also emphasised that any delay occasioned by the absence of the report must be reasonable, and that appropriate expedition must be exercised in procuring the report.

Where the reason put forward by a plaintiff to justify renewal is simply the fact that new proceedings would be statute-barred, Clarke J in *Moloney* is quite clear: "It is not a good reason to renew a summons simply to prevent the defendant availing of the *Statute of Limitations*." This dictum follows an analysis of the policy considerations behind the statute (that is, that a defendant be aware in a formal sense of the existence of proceedings within the statutory period and the injustice of proceedings not commenced in timely manner). Clarke J went on to say that this reason must be accompanied by analysis of the events leading up to the time when the statute might have applied and, in particular, the extent to which the defendant knew of the existence of the claim and that proceedings had been issued. This conjunction could, according to Clarke J, constitute a "good reason" to renew the summons.

> **The implications of the *European Convention on Human Rights* and the increasingly strict approach taken by the Irish courts will be welcomed by defendants facing proceedings of some antiquity**

While some earlier High Court decisions (for example, *O'Grady v Southern Health Board*) accepted this very reason in permitting renewal, it is submitted that the views expressed in *Moloney* are to be preferred, having derived from the Supreme Court authorities in *O'Brien v Fahy* (1997) and *Roche v Clayton* (1998). In *Aherne v MIBI* (2012), Herbert J analysed the Supreme Court authorities in some detail and cited *Moloney* in support of the contention that avoiding the *Statute of Limitations* defence could not, of itself, constitute a good reason for renewal.

The stricter approach creates an imperative for plaintiffs and their legal advisers to ensure that summonses are served promptly. If a summons is issued within 12 months of the commencement of the limitation period, it is even more important that a plaintiff acts swiftly. The approach further accords with the responsibility on plaintiffs to prosecute proceedings with due expedition.

That's life

Recent jurisprudence in relation to applications for dismissal for want of prosecution has adopted a stricter approach in relation to delay. As Clarke J stated in *Stephens v Paul Flynn Ltd* (2005): "Delay which would have been tolerated may now be regarded as inordinate. Excuses which sufficed may no longer be accepted." It has been made clear in a number of cases that, particularly in light of the article 6 of the *European Convention on Human Rights*, grave delay in the prosecution of proceedings will no longer be tolerated. In *Moloney*, Clarke J applies the new, stricter approach from the delay jurisprudence to applications for renewal of summonses. This approach was taken before by Clarke J in *Greene v Triangle Developments Ltd* (2008), where the delay jurisprudence was effectively imported into applications to set aside third-party notices.

In adopting this approach in *Moloney*, Clarke J noted that the second limb of the test for dismissal was that the delay be inexcusable, and he equated that with the analysis of whether a party seeking renewal could furnish some "other good reason". Furthermore, the third limb of the dismissal test (the balance of justice) and the third limb of the renewal test (interests of justice and the balance of hardship) were noted to involve similar considerations (for example, degree of delay and prejudice). The effect of this seems to standardise the considerations for the court in all applications touching upon delay, be they for renewal, dismissal of proceedings, or setting aside third-party notices. The standardisation is a welcome change for practitioners, who now have a wider number of authorities to draw upon when making submissions. It may not be welcome, though, for parties guilty of delay, as the new approach is certainly less tolerant of dilatoriness, be it on the part of plaintiffs themselves or their professional advisors.

In relation to considerations of prejudice, there remains a tug-of-war between the cases that require actual prejudice on the part of a defendant and those that impute it as an inevitable consequence of delay. Interestingly, O'Neill J in *O'Grady v Southern Health Board* placed the burden upon a defendant to demonstrate "actual prejudice" in refusing to set aside renewal of a summons. Similarly, Cooke J in *Kearns v Roches Stores* (2009) relied upon the actual prejudice accrued to the defendant in granting the application to set aside. However, Clarke J in *Moloney* spoke of "the real risk of prejudice" and dealt with the prejudice issue in a manner similar to the approach taken in *Allergan Pharmaceuticals* (2009), where O'Sullivan J stated that "the passage of time gives rise to a presumption of prejudice in particular cases where oral evidence is required".

It seems, then, in certain cases, prejudice will be presumed, whereas in others it must be real and shown by the party seeking to rely upon it. Certainly the progression of case law shows that, in cases where oral evidence will be required, prejudice as a result of delay is presumed. It may be that in other cases (for example, in cases where liability is admitted) that only actual prejudice will suffice to set aside renewal. At present, however, the line is not clearly drawn.

A final consideration in that decision of Clarke J in *Moloney* was the fact that a plaintiff who is refused renewal will likely have a cause of action against their professional advisers; indeed, in *Moloney*, such proceedings had already commenced at the date of the judgment. Furthermore, Hogan J in *Doyle v Gibney* regarded the fact that the plaintiff might have an alternate remedy against her former solicitors as mitigating the prejudice she would suffer as a result not being permitted to proceed in the current case. However, Herbert J in *Aherne* excluded such matters from his consideration, citing Ormrod J in the English case of *Firman v Ellis* (1978): "It is prejudicial to be forced to start another set of proceedings and against a party whom one does not particularly wish to sue and to be deprived of a good cause of action against the original tortfeasor." A plaintiff who finds themselves with an expired summons may well have a legitimate complaint against his or her legal advisors,

and that fact is likely to influence the court in deciding upon the balance of justice in a renewal application.

The second time around

In summary, where a summons has expired, a plaintiff must show either attempts at service within the 12 months or some other good reason to renew it. That good reason can no longer simply be that new proceedings would now be statute-barred; there must be some additional factor, such as prior awareness of the defendant that proceedings were in being or contemplated, or the absence of prejudice to the defendant. Neither is it necessarily acceptable to say that an expert report was being awaited. If a plaintiff would have a case in negligence against his or her legal advisors as a result of being refused renewal, that fact is likely to factor into the court's consideration of the balance of justice. If a defendant seeks to set aside a renewal of a summons, they bear the onus of proof but are not required to adduce new evidence to the court in support of the application.

The law in relation to delay has undoubtedly undergone change in the last decade. The implications of the *European Convention on Human Rights* and the increasingly strict approach taken by the Irish courts will be welcomed by defendants facing proceedings of some antiquity. While the recent decisions have not put the law on renewal of summonses to rest, they certainly narrow the areas requiring clarity and make it easier for legal advisors to say with greater certainty whether or not renewals will be granted.

look it up

Cases:

- *Aherne v Motor Insurers Bureau of Ireland* [2012] IEHC 351 (unreported, High Court, 10 August 2012)
- *Allergan Pharmaceuticals (Ireland) Ltd v Noel Deane Roofing and Cladding Ltd* [2006] IEHC 215; [2009] 4 IR 438
- *Behan v Bank of Ireland* (unreported, High Court, 14 December 1995)
- *Bingham v Crowley* [2008] IEHC 453 (unreported, High Court, 17 December 2008)
- *Chambers v Kenefick* [2005] IEHC 402; [2007] 3 IR 526
- *Doyle v Gibney* [2011] IEHC 10 (unreported, High Court, 18 January, 2011)
- *Firman v Ellis* [1978] QB 886
- *Greene v Triangle Developments Ltd* [2008] IEHC 52 (unreported, High Court, 4 March 2008)
- *Kearns v Roches Stores* [2009] IEHC 272 (unreported, High Court, 18 May 2009)
- *Moloney v Lacey Building and Civil Engineering Ltd* [2010] IEHC 8; [2010] 4 IR 417
- *O'Brien v Fahy* (unreported, Supreme Court, 21 March 1997)
- *O'Grady v Southern Health Board* [2007] IEHC 38 (unreported, High Court, 2 February 2007)
- *Roche v Clayton* [1998] 1 IR 596
- *Stephens v Paul Flynn Ltd* [2005] IEHC 148 (unreported, High Court, 28 April 2005)

Legislation:

- *European Convention on Human Rights*, article 6
- *Rules of the Superior Courts 1986*, order 8

Know your ONIONS

You are what you eat – which is why food labels were invented. But what's in a label? Fiona Lalor and Maree Gallagher check the small print in light of recent changes to food labelling law, most of which got the green light last December

Dr Fiona Lalor is the regulatory affairs manager for Food for Health Ireland, based at University College Dublin. She is an expert on matters of food labelling

Maree Gallagher, MGA Solicitors, is a practitioner with 20 years' experience advising the food and drink industry on EU and Irish food law and product recall

The dangerous adulteration of food in the late 19th and early part of the 20th century led to the first attempt by legislators to draft and enforce food labelling laws. After the Second World War, the industrialisation and dramatic increase in food production meant that consumers were more reliant on food labels as a key source of information when making purchases. The name of the food, product weight, and address of the manufacturer were the initial key pieces of information that had to be supplied – and this was expanded in 1979 when the first European rules for food labelling were introduced with the publication of Council Directive 79/112 on labelling, presentation and advertising of foodstuffs by the EEC.

Since then, the rules about what needs to appear on a food label have gone through several stages of change. Developments in nutrition and food science and an

at a glance

- In 2011, in an effort to give consumers more and better information on food labels, EU Regulation 1169/2011 on the provision of food information to the consumer was published
- The regulation is vast and varied and covers many aspects of what food information must be given to consumers and how such information should be given.
- When advising on food labelling laws, practitioners should have regard to the regulation and to any implementing acts or national implementing rules

> Every deli counter, pub, garage, takeaway, restaurant, market stall, and any other place that serves food that is not pre-packaged must have accurate, written information available to consumers on all the allergens used in products

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improved understanding of the relationship between food consumption and health led to greater consumer demand for more detailed information and, in 1990, nutrition labelling laws were first introduced by Council Directive 90/496/EC to supplement the 1979 general food labelling rules. In 2011, in an effort to give consumers more and better information on food labels, EU Regulation 1169/2011 on the provision of food information to the consumer (the *FIC Regulation*) was published. A thorough analysis of the wide-ranging and detailed requirements contained in FIC would necessitate more than the space allocated for this article, but we draw your attention to some of the main provisions about which practitioners may be required to advise.

> Often the actual physical label on a product may meet all the various requirements, but other information the food business operator makes available may be in breach of the rules

Cheeseburger in paradise

The overriding provision of FIC mirrors that of previous EU food labelling law: consumers must not be misled by information provided about foodstuffs. With FIC, however, it is specifically stated that the rules apply to all information provided on food, regardless of how much information is delivered. Therefore, information on a product that appears on a website, or an advert, or on social media is also covered by FIC. Practitioners should note this, as often the actual physical label on a product may meet all the various requirements, but other information the food business operator makes available may be in breach of the rules.

FIC defines 'food information' as "information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means, including modern technology tools or verbal communication".

At its most fundamental, this regulation sets out the requirements for the provision of food information to the consumer, as well as setting out the requirements with regard to the provision of nutrition information on foodstuffs. Among other things, it provides for nutrition labelling for all processed foods, a uniform method for declaring the presence of allergens, specific font size for all information supplied, and applies to food business operators at all stages of the food chain where their activities concern the provision of food information to consumers.

While the principles of food labelling have remained the same with the publication of FIC, some aspects are undoubtedly different. For example, while it remains mandatory to have the name of the food, the net quantity, and the alcoholic strength in the same field of vision, the date of minimum durability need no longer be in this field. Additionally, for the first time, there's a specific requirement in terms of font size. All mandatory requirements must be given in a minimum font size, 'x height' of 1.2mm (Times New Roman), with an exemption for smaller packs where there is a defined minimum surface area.

The list of mandatory particulars provided for in FIC are provided for in article 9 and outlined in the panel below.

30,000 pounds of bananas

The list of ingredients must be headed by the word 'ingredients'. The requirement is to include the list of ingredients as they are used at the time of manufacture in descending order of weight. Annex VI of FIC sets out a number of specific particulars in terms of the list of ingredients. For example, the name of the food must be accompanied by the particulars as to the physical conditions of the food or the specific treatment that it has undergone, for example, powdered, refrozen, quick frozen, and so on.

Foods treated with ionising radiation must carry the phrase 'irradiated' or 'treated with ionising radiation'. In the case of meat products and meat preparations that have the appearance of a cut, joint, slice, portion or carcass of meat, the name of the food shall include an indication of the presence of added water if the added water makes up more than 5% of the weight of the finished product.

In beverages that have a high caffeine content (with the exception of coffee and

FOCAL POINT

mandatory particulars

- The name of the food,
- The list of ingredients,
- Any ingredient or processing aid listed that might cause allergies or intolerances,
- The quantity of certain ingredients,
- The net quantity of the food,
- The date of minimum durability,
- Any special storage conditions,
- The name or business name and address of the food business operator,
- The country of origin,
- Instructions for use where their absence would make it difficult to make proper use of the food,
- Beverages containing more than 1.2% by volume of alcohol must declare the actual alcoholic strength,
- A nutritional declaration.

tea), the statement 'high caffeine content – not recommended for children or pregnant or breast-feeding women' must be declared on the pack.

Strange fruit

All food information is now required to declare the presence of food allergens. Fourteen of the most common allergens are specifically listed in annex II. The list includes cereals containing gluten, eggs and products thereof, peanuts and products thereof, lupin, milk and products thereof.

When listing the ingredients on packs, food business operators must emphasise the name of the substance that corresponds to the one listed in annex II. The allergens must be emphasised in the ingredient list by means of font, style, background, or colour.

In practice, the majority of business operators provide the information by putting the name of the allergen in bold typeface within the list of ingredients. This indication of allergens has also been extended to non-prepacked food and food being sold through the catering trade.

This information must be available and easily accessible and, according to 2015 European Commission guidelines on the matter, it is no longer sufficient to provide allergen/intolerance information only and simply upon request by the consumer. It must be clearly displayed.

The Irish implementing regulations require that the allergen information about non-packaged food must be available to consumers in writing. This means that every deli counter, pub, garage, takeaway, restaurant, market stall, and any other place that serves food that is not pre-packaged must have accurate written information available to consumers on all the allergens used in products.

Blueberry Hill

Arguably, the single most important change to food labelling law introduced by FIC is the imposition of mandatory nutritional labelling. Unlike most other provisions of FIC, which came into effect in December 2014, the nutritional information provision will come into effect in December 2016.

Prior to FIC, the provision of a nutrition table on packs was only mandatory when a nutrition-related claim was being made. For example, if a product claimed to be 'low fat', then a list of the nutritional composition of the food had to be provided. FIC requires mandatory nutritional information for all packaged foods (with the exception of those with a small pack, whereby the largest surface area is less than 25cm²).

The order of the nutrients has changed, that is, they must now be provided in the following order: energy (kJ/kcal), fat, saturates, carbohydrates, sugars, protein, and salt. It is also possible to include additional declarations, for example, mono-unsaturates, starch, fibre, and so on. Information must be given in 100g/ml, but may also be given per serving.

Sometimes the industry is keen to provide nutritional information to the consumer in terms of a percentage of the recommendations. In these cases, the statement 'reference intake of an average adult (8400kJ/2000kcal)' must be included and placed in close proximity to the nutritional information.

> Arguably, the single most important change to food labelling law introduced by FIC is the imposition of mandatory nutrition labelling, which will come into effect in December 2016

All of these components must be declared in the same field of vision. However, it is now possible, on a voluntary basis, to also list elements of the nutritional information on the front of pack (FOP). Either energy or energy together with fat, saturates, sugars and salt may be declared in this capacity.

FIC gave discretion to member states as to whether or not they wanted to introduce agreed schemes for FOP labelling. Britain has developed what it calls 'traffic-light labelling' for nutritional information, using red, amber and green to indicate, at first glance by the consumer, whether the product is high in calories, fat or sugar, for example. Ireland is unlikely to introduce a similar system in the short term but, in time, it may decide that a national scheme is in the interests of consumers.

Ice-cream freeze

Prior to FIC, country-of-origin labelling (COOL) was only mandatory for beef – and where its absence might mislead consumers. For example, if a jar of fruit jam displayed an Irish flag, but was manufactured in Italy, then the country of origin (Italy) would have to be declared. Some exceptions to this rule exist for products such as fish, honey, olive oil, and fresh fruit and vegetables, whereby their country of origin had to be declared regardless of any additional information displayed on packs.

EU Regulation 1337/2013 is one of the implementing acts introduced pursuant to FIC. It has extended COOL to include unprocessed pre-packaged pig, sheep, and poultry meat, including chicken breasts, pork chops, lamb cutlets, and so on. It does not include cured meats (such as rashers), products that have been further processed (such as chicken Kiev), nor products that contain meat as an ingredient (such as lasagne).

A label now must indicate the name of the member state or third country where the animal was reared and slaughtered. If, however, the animal was born, reared, and slaughtered in the one member state or third country, and the food business operator can prove to the competent authority that this is the case, then the label may just state 'origin: [name of member state or third country]'. The controversial issue of mandatory origin labelling for meat when used as an ingredient is the subject of ongoing discussions in Brussels.

FIC is vast and varied and covers many aspects of what food information must be given to consumers and how such information should be given. When advising on food labelling laws, practitioners should have regard to FIC and to any implementing acts or national implementing rules – but it is also important to consider any supplemental labelling rules that are contained in some of the vertical legislation.

In addition, in 2013, the FSAI has published a guidance note on the use of food marketing terms such as 'artisan', 'farmhouse', 'traditional', and 'natural'. This should provide clarity as to the FSAI's likely interpretation of certain terms.

Food labelling laws change regularly, and items that are currently top of the agenda in Brussels include the recent call by the European Parliament for nutrition labelling on alcoholic beverages and the ongoing pleas for COOL on meat ingredients. The next big challenge for the food industry, however, is to ensure compliance with mandatory nutrition labelling by December 2016. g

look it up

Legislation:

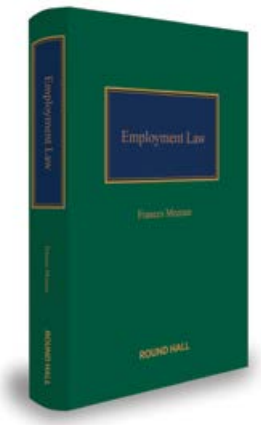
- Council Directive 79/112
- Council Directive 90/496/EC
- EU Regulation 1337/2013
- EU Regulation no 1169/2011

Literature:

- European Commission (2015), 'New EU law on food information to consumers'

Employment Law

Frances Meenan. Round Hall (2015), www.roundhall.ie. ISBN: 978-0-4140-510-03. Price: €85 (incl VAT).



When you find yourself actually reading – rather than skimming – a textbook covering over 1,200 pages in order to write a review, you know that the author has made a good job of making the subject interesting and relevant. This book is a comprehensive, densely fact-filled text providing a thorough examination of employment law in Ireland.

The book highlights, in a clear and comprehensive way, the many influences on employment law arising from the complex body of legislation, both at national and European level, and the key decisions of the Irish and European courts, as well as the Irish employment rights bodies.

The first seven chapters are devoted to the development of employment law and the employment relationship in its wider form. Chapters focus on pre-employment matters, contracts of employment, and the various types of workers, including agency, part-time and fixed-term workers.

The next section (11 chapters) is devoted to an in-depth analysis and review of the principles, legislation and case law governing the terms and conditions of the employment relationship.

The final section addresses what can happen when the employment relationship breaks down and considers, in depth, the issues that can arise in relation to grievance and disciplinary matters. The analysis of the case law in relation to discipline, and especially the issues of representation, investigations and suspension, was particularly relevant and up to date.

The author then addresses how the contract of employment can be terminated, both at common law and under contract. The book covers the topics of statutory dismissal, redundancy, employer insolvency, taxation of awards and settlements, practice and procedure in employment rights bodies, employment equality claims and injunctions, in an informative and useful manner. The analysis of the employment injunction is very comprehensive.

This book was published before the publication of the *Workplace Relations Bill*, which was signed into law by the President on 20 May 2015. While it would have been interesting to get the views of the author on the changes due to come into effect under the *Workplace Relations Act*, the fact that this topic is not addressed does not reduce its usefulness – whether to lawyers with limited experience in employment law, or to well-versed and seasoned employment lawyers or HR advisors.

Mr Justice Gerard Hogan, in his foreword, writes: "With this book, Ms Meenan has registered a major achievement, a fact which even the casual reader of this book will instantly recognise." This is a statement with which I wholeheartedly agree.

Lynne Martin is an employment solicitor in the Allied Irish Bank group of companies.

Law and Government: A Tribute to Rory Brady

Bláthna Ruane, David Barniville and Jim O'Callaghan (eds). Round Hall (2014), www.roundhall.ie. ISBN: 978-1-8580-071-37. Price: €50 (incl VAT).

This book is a tribute to Rory Brady, former Attorney General and chairman of the Bar Council, who died at the young age of 52 years. Born in Dublin's Liberties in 1957, Rory Brady was considered to be a man with admirable aspirations for a modern Ireland. Politics was in his blood – his father had contested the 1948 general election for Clann na Poblachta. Educated at Synge Street Christian Brothers' School, he excelled in debating in UCD: he was a natural barrister.

Many of the finest lawyers in Ireland have written chapters in this book – testament to the

esteem in which Rory Brady was held. Mr Justice John Murray of the Supreme Court has written a thoughtful foreword. Section 1 of the book consists of a 'portrait' of Rory Brady by David Barniville SC (now chairman of the Bar Council) and Jim O'Callaghan SC. One fascinating observation is that Rory Brady and his predecessor as Attorney General Michael McDowell SC (also a contributor) played a significant part in moulding the membership of the current superior courts.

Section 2 considers contemporary issues, wherein Michael McDowell, in his essay 'Reflections on the limits to the law's ambitions', writes perceptively on the primacy of the elected representatives of the Oireachtas in the overall scheme of the separation of powers doctrine. Other contributors include Noel Whelan BL, Paul Gallagher SC, Mr Justice Hugh Geoghegan (former judge of the Supreme Court), Brian Murray SC, Paul Screenan SC, Michael Collins SC and Turlough O'Donnell SC.

Section 3 considers historical legal issues. Mr Justice Donal O'Donnell considers the debates on legislative proposals for home rule for Ireland. Mr Justice Gerard Hogan, in a stimulating essay, considers the influences of the continental constitutional tradition on the drafting of the Constitution. This section concludes with Dr Bláthna Ruane's article on the 1922 Constitution.

There are several dimensions to this book. Not only is it moving and informative on the life of a great lawyer, but it is also a most accessible, magnificently researched and highly readable account of current legal and historical issues that enhance our knowledge of Irish law. ***Law and Government*** is a masterful overview and a significant contribution of permanent value to the understanding and appreciation of many legal issues that influence our daily lives.

Dr Eamonn G Hall, solicitor and notary public, is the director of the Institute of Notarial Studies based in Dublin.

The Law of Local Government

David Browne. Round Hall (2014), www.roundhall.ie. ISBN: 978-0-4140-351-95. Price: €295 (incl VAT).

The 1960s brought about major legislative changes to local government: the *Planning Act 1963* and the *Housing Act 1966*. While there were a few major changes to local authority legislation between the 1960s and the year 2000 – for example, the *Fire Services Act 1981*, the *Derelict Sites Act 1990*, the *Roads Act 1993* and the *Waste Management Act 1996* – the 1963 *Planning Act* and the 1966 *Housing Act* remained the major foundations of local government legal practice. For many years, local authority lawyers were left scrambling around looking for some kind of legal guidance, often having to rely on dog-eared copies of out-of-print books.

The introduction of the *Planning and Development Act 2000*, the *Local Government Act 2001*, the *Housing (Miscellaneous Provisions) Act 2009* and the *Local Government Reform Act 2014*, together with the impact of EU legislation, brought about seismic changes to local government processes and procedures. As a result, the work of the local government lawyer has become increasingly more complex and diversified.

With the legislative tide – to the relief of all practitioners – came a wave of local authority legal publications. Any legal book that offers a thoroughly researched point of reference is very welcome to any lawyer's office, and *The Law of Local Government* by David Browne is that book.

Not only does it cover the primary (and secondary) legislation in considerable detail, it manages also to guide the reader through the complex web of public procurement and to give an in-depth analysis of judicial review processes. Of significant interest is the large volume of case law involving local authorities referenced in this book.

It's impossible to give a full and just review of a book with 1,160 pages of text, cross-referenced by comprehensive footnotes, tables of cases and legislation. This book is so detailed and well researched that it is a valuable resource, not only to lawyers working within the public service but to any practitioner or student with an interest in local government.

Máiréad Cashman is senior solicitor at Dublin City Council.

council report

12 June 2015

Requisitions on Title

The Council congratulated the Conveyancing Committee on the launch of the revised edition of the *Requisitions on Title*, which represented an extraordinary amount of voluntary effort by committee members to the benefit of their colleagues. It was noted that the requisitions would be updated on an ongoing basis for the future. It was suggested that the Society should explore the dissemination of the requisitions and other conveyancing documentation to the profession in amendable electronic format at no charge, rather than in hard copy for a fee.

Legal Services Regulation Bill

The Council noted a transcript of the second stage debates on the bill in the Seanad on 13 May. The minister had outlined the principal provisions of the bill, as amended in the Dáil, the areas in respect of which amendments would be brought forward in the Seanad, and her intention that the bill would be enacted during 2015, with the establishment of the new Legal Services Regulatory Authority before year-end. The Council noted that the bill would resume at committee stage in the Seanad in the autumn.

Marriage equality referendum

The Council considered the correspondence received from members, together with the feedback via social media, in relation to the position taken by the Society in support of the marriage equality referendum. All correspondence had received a reply from the president. Council members provided feedback from their own discussions with colleagues, and noted that some members of the profession had supported the Society's position, while others had not.

PII common proposal form

Michael Quinlan reported that the PII common proposal form would be available on the Society's website by September.

Companies Act

Paul Keane briefed the Council on a number of practical issues that had arisen following the enactment of the *Companies Act* and the requirement for e-filing of certain forms with the Companies Registration Office. It was hoped that any difficulties would be resolved in early course. The Council noted the very successful seminar on the new act addressed by members of the Business Law Committee in Cork, with the proceeds being donated to Irish Rule of Law International.

Specialist accreditation

Valerie Peart noted that a survey had issued to the profession in relation to specialist accreditation and she urged that Council members would encourage colleagues to participate.

BUSINESS LAW COMMITTEE

Resolutions under the new *Companies Act 2014*

Sections 191 to 198 of the *Companies Act 2014* set out the provisions in relation to special resolutions and ordinary resolutions.

A special resolution requires a 75% majority of the votes cast by the members entitled to vote. An ordinary resolution is defined in the act as a resolution passed by a simple majority of the votes cast by the members entitled to vote, to be voted in person or by proxy at a general meeting of the company.

A written resolution under the act can be either a special or an ordinary resolution. Please refer to sections 193 and 194 of the act for further details.

Unanimous written resolution (section 193)

A unanimous written resolution is one in writing, signed by all the members of a company that are, for the time being, entitled to attend and vote. Previously, under the *Companies Acts 1963-2013*, this written resolution could only be used where the company's articles specifically provided for it.

A resolution to remove an auditor or director cannot be passed by unanimous written resolution.

Majority written resolution (section 194)

A majority written resolution can be used in relation to an ordinary or a special resolution, and the requirements vary according to the requisite majority.

A majority written resolution takes effect later than a written resolution unanimously passed.

A majority written ordinary resolution takes effect seven days after the last signature, whereas a majority written special resolution takes effect 21 days after the final signature, unless members waive that right under section 194(10) of the act or the resolution specifies a certain date upon which the resolution is passed.

A majority written resolution cannot be used by public limited companies (PLC), by companies limited by guarantee (CLG), or by unlimited companies (ULC/PUC/PULC).

A resolution to remove an auditor or director cannot be passed by majority written resolution.

In a majority written ordinary resolution, the requisite majority of members means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50% of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company.

In a majority written special resolution, the requisite majority of members means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 75% of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company.

The resolution can consist of several documents in like form, each signed by one or more members.

Single member companies

A single member company is simply a company that has a sole member. All powers exercisable by a company in general meeting are exercisable by the sole member without the need to hold a general meeting. This does not apply, however, to the power to remove an auditor. The resolution would then be submitted to the CRO within 15 days.

A copy of a special resolution is required, under section 198 of the act, to be submitted to the CRO within 15 days of the passing. Form G1 continues to be used for this purpose.

Resolutions that need to be submitted to the CRO (this is not an exhaustive list) include:

- Resolutions that are required by the act or a company's constitution to be special resolutions,
- Resolutions that would have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions,
- Resolutions or agreements that have been agreed to by all members of some class of shareholder but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholder though not agreed to by all those members,
- Resolutions increasing or decreasing the authorised share capital (if any) of a company,
- Resolutions conferring authority for the allotment of shares,
- Resolutions that a company be voluntarily wound up,
- Resolutions attaching rights or restrictions to any share,
- Resolutions varying any such right or restriction to a share,
- Resolutions classifying any unclassified share,
- Resolutions converting shares of one class into shares of another class, Resolutions converting share capital into stock, and resolutions converting stock into share capital.

BUSINESS LAW COMMITTEE

Incorporation of an LTD under the *Companies Act 2014*

The *Companies Act 2014* introduces two new types of private companies limited by shares, to replace the existing single type of private company limited by shares. Therefore, shareholders and directors of all existing private limited companies will have to decide whether to register as a company limited by shares (LTD) or become a designated activity company (DAC). This is a decision that will affect approximately 90% of Irish registered companies that are currently private limited companies.

It is expected that the majority of newly incorporated private companies will choose to be LTDs. This practice note briefly summarises the process of incorporating a LTD under the act.

Method of incorporation

Part 2 of the act deals with the incorporation and registration of companies.

The new LTD will have a one-document constitution in place of the current 'memorandum and articles of association'. The limit on the number of members a new LTD may have has been increased to 149. Employees and former employees are not counted when determining the total number of members.

The constitution will state the name, that it is a private company limited by shares registered under part 2, any supplemental regulations, the authorised share capital of the company (if any), and the number of shares taken by each subscriber. It must be signed

practice notes

by the subscriber(s) and will be in a form as set out in the first schedule to part 2. The new LTD will have full and unlimited capacity the same as that of a natural person, as it will not have an objects clause and so it will not be subject to the doctrine of *ultra vires*.

A prescribed form detailing the person who is, or the persons who are, to be the first director or directors of the company, the secretary, the registered office, the place where the central administration of the company will normally be carried on, details of the activity of the company being carried on in the State, and the place in the State where it is being carried on must be prepared as part of the incorporation process. This form will be signed by the directors(s), secretary, and the subscriber(s) and shall include an unsworn declaration, which must be made by one of the directors or the secretary or a solicitor acting on behalf of the company, and is submitted with the constitution to register the company. Where there are no directors resident in the EEA, a bond must be provided with the prescribed form to incorporate the company. Where a director named on the prescribed form is disqualified, a separate statement in a prescribed form must be signed by that director specifying the jurisdiction in which, and date, they became disqualified, together with the period of disqualification.

In addition to the one-document constitution, one of the fundamental changes under the new legislation is to reduce the number of directors required by a company to just one. The act preserves the requirement to have a secretary of a company who cannot also act in the role of sole director. This will do away with the need to have a passive nominee director and increase the level of accountability on the one director. An LTD is also no longer required to state an authorised share capital, but may instead state that its share capital will be divided into shares of a fixed amount specified in the constitution.

Certificate of incorporation

Upon registration of the constitution of an LTD, the registrar will issue a certificate of incorporation. The certificate of incorporation is conclusive evidence that the company is registered.

The last word of the name of the company shall be 'Limited', or this can be abbreviated to 'Ltd'. Trading under a misleading name shall subject any officer of the company who is in default to a category 3 offence.

The provisions applying to the reservation of a name when incorporating a company or changing a company name are preserved. Similarly, the provisions applying to any change of name or alteration in the constitution of a company will still require a special resolution.

Electronic filing agent

Part 2 also deals with the authorisation of an electronic filing agent, which facilitates the electronic signing of documents and the delivery of those documents to the registrar by electronic means. A company may also revoke the authorisation of an electronic filing agent.

Member rights

Finally, the new legislation also provides that, on request, any member is entitled to receive a copy of the constitution from the company. Failure to provide a copy is a category 4 offence.

Conclusion

In summary, the provisions relating to the incorporation of an LTD are broadly similar to those currently in existence for a limited liability company – the main differences being the introduction of the new one-document constitution, the provision that an LTD may (which is not the case for a DAC) only have one director, and may elect not to have an authorised share capital.

Philip Daly is a partner in the corporate department of LK Shields.

CONVEYANCING COMMITTEE

Easements and *profits à prendre* created by express grant prior to first registration of servient tenement

Practitioners are reminded that, by virtue of section 69 of the *Registration of Title Act 1964* (RTA 1964), easements and *profits à prendre* created by express grant or reservation prior to first registration of the servient tenement are not capable of registration as a burden on the newly opened folio. Instead, once the title to the servient tenement is registered, such easements and *profits à prendre* become burdens affecting the servient tenement without registration by virtue of section 72(1)(h) of the RTA 1964. It is therefore recommended that the following practice be adopted:

1) When making an application for first registration of a property affected by an easement or *profit à prendre* created by express grant or reservation, practitioners should also apply, by virtue of section 72(3) of the RTA 1964, for the entry of a notice on the register of the existence of the easement or *profit à prendre*. There is no specific form that must be used when applying for the registration of such a notice, but the deed of grant or reservation should be lodged, accompanied by a suitable map showing the claimed right. As the Land Registry will not be mapping the right on the registry map, the map showing the claimed right need not comply with Land Registry mapping requirements. However, the easement or *profit à prendre* should be clearly marked on the map and the location of the easement or *profit à prendre* be easily identifiable. Once registered, the entry of the notice is made on the folio by reference to the map filed on the instrument. No description of the right is shown on the registry map. A copy of the grant or reservation should be retained with the title deeds for future reference.
2) On future sales of the servient tenement (post registration), the section 72 declaration should disclose the existence of the easement or *profit à prendre*.

Easements or *profits à prendre* created by express grant after registration are capable of registration by virtue of section 69(1)(j) of the RTA 1964 and must be registered in order to affect the servient tenement.

Practitioners are also referred to the practice note in relation to registration of an easement on a leasehold folio, published in the November 2012 issue of the *Gazette* (p53).

GUIDANCE AND ETHICS COMMITTEE

Ten steps towards a successful merger

1) **Know why you want to merge and set a merger strategy – ask yourself why you want to do it, what you want to achieve, and what you are prepared to do to achieve it. There are right reasons and wrong reasons. Some of the right reasons might be to:**
   - **Enhance the competitive position of both firms,**
   - **Add complementary practices or services,**
   - **Increase or diversify client base, and**
   - **Allow development of specialist areas.**

   Some wrong reasons might be to solve economic problems, to deal with internal problems, or problems in the existing partnership.
2) **Know your own practice – you must carry out a comprehensive honest and objective assessment of your own practice, clients, employees and opportunities. Do it as a SWOT analysis (strengths/weakness/opportunities/threats) of your own practice. Ensure your target does the same.**
3) **Get help – it is well worthwhile engaging outside involvement to assist the initial discussions and to drive and oversee the merger. An outside facilitator (who should be disinterested and have no professional relationship with either firm or no prospect of one with the merged entity) is more likely to have an objective view and be skilled in setting action points and deadlines for the progress of the merger talks, and then the merger. Agree a cost in advance and who is to pay it.**
4) **Evaluate the merger and identify key issues and deal breakers early on – both sides must know in advance if there is a synergy between the merging firms. Identify shared values and goals. Identify each other's weaknesses and strengths. Do a SWOT analysis of the merger. Identify the key issues. Identify the potential deal breakers and get them out of the way early rather than waste time.**
5) **Do a full financial analysis – a full review of detailed historical financial data must be carried out. If the facilitator has an accounting/financial background, they may be of assistance and may be independent of each side. Through historical analysis, you will have a clear picture of what each side can bring to the table, and this will assist in developing projections and cash-flow plans for the future of the merged entity and in setting financial policies. Prudent planning should provide that, in the initial months of the merger, cash flows will be less than the aggregate of the pre-merger average of both firms.**
6) **Conduct a file and claims due diligence – it is essential that a proper file and claims review and due diligence are conducted, so that each side is satisfied that there are no skeletons in the closet of the other that will create problems in the merged entity. Any problems identified must be notified to the appropriate insurer. Do not be afraid to ask the hard questions.**
7) **Make a decision – once you have your information, decide to progress or terminate. It is pointless to procrastinate, and the deal will lose momentum.**
8) **Communicate and plan for what will happen when the merger becomes official – once the integration plan is set, people will be asking questions, and it is far better to communicate early and effectively with staff members and key clients to put their minds at ease, quash rumours, and bring them fully on board with the merger.**
9) **Invest in the merger – be prepared to make changes in your own work practices, and be prepared to spend money.**
10) **Use the marketing opportunity – a successful merger is good news. Use the opportunity to spread the good news and to market your new practice and the enhancement of service that you can offer.**

legislation update

12 May – 8 June 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

Sport Ireland Act 2015
Number: 15/2015
Provides for the establishment of Sport Ireland and for the dissolution of the Irish Sports Council and the National Sports Campus Development Authority. Sport Ireland will assume responsibility for the relevant functions currently performed by the Irish Sports Council and the National Sports Campus Development Authority. Updates the law in relation to doping in sports, and provides for related matters.
Commencement: Part 4 shall come into operation on the establishment day

Workplace Relations Act 2015
Number: 16/2015
Makes provision relating to the resolution, mediation, and adjudication of disputes and complaints relating to contravention of, or entitlements under, certain enactments governing the employment relationship between employers and employees. Provides a statutory basis for a new structure that will replace the existing five State bodies with two: the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal, the first instance functions of the Employment Appeals Tribunal (EAT), and the first instance functions of the Labour Court will be replaced by the new Workplace Relations Commission (WRC), and the appellate function of the EAT will be transferred to a new expanded Labour Court. The WRC will deal with all cases in the first instance; the Labour Court will deal with all cases on appeal. Provides for the repeal and amendment of certain enactments and provides for related matters.
Commencement: Commencement order(s) required as per s1(2) of the act

Criminal Justice (Terrorist Offences) Act 2015
Number: 17/2015
Amends the *Criminal Justice (Terrorist Offences) Act 2005* to create three new offences in order to give effect to Council Framework Decision 2008/919/JHA of 28/11/2008, amending Council Framework Decision 2002/475/JHA on combating terrorism. The three new offences are public provocation to commit a terrorist offence, recruitment for terrorism, and training for terrorism. Also gives effect to the Council of Europe *Convention on the Prevention of Terrorism*, done at Warsaw on 16/6/2005.
Commencement: One week after date of signing as per s12(3) of the act

SELECTED STATUTORY INSTRUMENTS

Companies Act 2014 (Section 897 Order) 2015
Number: SI 203/2015
Provides that certain forms prescribed under the *Companies Act 2014 (Forms) Regulations 2015* (SI 147/2015) may be delivered to the Registrar of Companies only by the means provided for under the *Electronic Commerce Act 2000*, effected in a manner that complies with any requirements of the registrar of the kind referred to in sections 12(2)(a) and 13(b) of that act.
Commencement: 1/6/2015

Companies Act (Fees) Regulations 2015
Number: SI 213/2015
Set out the fees to be paid to the Registrar of Companies in respect of matters under the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Recognised Stock Exchanges) Regulations 2015
Number: SI 214/2015

Prescribe the main market of the London Stock Exchange, the New York Stock Exchange, and the market known as NASDAQ (operated by Nasdaq Stock Market incorporated), for the purposes of section 1072 of the *Companies Act 2014*, to permit Irish public companies to make overseas market purchases on a recognised stock exchange.
Commencement: 1/6/2015

Companies Act 2014 (Bonding) Order 2015
Number: SI 215/2015
Prescribes the form of bond for the purposes of section 137 of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Part 14 Prescribed Officers) Regulations 2015
Number: SI 216/2015
Prescribe officers of the court, and the particulars, form and time within which information is to be furnished by them to the registrar for purposes of certain sections of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Section 580(4) Members' Voluntary Winding Up Report) Regulations 2015
Number: SI 217/2015
Prescribe the form of report for the purposes of section 580(4) of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Section 208 Report) Regulations 2015
Number: SI 218/2015
Prescribe the form of report in accordance with section 208 of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Section 623 Account) Regulations 2015
Number: SI 219/2015
Prescribe the account to be maintained in accordance with section 623 of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Commencement No 2) Order 2015
Number: SI 220/2015
Amends article 3 of the *Companies Act 2014 (Commencement) Order 2015* (SI 169/2015).
Commencement: 1/6/2015

Companies Act 2014 (Section 682) Regulations 2015
Number: SI 221/2015
Prescribe the form of the liquidators report for the purposes of section 682(2) of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Disqualification and Restriction Undertakings) Regulations 2015
Number: SI 222/2015
Prescribe the form of the disqualification undertaking form and the restriction undertaking form, incorporating the notices required under section 850(3) and section 852(3) of the *Companies Act 2014*, the "disqualification acceptance document" and "restriction acceptance document" under section 854(1), the statement of legal effects as specified in section 850(4)(b) and section 852(4)(b), and the particulars to be furnished by the ODCE to the CRO under section 851(3)(a).
Commencement: 1/6/2015

Companies Act 2014 (Section 1313) Regulations 2015
Number: SI 223/2015
Apply certain provisions of part 17 of the *Companies Act 2014* to any unregistered company that is a traded body under part 24 of the *Companies Act 2014*.
Commencement: 1/6/2015

Companies Act 2014 (Section 150) Regulations 2015
Number: SI 225/2015
Provide for a procedure that dispenses with the requirement that the usual residential address of an officer of a company appear on the register kept by the registrar in circumstances where an officer of a company has obtained supporting statement from an officer of An Garda Síochána, not below the rank of chief superintendent, that the company officer's personal safety or security warrant the granting of an exemption.
Commencement: 1/6/2015

European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015
Number: SI 192/2015
Allow the court jurisdiction to lift the automatic suspension of the procedure for the award of a contract in certain cases.
Commencement: 30/4/2015

European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) (Amendment) Regulations 2015
Number: SI 193/2015
Allow the court jurisdiction to lift the automatic suspension of the procedure for the award of a contract in certain cases.
Commencement: 30/4/2015

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, m.gaynor@lawsociety.ie.

Prepared by the Law Society Library

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 William James Murphy, solicitor, of Murphy Coady & Co, Solicitors, Commons Road, Navan, Co Meath, and in the matter of the *Solicitors Acts 1954-2011* [6245/DT122/12 and High Court record 2014 no 126SA]

Named client (applicant)
William James Murphy (respondent solicitor)

On 21 July 2014, the Solicitors Disciplinary Tribunal found the espondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaint as set out in the applicant's affidavit: the respondent solicitor would not furnish the applicant with a cash account in respect of seven specified transactions that the applicant entrusted to him or show the applicant where his moneys went.

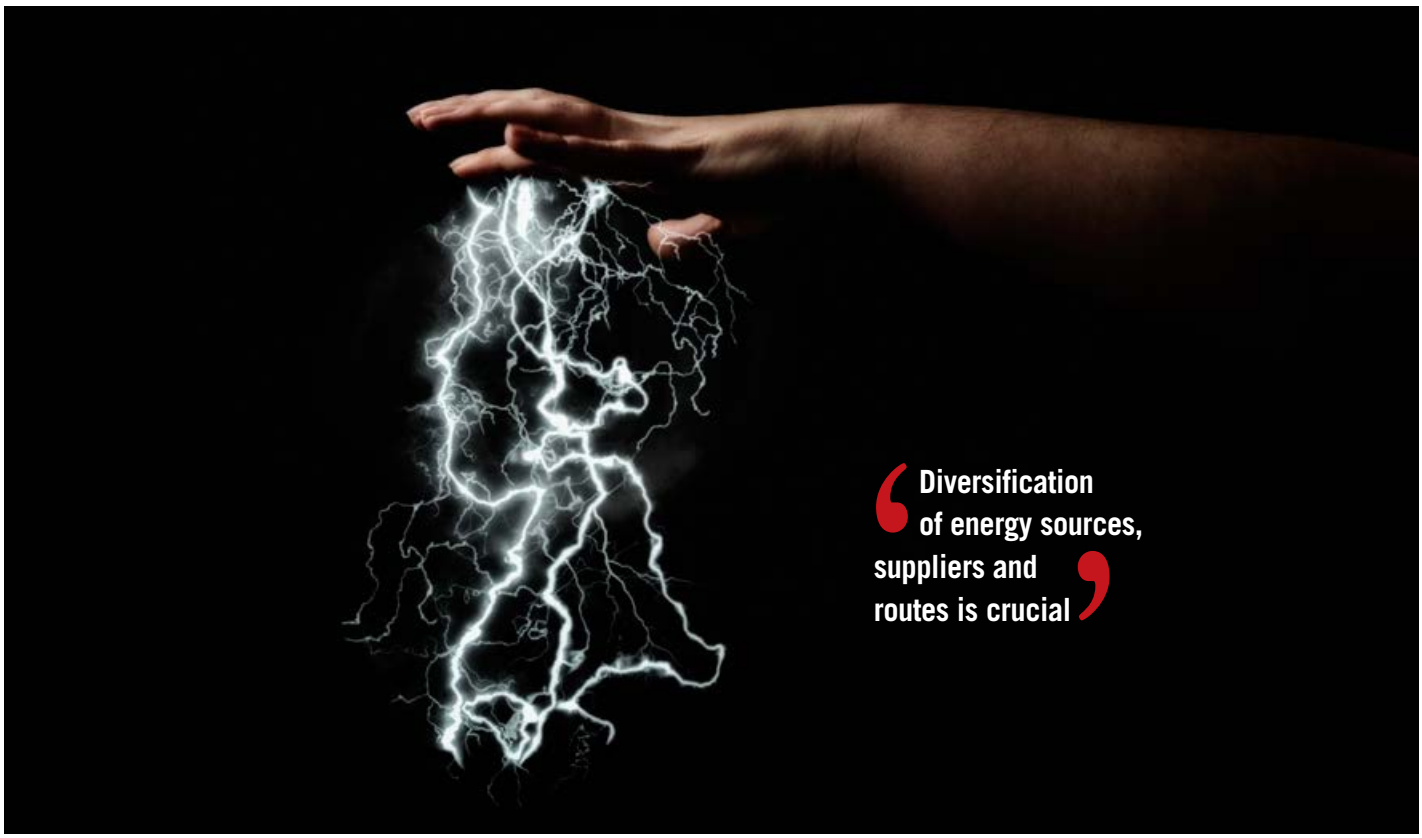
The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €4,800 as restitution to the applicant without prejudice to any of his legal rights,
3) Pay the whole of the costs of the applicant, to be taxed by the taxing master of the High Court in default of agreement.

The applicant appealed the decision of the Solicitors Disciplinary Tribunal. On 2 February 2015, the High Court affirmed the decision of the Solicitors Disciplinary Tribunal and dismissed the appeal.

eurlegal

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

EU ENERGY UNION PACKAGE



Published in February 2015, the EU Energy Union Package encompasses three European Commission communications. The focus is on a framework strategy for a resilient EU with a forward-looking climate-change policy, achievement of a 10% electricity interconnection target, and a blueprint for tackling global climate change beyond 2020.

It seeks a fundamental transformation of the EU's energy system, involving movement away from the current fossil-fuel driven economy, where energy is based on a centralised, supply-side approach, relying on old technologies and outdated business models. Even though energy rules are set at EU level, the reality is that there are 28 national regulatory frameworks, with energy islands creating vulnerability in terms of energy security. The unavoidable shift to a low-carbon economy is foreseen to be harder, with fragmented national energy markets. Resetting the EU's energy policy is therefore seen as essential. Current low oil and gas prices, and the falling cost of cleaner forms of energy, makes now a good time to reset the policy. The proposed framework strategy (COM(2015) 80 final) is built on five mutually reinforcing and closely interrelated dimensions:

- Energy security, solidarity and trust,
- A fully integrated European energy market,
- Energy efficiency contributing to moderation of demand,
- Decarbonising the economy, and
- Research, innovation and competitiveness.

Energy strategy

In terms of energy security, solidarity and trust, the Energy Union seeks to build on the Energy Security Strategy set out by the commission in May 2014. Key drivers of energy security are completion of the internal energy market, more efficient energy consumption, as well as transparency and more solidarity and trust between member states. Diversification of energy sources, suppliers and routes is crucial: this will involve intensifying work on the Southern Gas Corridor, so that Central Asian countries may export their gas to Europe, and establishing liquid gas hubs with multiple suppliers. The full potential of liquefied natural gas (LNG) is to be explored, and the commission is tasked with preparing a comprehensive LNG strategy as well as removing obstacles to LNG imports from the US and other LNG producers. It also falls to the commission to update and enhance the requirements regarding information to be provided on nuclear installation products.

Producing oil and gas from unconventional sources in Europe, such as shale gas, is another option to be explored, provided public acceptance and environmental impact are addressed. The commission is to propose preventive and emergency plans at regional and EU level for introducing common crisis management. It is also tasked with assessing options for voluntary demand aggregation mechanisms for collective purchasing of gas during a crisis. With respect to security of electricity supply, the commission is to ascertain a range of acceptable risk levels for supply interruptions, and an objective, EU-wide, fact-based security-of-supply assessment addressing the situation in member states,

taking into account cross-border flows, variable renewable production, demand response, and storage possibilities.

It is the view that the EU must also improve its ability to project its weight on global energy markets. The commission is to pursue an active trade and investment agenda in the energy field, including access to foreign markets for European energy technology and services. Strategic energy partnerships are to be established with increasingly important producing and transit countries or regions, such as Algeria, Turkey, Azerbaijan, Turkmenistan, the Middle East, and Africa. Partnerships with Norway, the USA and Canada will be further developed. The energy relationship with Russia may be reframed, and the strategic partnership with Ukraine will be upgraded. Closer integration of the EU and Energy Community energy markets is also an aim. An important factor to ensure energy security is full compliance of agreements relating to the purchase of energy from third countries with EU law; in future, the commission should be informed about the negotiation of intergovernmental agreements from an early stage, so that compatibility with internal market rules and security of supply criteria is ensured.

Fully integrated market

A fully integrated European energy market is yet to be achieved. The current market design fails to lead to sufficient investments, while weak competition remains an issue. At the moment, the electricity and gas transmission systems, particularly cross-border connections, are insufficient to make the internal market work properly and to link the remaining energy islands. In recent years, work on infrastructure projects has accelerated– for example, 248 energy infrastructure projects of common interest (PCI) were identified in 2013, while 33 infrastructure projects were identified by the European Energy Security Strategy. A specific minimum interconnection target has been set for electricity at 10% of installed electricity production capacity of the member states, to be achieved by 2020. The necessary measures to achieve this target are set out in a commission communication (COM(2015) 82 final). The communication identifies 12 member states that are currently below the 10% electricity interconnection target – including Ireland, at 9%. In 2011, Ireland's interconnection level was 3%, but increased to 7% by 2013.

It is envisaged that the 10% interconnection target should mainly be reached through implementation of the PCI (52 of the 248 projects are electricity interconnections). The PCIs are designed and implemented by transmission system operators and private promoters. In Ireland's case, it is predicted that interconnectivity would exceed 15% by 2020, when the planned PCIs connecting Ireland further with Britain and possibly France are envisaged to have been constructed. It is recognised that a solid regulatory framework is a prerequisite for the necessary infrastructure investments to happen. Since 2013, the EU has adopted a holistic approach to infrastructure planning and implementation. The *Trans-European Energy Networks Regulation* (TEN-E) addresses the issue of projects that cross borders or have an impact on cross-border flows. While regional cooperation is seen as a key factor and is strengthened through the TEN-E regional groups, further work in the area of cooperation is proposed by way of memorandums of understanding, common strategy papers, and action plans. Making use of all available financial instruments, such as the Connecting Europe Facility, the European Structural and Investment Funds, and the European Fund for Strategic Investments, is also promoted. In 2016, the commission has the job of reporting on the necessary measures to reach a 15% interconnection target by 2030.

> **The EU must also improve its ability to project its weight on global energy markets**

In addition, an ambitious legislative proposal to redesign the electricity market and link wholesale and retail is to be prepared by the commission. This is expected to increase security of energy supply, ensure the electricity market is better adapted to the energy transition, and enable full consumer participation in the market, notably through demand response. Implementing and upgrading the internal market's software and protecting vulnerable consumers are also to be dealt with.

Moderating energy demand

Energy efficiency as a contribution to the moderation of energy demand is another key element – rethinking energy efficiency as an energy source in its own right. In October 2014, the European Council set an indicative target at EU level of at least 27% for improving energy efficiency in 2030. While all economic sectors are expected to take steps to increase efficiency of their energy consumption, special attention is given to sectors with huge energy-efficiency potential: the buildings and transport sectors. The gains yet to be captured through district heating and cooling are to be addressed in a commission strategy, while new financing schemes and techniques are to be promoted.

In terms of the transport sector, focus is on tightening CO_2 emission standards for vehicles, reduction of CO_2 emissions, increased fuel efficiency, and better traffic management. Additional focus is placed on electrification of transport, moving away from reliance on oil.

Decarbonisation

In the ambit of decarbonisation of the economy, an integral aspect of the Energy Union is an ambitious climate policy. Currently, the EU's climate policy is based on an EU-wide carbon market (the EU Emissions Trading System), greenhouse gas reduction targets for sectors outside the trading system, and an energy policy to make the EU number one in renewable energy. The EU's commitment, made in October 2014, of at least a 40% domestic reduction in greenhouse gas emissions by 2030 compared with 1990 is an ambitious contribution to the international climate negotiations to achieve a binding climate agreement in 2015. This contribution is set out in commission communication COM(2015) 81 final ('A Blueprint for Tackling Global Climate Change Beyond 2020'), which sets out the objectives that need to be delivered by the upcoming agreement due to be finalised in December 2015 by the parties to the *United Nations Framework Convention on Climate Change*. These include securing ambitious reductions of emissions, ensuring dynamism with a five-year global review, encouraging climate-resilient sustainable development, and strengthening transparency and accountability. By mid-2015, we should see the commission presenting legislative proposals to implement the 2030 climate and energy framework agreed by EU leaders in October 2014.

In addition, at the heart of the Energy Union will be a new strategy for research, innovation, and competitiveness. To be number one in renewable energies, the EU must lead on the next generation of renewable technologies and storage solutions. Energy system transformation is to be accelerated, building on Horizon 2020 and involving all member states, stakeholders and the commission.

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

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
13 – 15 July	Technology in Litigation a collaboration between the prestigious Stetson University College of Law (Florida) and Law Society Professional Training	n/a	€650	14 Incl 2 Regulatory Matters (by Group Study)
10 Sept	Legal Aid Conference: Legal Aid, Victim Support & Prison Law Symposium in collaboration with the Criminal Law Committee	€150	€176	3.5 General (by Group Study)
11 Sept	Essential General Practice update– Muckross Park Hotel, Killarney, Kerry	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
16 Sept	Garda Station Questioning workshop in collaboration with the Criminal Law Committee - Cork	€150	€176	3 General (by Group Study)
17 Sept	The impact of mass surveillance on lawyer-client confidentiality in collaboration with the EU & International Affairs Committee	n/a	€95	3 General (by Group Study)
18 Sept (Fridays) 6-8pm	Law Society Finuas Network/UCD Post Graduate Diploma in International Financial Services Law - Blended-learning Model	€3,200	€4,000	Full CPD requirement for 2015 (provided relevant sessions attended)
25 & 26 Sept & 9 & 10 Oct	The Fundamentals of Commercial Contracts Module 1: Negotiating and Drafting Commercial Contracts Module 2: Analysis of Key Commercial Contracts:	€800 *(Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)*	€1,000 *(Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)*	10 Hours including 3 M & PD Skills - for each module
25 & 26 Sept & 9 & 10 Oct	The Fundamentals of District Court Civil Procedure, Drafting & Advocacy Skills (Focus on General Tort & Personal Injuries Litigation) Module 1: The fundamentals of PI Litigation; District Court Civil Procedure and Drafting Skills Module 2: Preparing for trial and court room advocacy	€608	€760	CPD hours for each module – 10 CPD hours including 3 M & PD Skills (by Group Study)
1 Oct	Annual Employment Law seminar in collaboration with the Employment & Equality Law Committee	€150	€176	3 General (by Group Study)
2 Oct	Law Society Skillnet Connaught Solicitors Symposium 2015 hosted by Mayo Solicitors' Bar Association – Breaffy House Resort, Castlebar, Co Mayo	n/a	€95	3 General plus 3 M & PD Skills (by Group Study)
10 Oct	Annual Human Rights conference presented in collaboration with the Human Rights Committee	Complimentary		3 General (by Group study
16 Oct	Law Society Skillnet North East CPD Day 2015 in association with Monaghan, Cavan, Drogheda and Louth Solicitors' Bar Associations – Glencarn Hotel, Castleblayney, Co Monaghan	n/a	€95	5 M & PD Skills plus 1 Regulatory Matters (by Group Study)
16 Oct	Blue Skies or Stormy Clouds? – Best Business Use of Cloud and Social Media Platforms - Annual Technology Conference – in collaboration with the Technology Committee – Temple Gate Hotel, Ennis	€150	€176	3.5 hours General (by Group study
21 Oct	Property Law conference – in collaboration with the Conveyancing Committee	€150	€176	3.5 General (by Group study)
23 Oct	Law Society Skillnet Practice & Regulation Symposium 2015 in partnership with the Small Practice Network and DSBA – Mansion House, Dublin	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
12 Nov	Annual In-house and Public Sector Conference – in collaboration with the In-house and Public Sector Committee	€150	€176	2 M & PD Skills plus 1.5 General (by Group study)
13 Nov	Law Society Skillnet Practitioner Update Cork 2015 in partnership with Southern Law Association and West Cork Bar Association – Clarion Hotel, Cork	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
13 & 14 Nov & 22 & 23 Jan & 5 & 6 Feb 2016	Property Transactions Master Classes Module 1: The Fundamentals of Property Transactions Module 2: Complex Property Transactions Module 3: Commercial property transactions	Fee per Module: €484	Fee per Module: €550	CPD Hours per Module: 8 General plus 2 M&PD (by Group Study) Attend 1, 2 or all 3 modules
20 Nov	Law Society Skillnet General Practice Update 2015 in partnership with Carlow Bar Association, Kilkenny Bar Association, Waterford Law Society and Wexford bar Association – Hotel Kilkenny, Kilkenny	n/a	€95	3 General plus 3 M & PD Skills (by Group Study)
27 & 28 Nov and 15 & 16 Jan 2016	The Fundamentals of Technology & Intellectual Property Law Module 1: Intellectual Property Law Module 2: Technology Law	€800 *(Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)*	€1,000 *(Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)*	CPD Hours for each Module: 10 Hours including 3 M & PD Skills

For full details on all of these events plus our full range of skills workshops visit www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on
P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

The 2015 CPD requirement is 16 hours in total, to include a minimum of 3 hours Management & Professional Development Skills and a minimum of 1 hour Regulatory Matters.
*Please note FIVE hours on-line learning is the maximum that can be claimed in the 2015 CPD Cycle. *Applicable to Law Society Skillnet members.*

professional notices

WILLS

Bartley, Andrew (deceased), late of 51 Clandonagh Road, Donnycarney, Dublin 5, who died on 30 November 2012. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Roisin Slattery-Gleeson, James P Evans, Solicitors, Unit 13C Main Street, Ongar Village, Dublin 15; tel: 01 640 2717, email: info@jamespevans.com

Brett, Neville (deceased), late of Carrick Road, Mullinahone, Co Tipperary. Would any person having knowledge of a will executed by the above-named deceased, who died on 6 October 2014, please contact Poe Kiely Hogan Lanigan, Solicitors, 21 Patrick Street, Kilkenny; tel: 056 772 1063, fax: 056 776 5231, email: tkiely@pkhl.ie

Connolly, Alice (deceased), late of 3 St Oliver's Cottages, Blackcastle, Navan, Co Meath (and St Benildus Villas, Navan, Co Meath) who died on 2 March 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact McAlister O'Connor, Solicitors, Abbey Road, Navan, Co Meath; tel: 046 902 2223, email: declanpoconnor@gmail.com

Cusack, Julia (deceased), late of 19 Rosendale Gardens, Corbally, Limerick, who died on 28 July 2014. Would any person having knowledge of a will executed on 12 June 2012 or any other subsequent will made by the above-named person please contact Lane & Co, Solicitors, Ducart Suite, Castletroy Park, Commercial Campus, Limerick; tel: 061 502 020, email: info@lane.ie

Healy Margaret (deceased), late of Largy, Spencer Harbour, Co Leitrim, and Balloughly, Kingscourt, Co Cavan, latterly of Fairlawns Private Nursing Home, Bailieborough, Co Cavan, who died on or about 26 January 2015. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Joseph McNally, Solicitors, The Maieston, Santry Cross, Ballymun, Dublin 11; tel: 01 960 2047, email: info@jmsolicitors.ie

Lavelle, Thomas J (otherwise TJ) (deceased), late of Haynestown, Dundalk, Co Louth, who died on 26 May 2015. Would any person having any knowledge

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 Aug/Sept 2015 *Gazette*: 10 August 2015. 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 a will made by the above-named deceased please contact Oliver Matthews & Company, Solicitors, Quayside Business Park, Mill Street, Dundalk, Co Louth; tel: 042 935 7770, email: oliver@matthewssolicitors.ie

Reddin, Denis (deceased), late of 130 Kilbarry Place, Farranree, in the city of Cork. Would any person having any information with regard to the whereabouts of a will of the above-named deceased please contact Diarmaid Falvey, Solicitors, Church Street, Cloyne, Co Cork; tel: 021 465 2590, fax 021 465 2868, email: info@diarmaidfalvey.ie

Stanhope, Yvonne (deceased), late of 12 Seafield Court, Killiney, Co Dublin. Would any person having knowledge of any will made by the above-named deceased, who died on 18 February 2015, please contact Fiona Lee, Murphys, Solicitors, Mount Clarence House, 91 Upper George's Street, Dun Laoghaire, Co Dublin; tel: 01 280 0261, email: fiona@murphyssolicitors.ie

Taylor, Audrey (deceased), late of 2 Millworth Terrace, Meath Road, Bray, Co Wicklow, formerly of Ballinastoe, Roundwood, Co Wicklow, who died intestate on 30 April 2008. 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, MD O'Loughlin & Company, Solicitors, Suite 11, Parklands Office Park, Southern Cross Road, Bray, Co of Wicklow; tel: 01 286 2909, email: emma@mdol.ie

Wall, Alan (deceased), late of 65 Fosters Avenue, Mount Merrion, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 2 September 2014, please contact Patrick J Farrell & Co, Solicitors, Newbridge, Co Kildare; tel: 045 431 542, email: niall.farrell@pjf.ie

MISCELLANEOUS

For sale – seven-day ordinary publican's licence. Contact: 087 233 6925

TITLE DEEDS

In the estate of Joseph Edward MacDermott, late of Bellfort, Blackrock, in the county of Dublin, solicitor

Joseph Edward MacDermott granted a lease on 11 July 1921 to William J Noran of 21 Upper Leeson Street in the city of Dublin in respect of the premises known as and situate at 5 Proby Square, Blackrock, in the county of Dublin.

I am now seeking to locate the executors, administrators, and/or assigns of Joseph Edward MacDermott in order for them to execute a consent to the acquisition of the intermediate leasehold interest in respect of the above premises pursuant to the provisions of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*.

Would anyone knowing the whereabouts of the executors, administrators, and assigns of Joseph Edward MacDermott please contact Ben O'Rafferty, solicitor, 18 Merrion Row, 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 30 Lower O'Connell Street, Dublin, and an application by Aviva Life & Pensions UK Limited

Any person having a freehold estate or any intermediate interest in all that and those 30 Lower O'Connell Street, Dublin 1, being currently held by Aviva Life & Pensions UK Limited under an indenture of lease dated 15 November 1944 between Terrance Marsh Jackson, Dennis Richard Martin Jackson, Florence Marsh Potts, and Frances West Feiley of the one part, and Matthew Joseph McCabe of the other part, take notice that Aviva Life & Pensions UK Limited, as lessee under the said lease, intends to apply to the county registrar for 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 title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Aviva Life & Pensions UK Limited 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 Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests, including the freehold reversion, in the premises are unknown or unascertained.

Date: 3 July 2015

Signed: William Fry (solicitors for the applicant), 2 Grand Canal Square, Dublin 2

particeps criminis

Iowa residents raise their glasses to Supreme Court 'drunk' ruling

The right to be drunk on your porch was recently endorsed by the Iowa Supreme Court. It said that Patience Paye (29) of Waterloo, Iowa, couldn't be convicted of public intoxication while standing on her front steps.

Paye based the appeal of her 2013 case on the contention that her front steps are not a public place, so she couldn't be charged with public intoxication.

The Supreme Court agreed, rejecting a District Court judge's conclusion that Paye's front porch was a public place, plainly accessible, visible to passers-by, and was a place to which the public was permitted access.

"If the front stairs of a single-family residence are always a public place, it would be a crime to sit there calmly on a breezy summer day and sip a mojito, celebrate a professional achievement with a mixed drink of choice, or even baste meat on the grill with a bourbon-infused barbecue sauce – unless one first obtained a liquor licence," Justice Daryl Hecht wrote in the court's unanimous opinion. "We do not think the legislature intended Iowa law to be so heavy-handed."

Iowa is among only a few states to criminalise public drunkenness.

Game of gnomes conundrum

A woman in England called the police after she found over 100 garden gnomes deliberately posed in her garden, *The Independent* reports.

Police attended her Devon home at about 1.30am on 2 June after Marcela Telehanicova found 107 gnomes, including a formation 30 rows deep and three abreast, in her front garden.

"Someone has taken quite a bit of time and effort to place them there," a police spokesman said. "It has unsettled the homeowner, who has no idea why they were put in her front garden at night. We are seeking to establish where the gnomes have come from. The question is whether they are stolen, or if it's a prank and someone is playing a game of gnomes."

A local garden centre has been checked, but no gnomes have been reported missing, a police spokesman said. Residents are being urged to check their gardens to see if any gnomes have disappeared.

Never say never again

A New Jersey man who had just finished serving a 15-year sentence for robbing a shoe shop in 1999 is heading back to jail for a 16-year stint – for robbing the same shop the day after his release from prison for the first robbery.

Christopher Miller was recognised by the very same clerk who had been behind the counter at the time of the first robbery. The 41-year-old suspect pleaded guilty to robbery charges, including theft of $389 as well as employees' mobile phones.

Surely a case of jury stereotyping?

A Vermont man has escaped jury duty by dressing up as a convict. James Lowe was dismissed when he showed up at court wearing a black-and-white-striped jumpsuit with a matching beanie hat.

The Caledonian Record reports that Lowe showed up on time and joined other prospective jurors before the start of the selection process. Deputies directed him to an empty courtroom to meet with the judge, who told him to leave, reportedly saying that Lowe could have been found in contempt of court, which could have meant a fine or jail time.

Juror instructions appear to place no restrictions on the clothing worn by jurors. Lowe says he was happy to be released due to his work schedule and family obligations.

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- Advising in relation to investigations by the Financial Regulator, the provisions of the Central Bank Acts, the Administrative Sanctions regime, Notice of Examination procedure and Inquiry procedure under the Central Bank Acts.
- Advising on corporate governance and general secretarial matters.
- General advice on loan finance, secured and unsecured loans and equity investment arrangements.
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The role will involve advising international financial institutions and corporations involved in arranging and executing structured finance both in Ireland and abroad. They will be working alongside specialists from the Tax, Banking and Financial Services departments.
Successful applicants should have extensive experience within Capital Markets from a top tier, Magic Circle or Silver Circle firm.

Construction Solicitor - Dublin
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Our client, a top tier firm, is seeking to recruit a Solicitor to join its market leading Construction Group which is going through significant growth at present. This role will be non-contentious only and will involve providing clear, commercial concise and timely advice on construction and engineering projects. You will be acting for clients based in Ireland and overseas including government, local authorities, banks, developers, contractors and designers.
The ideal candidate should be a solicitor in a Projects, Energy or Construction department of a reputable Irish or UK firm.

In House Funds Legal Counsel - Dublin
€65,000 - €70,000

Our client, a leading international financial services company, is seeking to recruit a Funds Solicitor to join a growing team. This is a tremendous opportunity for someone with relevant legal experience and knowledge of the funds industry looking to develop their skills.
The role involves legal review of all relevant documents for fund launches and of all relevant documents for structured finance deals in Ireland and Luxembourg; drafting documentation and participating in the pitch for new funds business.
The ideal candidate will have worked in a funds department of a top tier firm and/or an in-house funds role.

For further information on these or other senior legal roles, please contact Michael Minogue in strict confidence on 01 6621000 or email at m.minogue@gbrightwater.ie

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Pictured from left to right. Back: Natasha McKenna, Maura Dineen, Declan Black, Rowena Fitzgerald, Keelin Cowhey. Front: David Mangan, Adrian Lennon, Jamie Fitzmaurice, Neil Campbell, Daniel Kiely. Absent: Shane Dolan.

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Commercial Property – Assistant to Associate – PP0313
Our client is searching for an experienced commercial property lawyer to advise both domestic and international clients on the full range of property matters including multi-jurisdiction sales and acquisitions, sale and leasebacks, re-financings and investments.

Conveyancing solicitor – Associate to Senior Associate – PP0228
Our client is a successful and dynamic practice seeking a highly competent practitioner who will take on a broad range of transactions to include commercial developments and acquisitions as well as commercial landlord & tenant matters.

Commercial Litigation – Associate to Senior Associate
A leading Dublin firm is seeking a commercial litigation practitioner to deal with high caliber commercial court work. You will be working with a highly regarded team dealing with challenging and often complex cases.

Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471
This Dublin based firm is seeking a solicitor to join their Corporate/ Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

Corporate Finance Solicitor – Assistant to Associate – J00424
Advising financial institutions, government bodies and regulators as well as domestic and international companies, the successful candidate will have exposure to a broad range of financial services including asset finance, insolvency, regulation and secured/ unsecured loans.

Environmental – Assistant – J00375
A leading Dublin firm seeks an ambitious practitioner with experience of providing environmental advice. The role will involve, inter alia: Provision of environmental due diligence advice on property; Corporate and banking transactions; Advising on environmental infrastructure projects; Stand-alone environmental compliance advice.

Financial Regulatory – Assistant – J00505
A top flight firm requires an ambitious assistant solicitor to join its financial regulatory team. The role will involve: Advising clients on practical implications of new regulatory developments; Consumer based financing; Sanctions regimes; Insurance regulation.

Intellectual Property Specialist – Associate to Senior Associate
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