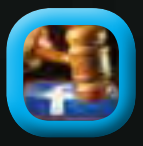
Having your collar felt
Recent white-collar case law has given criminal lawyers something to go on

Jolly green giant
New energy efficiency rules will have implications for all building-sector stakeholders



#21st_century_courts
An Australian court is embracing social media in the name of transparency

gazette
LAW SOCIETY

€4.00 JAN/FEB 2014

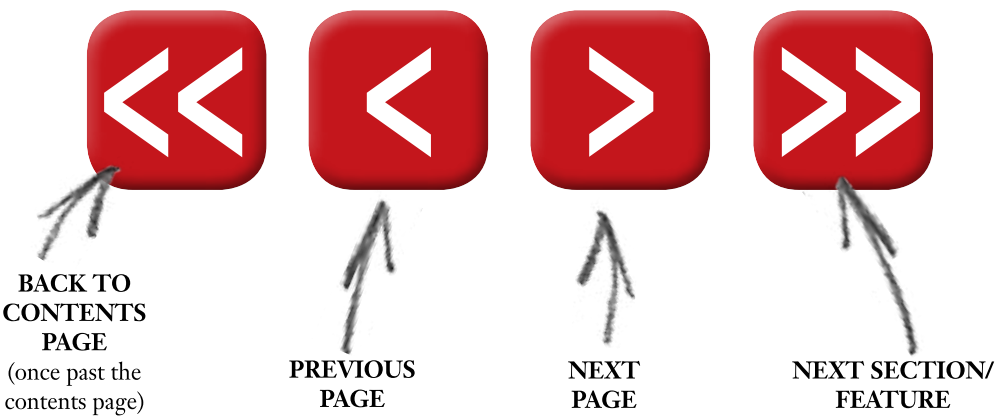
IMA WINNER

THE RIGHT TO LIGHT

Breaches could leave developers in the shade

navigating your interactive

gazette
LAW SOCIETY



... enjoy

A dedicated one-to-one service. Because your time matters.

Private Banking is a personal service where you will experience a new standard of banking. Our dedicated relationship managers provide an exceptional day-to-day banking service, and offer insightful professional guidance to help you achieve your goals. If you have a joint income of over €175,000 you can benefit from this exclusive service for a monthly fee of €36 by contacting us on 01 770 0736.

You'll call it really helpful. We call it Private Banking.

Private Banking

Ulster Bank

Important Information
Terms and conditions apply. Available to over 18s and residents in the Republic of Ireland.
Information correct as at 23 August 2013. Ulster Bank Ireland Limited is regulated by the Central Bank of Ireland. Calls may be recorded.

GETTING IT RIGHT

It is hard to believe that two months have passed since I was appointed as president of the Society, but it has been a very busy time so far.

Prior to my appointment, I had chaired the task force looking into the future of the Society in light of the *Legal Services Regulation Bill*. That task force reported to the Council in July of last year and its report was adopted in full. Acting on the report's recommendations, already the Society has taken steps to beef up its representational role. A programme has also begun to improve how the Society delivers services to its members, and a pilot scheme is under way to assist solicitors in competing for the provision of legal services on the web.

The conclusion of the commitee stage of the *Legal Services Regulation Bill* by the Justice Committee will be on 12 February next. At the time of writing, we await sight of the draft amendments to be considered by the committee on that date.

> It would be a serious breach of citizens' rights to allow the Government access to their legal advice

Pace of progress

Many people have been critical of the rate of progress of the bill and, indeed, many of the substantive issues that were to have been dealt with in the committee stage have been postponed to the report stage for consideration but, in fairness to the minister, he has always maintained that the first draft of the bill was just that: a draft. If the minister is good to his word and has considered all of the sensible amendments put forward by the Law Society, it will, necessarily, have taken his department a significant amount of time to accommodate many of the suggested improvements to the first draft.

Whatever the pace of progress of this bill, it is far more important to the profession and the public that the minister and his department get it right than that the Government is seen to pass a bill quickly. There is too much at stake here for this matter to be rushed at any stage.

Significant cause for concern

The transfer of staff, the setting up of the complaints-handling apparatus, the start-up costs of the regulatory authority, and the ongoing costs of complaints handling are matters that are of significant cause for concern for the Society, and on which detailed submissions have been made to the minister.

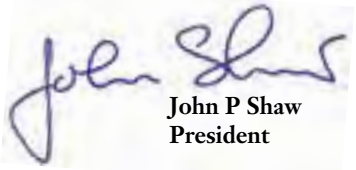
In addition, a separate strong submission has been made in relation to sections 15 and 17 of the bill, as drafted, which contains an attack on legal professional privilege.

Independence of the legal profession is the cornerstone of a democracy. That independence is pretty much worthless if a government, through its agencies or in any way, can gain access to the files of citizens held by their lawyers. Over 50% of the litigation in this country is conducted by or against the State, and it would be a serious breach of citizens' rights to allow the Government access to their legal advice. Legal professional privilege is the right of the client, not the entitlement of the lawyer, and it must be protected as such.

The minister had indicated at committee stage that he is taking legal advice in relation to this matter and is open to amendments in relation thereto. Any dilution of the citizen's entitlement to legal professional privilege will be strenuously resisted.

Threat to independence

Of similar concern is the expressed intention of the minister, which is not contained in the bill, to enable 'alternative business structures' to be established in the legal profession within this jurisdiction. Independence of the legal profession is threatened by such structures, which would enable third parties to invest in law firms. He who pays the piper calls the tune, and there is untold conflict awaiting the new Legal Services Regulation Authority if third parties are allowed to invest in law firms.



John P Shaw
President

gazette
LAW SOCIETY

cover story

features

law society gazette

Blackhall Place, Dublin 7. Tel: 01 672 4828, fax: 01 672 4801, email: gazette@lawsociety.ie

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

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

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

Law Society Gazette
Volume 108, number 1
Subscriptions: €60/€90

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretaries: Catherine Kearney, Valerie Farrell
Printing: Turner's Printing Company Ltd, Longford

regulars

Get more at
www.lawsociety.ie

Gazette **readers can access back issues of the magazine as far back as Jan/Feb 1997, right up to the current issue at www.gazette.ie.**

You can also check out:
- Current news
- Forthcoming events, including the Law Society Annual Conference 2014 in Dromoland Castle, Co Clare, on 25/26 April
- Employment opportunities
- The latest CPD courses

... as well as lots of other useful information

nationwide

New from around the country

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

DUBLIN

'Viva Espana!' for DSBA?

Keith Walsh and his council colleagues have done great work on the *Legal Services Regulation Bill*. This has complemented the excellent work being done by the Law Society task force. The signs are encouraging on a number of fronts.

Dublin colleagues were delighted to note the appointment of solicitor Max Barrett to the High Court recently, where he joins his other illustrious colleagues Mr Justices Peart, Sheehan and White. With several more appointments in the offing, let's hope that the solicitors' profession's 4:1 numerical advantage over our Bar colleagues can be reflected in future appointments.

As we know, the Law Society's conference is being held in Dromoland Castle, Co Clare, this year the weekend after Easter – a fitting location for president Shaw.

Keith Walsh, as many will know, hails from Mayo but, unlike John Shaw, is not likely to be holding his conference in his home county. Neighbours of Keith's in Stoneybatter tell of hearing the melodic sounds of a Spanish guitar! Perhaps, this may be just pre-natal soothing for Keith's beloved Moira, or possibly a clue to the conference's destination! If so, does it point to Bilbao, Seville or a return to Madrid?

The DSBA will hold a dinner for members on 13 June in Thomas Prior House in Ballsbridge. This new event to the calendar will feature also the inaugural award for the 'Law Book of the Year'.

KERRY

Chief Justice visits the Kingdom of Kerry

Patrick Mann (president, Kerry Law Society) welcomed the Chief Justice Mrs Justice Susan Denham to the society's annual dinner on 7 December

Kerry Law Society's year effectively finished on 7 December with its annual dinner. Chief Justice Susan Denham was the special guest. She emphasised the connections between Kerry and the legal community, from the days of Daniel O'Connell right up to the present day. She dealt with the role of the rural solicitor and acknowledged that the downturn had affected country practices in a most acute manner. She stated, however, that the country solicitor was an integral member of the community in which they served, providing a valuable service that often went above and beyond the call of duty.

Reflecting on 40 years in the profession, she spoke on the role of women, remarking on the fact that when she began her career as a barrister, women were rarely members of either profession. This now compares with the 50% of women now serving in the solicitors' profession.

Addressing the impact of EU law on the State, she pointed out that the volume of law being processed in the EU on a daily basis, by each country, was a challenge in terms of keeping up with the changes.

Finally, she dealt with children's rights, discussing the role of the judge in family law cases.

During the question-and-answer forum, it would appear from her replies that the Chief Justice expects the new Court of Appeal to be up and running by the beginning of October 2014, and that the increase in jurisdiction in the Circuit and District Courts will be in place early in 2014.

GALWAY

Ringing in the changes

The new committee elected at the AGM on 13 December 2013 comprises James Seymour (president), David Higgins (vice-president), Cairbre O'Donnell (treasurer), Ronan Murphy (PRO) and John Martin (secretary); committee members: Clodagh Gallagher, Lorna Cahill, Ian Foley, Brendan O'Connor, Grainne McDonagh and Yvonne Francis.

The association wishes to thank all of its members for their support during the year and for the great turnout at the Christmas social.

James Seymour (president) confirms that the committee is currently working on the CPD programme for 2014, which will provide at least 25 hours of CPD, free of charge, to all members who pay their annual membership subscription of €50. All 2014 subscriptions should be sent to Cairbre O'Donnell, GSBA treasurer, C/o John C O'Donnell & Sons, Solicitors, Atlanta House, Prospect Hill, Galway DX 4502 Galway.

MAYO

Concern over closures

Charlie Gilmartin was delighted with the turnout for the Christmas dinner dance in Mount Falcon. Colleagues and their guests from throughout the county attended, including members of the local judiciary.

Fellow practitioners have been particularly concerned about the closure of rural courthouses, with Swinford the most recent (see page 15 of this *Gazette*). While understandable, in the bigger picture it's challenging for those colleagues who practice in the locality of the affected courthouses.

representation

News from the Society's Committees and Task Forces

BUSINESS LAW COMMITTEE

Committee calls for alternative to examinership

The Business Law Committee welcomes the enactment of the so-called 'examinership lite' provisions in the *Companies (Miscellaneous Provisions) Act 2013*, which allow small companies to apply directly to the Circuit Court to have an examiner appointed. The committee recognises the benefit for small businesses to seek examinership through the Circuit Court, but suggests that a more radical and cost-effective approach should still be pursued.

The level of corporate insolvency in Ireland is still very worrying, and it is important to put in place a system that allows viable companies to restructure their liabilities and preserve employment. While the amendment to the rules on examinership is a useful development, it does not deal with the very high cost of an examination as a burden on already weakened companies. Companies seeking an examination in the Circuit Court will benefit from a reduction of the legal costs. However, the change will not alleviate the costs of preparing the required accountant's report and ancillary non-legal costs, which constitute a very significant part of the overall costs.

In December 2011, the committee proposed to the Government that a more radical and cost-effective approach was required, involving the facilitation of corporate voluntary arrangements (CVA). These are well-established mechanisms for dealing with corporate insolvency in many jurisdictions, including Britain.

As part of a CVA, no independent accountant's report is required; rather, the directors prepare a proposal (with the assistance of an insolvency practitioner). The insolvency practitioner gives an opinion on the likelihood of success of the proposal and will then act as nominee to supervise the implementation of the proposal. The CVA has some similarities to the debt settlement arrangements for individuals introduced under the *Personal Insolvency Act 2012*.

The committee believes that amendments to legislation could be made to satisfy concerns expressed as to whether a CVA process would be compatible with the constitutional property rights of secured creditors.

As these mechanisms work well elsewhere at substantially less cost than examinership or its equivalent (we believe somewhere in the order of Stg£10,000 for a relatively small company), the committee suggests that it is appropriate that these arrangements be given due consideration in Ireland.

FAMILY AND CHILD LAW COMMITTEE

Property adjustment orders and lending institutions: let us hear your views

Since 2008 and the drop in value of residential properties, arrangements that were achievable and standard during the 'Celtic' years became extremely problematic, mainly due to the attitude of the lending institutions. As we are all aware, things are dealt with on a case-by-case basis, and there is very little consistency among the lending institutions in relation to the circumstances in which they will consent to the transfer of a property to one spouse and release the other spouse from the terms and conditions of the mortgage.

It is timely, therefore, that the Family and Child Law Committee has been considering this matter and wishes to propose criteria that should and could be taken into consideration by each of the lending institutions for the purpose of issuing an approval to a transfer of a family home into the name of one of the spouses/civil partners.

We would therefore like to invite our colleagues to set out very briefly the facts that could and should be considered relevant in determining whether a lending institution should consent to the release of one party to a mortgage. Any experiential knowledge that you may have and difficulties encountered would be useful in putting together our submission. The names of parties should be redacted.

We feel it is also critical that, if options to transfer a property are going to be on the table in any settlement consultation then, without prejudice to the decisions to be made, both parties should actively cooperate in letters of enquiry going to their lending institution. It is felt that such cooperation can be directed by the county registrar at case progression stage when the issues are being canvassed between the parties.

If colleagues have views that they would like taken into account, please send a short email to committee secretary Colleen Farrell at c.farrell@lawsociety.ie.

representation

EU AND INTERNATIONAL AFFAIRS COMMITTEE

CCBE gives Irish lawyers a strong voice in Europe

The Council of Bars and Law Societies of Europe (CCBE) represents more than one million lawyers across Europe, *writes Eva Massa*. This includes 32 countries with 'full member' status and 11 with 'associate' and 'observer' country status.

Founded in 1960, the CCBE represents European bars and law societies in their common dealings before European and other institutions, including the European Commission, European Parliament, Council of the EU, the European Court of Justice and the European Court of Human Rights.

Similar to the Law Society, the work of the CCBE is carried out by a series of committees and working groups that report to its standing committee and plenary session. The president is elected annually and rotates between different member countries.

Cross-border matters

The CCBE focuses on European cross-border matters that affect lawyers and consults with the European Commission on directives that regulate the profession as well as other issues, including the impact of competition law on the legal profession's core values, market liberalisation, access to justice, and the rule of law.

The body also represents its members in their dealings with global lawyers' organisations and takes part in the annual conferences of the International Bar Association, the American Bar Association and other bodies.

Highly regarded

Ireland is a full member of the CCBE and Irish lawyers are represented through a delegation comprising members of the Law Society and the Bar Council of Ireland.

View of the CCBE plenary session in Brussels, 29-30 November 2013

Members of the CCBE executive team *(front, l to r)*: Michel Benichou (second vice-president, standing), Evangelos Tsouroulis (president, 2013), Aldo Bulgarelli (president, 2014) and Maria Slazak (first vice-president)

The head rotates bi-annually between both institutions, the present being Mr Paul McGarry SC. Irish delegates attend regular meetings in Brussels, at which they contribute to policy papers, identify areas of concern for the Irish profession, and state the Irish position on documents for approval. Delegates report back to the delegation and to their respective committees.

The CCBE has had two Irish presidents – Mr Justice John D Cooke (1985-1986) and John Fish (2002) – and held two plenary sessions in Dublin coinciding with these presidencies.

The input of the Irish delegation is highly regarded within the organisation. Ireland has received the full support of the CCBE in dealing with national issues that were perceived to have a potential negative impact on the profession.

Further information on the CCBE can be found at www.ccbe.eu; and on the webpage of the EU and International Affairs Committee in the members' area of www.lawsociety.ie. The CCBE also publishes its newsletter *CCBE-INFO* three to four times a year.

recent ccbe projects

In recent years, the CCBE has developed important projects and has had a notable impact on European legislation in many fields including:

- **The imperative of professional secrecy when drafting rules on data protection,**
- **The right of access to a lawyer in criminal proceedings (with the European Parliament choosing to follow the CCBE recommendations in this regard),**
- **Contribution to European Commission consultation in the area of company law (including the issues of single-member limited liability companies and cross-border transfers of registered offices),**
- **The e-Codex project that aims to link national e-justice systems to each other so as to permit electronic communication between them, including the participation of lawyers in cross-border e-proceedings,**
- **The charter of core principles of the European legal profession and code of conduct for European lawyers (2008),**
- **Support for lawyer victims of human rights violations around the world.**

Max Barrett appointed High Court judge

Solicitor Max Barrett has been appointed as a judge in the High Court, *writes Caoimhe Harney*.

Barrett, who qualified in 2001, was educated at Trinity College Dublin, University College Dublin and the University of Salford in Britain.

He is the former head of legal and compliance at both Danske Bank Ireland and Rabobank Ireland. Barrett also served as company secretary of IBRC (formerly Anglo Irish Bank), which he joined in 2010 following the bank's crash. Before his nomination, he was head of legal at SEB International Assurance in Dublin. He has written extensively on anti-money-laundering and anti-terrorist-financing legislation.

PIC: COLLINS

New High Court judges *(from l to r)*: Ms Justice Bronagh O'Hanlon, Mr Justice Max Barrett and Ms Justice Marie Baker

At 42, he is one of the youngest High Court judges ever. Also appointed as High Court judges on the same day were Bronagh O'Hanlon SC and Marie Baker SC.

Employment law catch-up

Matheson has launched a new series of podcasts focusing on Irish employment law.

Each episode consists of short, conversational overviews of significant recent cases and key developments in legislation of interest to employers.

Presented by Bryan Dunne (head of Matheson's employment group), they are aimed at HR practitioners, employment lawyers, in-house counsel and employers.

The podcasts can be downloaded at www.matheson.com/pages/employment-law-podcast.

Track your points with 'CPD Tracker' app

A&L Goodbody has launched a CPD tracker app – a useful resource for those who need to keep track of their continuing professional development (CPD) status.

The 'A&LG Legal CPD Tracker' app includes a CPD log that automatically calculates a user's outstanding CPD for the year and contains FAQs on CPD rules. It also allows all CPD records to be exported via email as a spreadsheet attachment. This useful function will prove useful to legal teams who wish to keep track of the training received by members and to help share material and other knowledge.

The firm's partner and head of knowledge, Paula Reid, says: "The ability to log attendance at CPD events 'on the go' on a smartphone will avoid the year-end challenge of trying to remember what training was actually received. It is also a very helpful resource for finding opportunities to meet CPD requirements."

The new app is part of a suite of online tools developed by the firm in the past 18 months that includes: 'Irish HR Law A-Z' and 'The Irish Data Privacy' app. The app is free to download on iPhone, iPad and Android.

Liam heads for the Áras

PIC: DEREK SPEIRS

Liam Herrick, the executive director of the Irish Penal Reform Trust (IPRT), is leaving to take up the position of adviser to the President of Ireland, Michael D Higgins. Liam starts in his new role on 10 February 2014.

The post of executive director for IPRT will be advertised shortly. Contact recruit@iprt.ie for further information. IPRT campaigns for prisoners' rights and reform of Irish penal policy.

Legal aid increase mainly due to State actions

The amount paid to criminal legal aid practitioners received media coverage across the national broadsheets on 24 January. The total bill has increased by €760,000 to €47.78 million.

Director general Ken Murphy has pointed out that this is due to an increase in the number of sittings and prosecutions brought by the State. Murphy said that criminal legal aid fees "are at a level bordering on uneconomical for a lot of legal firms". He added that "political promises have been made to others that, when the economy improves, public service salaries will be restored, and I would expect in better times that the cuts in legal-aid rates to lawyers must be reversed. It will and must happen soon."

AIB PRIVATE BANKING

Patrick Farrell,
Head of Private Banking

DELIVERING NEW STANDARDS IN BANKING FOR PROFESSIONALS.

You spend each day advising people on their legal matters, but who's looking after your financial affairs and the needs of your family? AIB Private Banking offers a dedicated banking service for legal professionals.

A busy career in law can leave you with little time to look after your own financial affairs. AIB Private Banking is an exceptional new banking experience, offering exclusive, highly-personalised banking to legal professionals and other individuals who require a more proactive, responsive banking relationship from AIB.

At AIB Private Banking, we offer you direct and confidential access to a Relationship Manager. They will help you to efficiently manage your daily banking transactions and best manage your finances to achieve your goals, freeing up your time for your career and your family. Each dedicated Relationship Manager is supported by an expert banking team, to ensure a responsive service where you take priority.

WE MAKE BANKING EASY,
SUPPORTING YOUR BIG DECISIONS,
HELPING YOU TO PLAN FOR THE FUTURE.

SUPERIOR STANDARDS & SERVICE LEVELS

AIB Private Banking is committed to making daily banking easier and more time-efficient for its most highly-valued clients, by introducing new standards and service levels. As an AIB Private Banking client you can contact your Relationship Manager for a prompt response on a range of financial issues, from ordering a new credit card or currency to transferring funds, or more complex financial issues you need information on, such as your mortgage or your pension.

Your Relationship Manager can manage many banking tasks by phone, email or fax ensuring a prompt, efficient service. This greatly reduces the amount of time that you need to give to your banking commitments, giving you the peace of mind that comes with confidential and trusted expertise.

Our team at AIB Private Banking is dedicated to follow-through on all commitments to you, doing the small tasks exceptionally well. You can also benefit from the most advanced digital banking services in Ireland.

A RETURN TO THE TRADITIONAL BANKING MODEL

Patrick Farrell, AIB's new Head of Private Banking, who is responsible for rolling out this new service, is clear in his motivations and aspirations for AIB Private Banking. "What we are aiming for is a return to the up-front values of trust and personal service that were traditional in the banking relationship. Our most highly valued clients are often those who have the least time to look after their financial affairs, such as those working in law, for example.

By delivering the highest level of day-to-day banking and the most advanced digital banking service, we can provide the premier banking experience for our clients. Our goal is to help them to meet their life objectives, giving them the support and advice they need to plan their financial futures. We place the client's long-term interests at the heart of the banking relationship, and are proactive in delivering solutions that will serve their needs and the needs of their family members through all life stages."

We would be delighted to discuss how our new AIB Private Banking services can benefit you. Typically our clients have an annual salary or income which exceeds €250,000. If this applies to you, talk to us about a better banking service which is tailored for you.

To find out more about AIB Private Banking, contact
Patrick Farrell: Telephone 01-6417634 or email patrick.a.farrell@aib.ie

Gazette celebrates awards wins with launch of brand new look

The *Gazette* won 'Best Magazine of the Year' at the Irish Magazines Awards in the business-to-business category yet again. It also won the trophy for 'Magazine Cover of the Year' *(pictured below)*.

The awards, presented at a glittering gala ceremony in Dublin's Marker Hotel on 5 December 2013, were attended by the *Gazette* team – editor Mark McDermott, deputy editor Garrett O'Boyle and art director Nuala Redmond – as well as the Society's top brass, in the persons of director general Ken Murphy, deputy director general Mary Keane, and director of representation and member services Teri Kelly.

On the podium, McDermott paid tribute to the *Gazette* team for their creativity, dedication and superb teamwork. He also praised the invaluable input of the *Gazette* Editorial Board, led by Michael Kealey, in initiating article ideas and providing vital direction on the latest developments.

Keynote speaker and former director-at-large of *Hello!*, Sally Cartwright, singled out the *Gazette* for particular praise, saying: "I love the marvellous individuality of the *Gazette* and its extremely high editorial standards. It's quite unique!"

PIC: PAUL SHERWOOD

Celebrating on the double at the Irish Magazine Awards were *(l to r)*: Mark McDermott (editor), Nuala Redmond (art director), Mary Keane (deputy director general), Garrett O'Boyle (deputy editor) and Teri Kelly (director of representation and member services)

PIC: GAZETTE STUDIO

SIGNIFICANT REVAMP

no resting on our laurels!

Despite the awards, the *Gazette* continues to seek to improve its content, design and digital functionality. The redesigned magazine is now in your hands – and on your screen.

As part of the redesign, the online version – available at www.gazette.ie – has been significantly revamped. For the first time, the digital version is being produced as an interactive PDF. Useful hyperlinks to legislation, judgments, reports and websites are included throughout – a handy reference feature.

Should they so wish, advertisers can avail of added-value features that will make their advertisements more interactive.

Responsive

In the near future, a flip-page, responsive design will be introduced – meaning that readers can read and interact with the *Gazette* comfortably on their format of choice, whether that be a tablet, smartphone, laptop or desktop.

The search facility will improve too, due to the introduction of new technology.

The *Gazette* team is also working on a new app, which will follow later in 2014.

In addition, readers will soon be able to order annual subscriptions, individual copies of the *Gazette*, as well as folders for your hard-copy magazines online, through an online shopping cart.

The *Gazette* has already begun using social media to flag significant news and *Gazette*-related material in advance of publication. Follow us on Twitter at #edlawgazette.

We are making these changes to ensure that we keep up to date with the latest publishing developments – and to provide our readers with the digital formats they require to stay informed while on the move.

Feedback on both formats of the new-look *Gazette* should be emailed to gazette@lawsociety.ie or tweeted to @edlawgazette. We look forward to hearing your views.

Ar mhaith leat a bheith ar Chlár na Gaeilge?

The PPC II elective Advanced Legal Practice Irish (ALPI)/*Ardchúrsa Cleachtadh Dlí as Gaeilge (CDG Ardchúrsa)* is open to practising solicitors who wish to be registered on the Irish Language Register (Law Society)/*Clár na Gaeilge (An Dlí-Chumann*).

In order to be entered onto the Irish Language Register, a solicitor must take this course and pass all assessment and attendance requirements.

The course will run from 17 April until 19 June 2014. Lectures and workshops will be delivered on Thursday evenings from 6-8pm at the Law Society (lectures in weeks 1 and 2 will be made available online, so physical attendance on those particular Thursday evenings is not required). The Advanced Legal Practice Irish Course was awarded the European Language Label 2012.

This is a blended learning course: in addition to physical attendance on the specific Thursday evenings, participants will be required to complete individual and group coursework online in between each session.

PIC: GAZETTE STUDIO

Due to the group work logistics of this course, attendance at all of the Thursday evening workshops is essential (apart from weeks 1 and 2).

Assessment will combine continuous assessment and an end-of-course oral presentation. It is recommended that course participants have a good level of IT skills and be familiar with web browsing, word processing, uploading/downloading files, and watching online videos. A Leaving Certificate Higher Level standard of Irish is a minimum standard. In advance of course commencement, participants will be invited to attend IT clinics to become familiar with the technology used in the course.

This course will fulfil the full practitioner CPD requirement for 2014, that is, 15 hours of CPD, including one hour of regulatory matters and three hours of management and professional development skills.

The fee for 2014 is €625. The closing date for applications is Friday 14 March at 5pm. Further information is available on the Law Society website.

For details and an application form, contact Robert Lowney/Roibeard Ó Leamhna by email: r.lowney@lawsociety.ie or tel: 01 672 4952.

2012
European Language Label
An Séala Eorpach Teanga

Committee's report recommends Copyright Council of Ireland

The Government-appointed Copyright Review Committee published its report and recommendations on 29 October 2013. The report, *Modernising Copyright*, is available on the DJEI website.

The three committee members appointed to carry out this task were Patricia McGovern (DFMG Solicitors and chair of the Law Society's Intellectual Property Law Committee), Dr Eoin O'Dell (Trinity College) and Prof Steve Hedley (University College Cork).

The report was written after a consultation process that took two years and involved the consideration of approximately 280 submissions – the result of a two-stage consultation process.

The recommendations in the report consider and balance the needs and interests of those who create and publish (the rights owners) and those who wish to use, share or transform the works (the copyright users).


Patricia McGovern

The result is a report that has, as a central recommendation, the establishment of a Copyright Council of Ireland. The council would be self-financing and have the remit to educate, advise and advocate nationally and internationally on copyright matters. It would also establish a Digital Copyright Exchange, a voluntary alternative dispute resolution service, and an Irish Orphan Work Licensing Agency.

In addition, there are recommendations for specialist intellectual property tracks in the District and Circuit Courts and the renaming of the Controller of Patents, Designs and Trade Marks to the Controller of Intellectual Property. The report contains strong recommendations to resource the courts and controller's office to enable them to function.

Other recommendations protect rights owners by extending available remedies, technological protection measures and rights management information. The recommendation to strengthen copyright protection for metadata should benefit photographers.

The position of users should be improved by introducing the full range of exceptions permitted by EU law. These should include format-shifting, parody, education, disability and heritage, as well as related exceptions for non-commercial user-generated content and content mining.

Also, copyright deposit libraries should benefit from the extension of existing legal copyright provisions to digital publications. All users should benefit from a recommendation that any contract term that unfairly purports to restrict an exception permitted by the act should be void.

In addition to making the recommendations for reform, the committee has drafted the necessary legislation in the form of the draft *Copyright and Related Rights (Innovation) (Amendment) Bill 2013*. In this area so influenced by rapid changes in technology, it is imperative that, if these proposals are acted on, it should be without any unnecessary delay.

A public forum was held on 9 December 2013 at the Royal Irish Academy on Dawson Street to allow the committee to present the findings contained in its report.

Society outlines facts of swift action on Byrne

Murphy: "Byrne was a criminal who in no way represents the profession"

Thomas Byrne was sentenced to 12 years on 2 December for fraud, theft and forgery, *writes Teri Kelly, director of representation and member services*. Byrne has the distinction of being the largest white collar criminal in the history of the State. He was also a former solicitor who committed his crimes in his work as a solicitor.

The reputational damage that a rogue solicitor like Byrne can inflict on an honest, upstanding and trustworthy profession is enormous. It was the Law Society's duty during this episode to represent the overwhelming majority of solicitors and to convey to the media – and therefore the public – that Byrne was a criminal who does not epitomise the profession, and that the Society acted swiftly and appropriately to remove him from practice.

The Law Society, led by director general Ken Murphy, undertook a strategy of full engagement with the print, radio and television media. Guided by our core media relations principles of transparency, availability and honesty, our key aim was to tell the facts about what happened.

We prepared a comprehensive press release and timeline detailing the Law Society's dealings with Byrne, which was distributed widely to media outlets. These showed that the Society shut down Byrne's practice faster than at any time in its history. Two days was all it took from the moment the Law Society discovered Byrne's fraud to changing the locks on the doors of his practice. In addition to covering this press release, *The Irish Times* published an article by President John P Shaw that, among other messages, emphasised that Byrne is an outlier and a criminal and in no way represents the solicitors' profession.

Ken Murphy appeared on RTÉ television's *Six One News* and *Prime Time* on the day of sentencing and followed up those appearances with a half-hour radio discussion with Pat Kenny on Newstalk and, later that day, with Matt Cooper on Today FM. Clearly, the Law Society was doing its duty – being forthright and forthcoming with all of the details.

While some of the media coverage was inaccurate, the majority of coverage was fair and balanced. It is an essential part of the democratic process that the media play their role asking the tough questions, and the Law Society welcomes this scrutiny.

Protecting the reputation of the solicitors' profession and of the Law Society of Ireland is a key goal of our increased focus on representing our members. Our work during the Thomas Byrne affair went some way toward representing the honest solicitor in the face of the media's focus on one thief.

THERE'S AN APP FOR THAT

An iOS solution to an iOS problem

APP: GOODREADER **PRICE:** €4.99

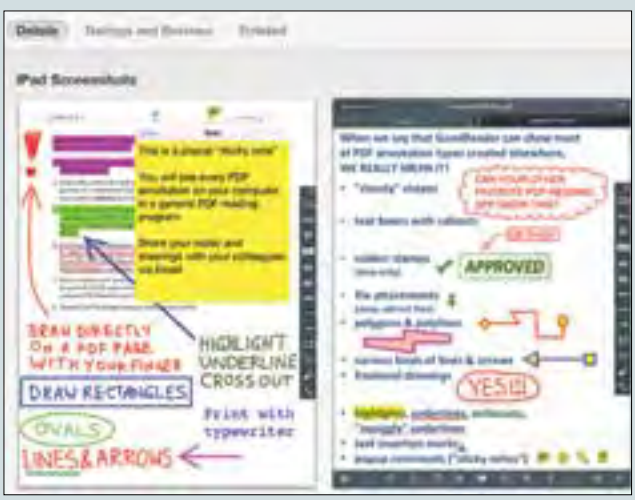
Goodreader **is one of those apps that leaves you wondering how you managed some of your files and documents without it,** ***writes Dorothy Walsh.*** **It is a paid-for app, at €4.99 from the App Store, and while there is a free version, the paid-for version offers so much more in terms of functionality to make it worth purchasing.**

What the ***Goodreader*** **app does apart from anything else is to solve a problem we all experience in sending documentation via email on the iPad. I found that where I produced several documents in** ***Pages*****, together with, perhaps a spreadsheet in** ***Numbers*****, I was having to send these documents in separate emails, as the iPad email app does not allow you to search through the device and attach emails in the way you would using a PC.**

I tried a number of methods to send multiple attachments via email on iPad and none worked. Catherine Taaffe, a solicitor in Ardee, Co Louth, kindly advised me that ***Goodreader*** **is just the app to solve this problem.**

What you do is use the 'open in another app' function button on each of the documents and choose to open these document in ***Goodreader*****. Once you have opened all of the documents you want to email together, go into the** ***Goodreader*** **app, highlight the documents you wish to email, and then click on the 'send by email' function. You will then be brought to the email app and, hey presto, all of the documents will be included in the email as attachments – all ready to go in one email!**

As if this wasn't enough, ***Goodreader*** **also allows you to listen to audio, watch video, open, view and mark-up PDF documents. If you synchronise your** ***Dropbox*** **account to allow** ***Goodreader*** **to access** ***Dropbox*****, you can manage your** ***Dropbox*** **account and documents with** ***Goodreader*** **too. It is definitely one of those apps that solves a very annoying problem while, at the same time, allowing you to discover even more functionality and an opportunity to get so much more out of your iPad.**



DATE FOR YOUR DIARY

25th/26th April 2014

Law Society of Ireland

Law Society Annual Conference

Dromoland Castle, Co Clare

CONFERENCE RATES

Full delegate package: €300
Access to full conference, Black Tie Gala Dinner on Friday, 25th April, B&B accommodation for one night sharing with another delegate or registered accompanying person and a light lunch on Saturday, 26th April, all in Dromoland Castle. If you will not be sharing and request a single room, a single supplement of €75 will be charged.

Accompanying person package: €200
One night's B&B accomodation (Friday, 25th April) sharing with a delegate, Black Tie Gala Dinner on Friday, 25th April, light lunch on Saturday, 26th April.

Additional night: €200
B&B accomodation per room

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

Minister announces *in camera* reforms

Changes to the *in camera* rule for family law and child care proceedings have been announced by Justice Minister Alan Shatter, *writes Caoimhe Harney.*

The changes will allow the media to report on family law proceedings, under strict conditions. The reforms are designed to address the need for public access to important information on the operation of family and child care proceedings in the courts.

Minister Shatter said that the changes would add "valuable information to the public, judiciary and legal professionals" on the operation of family law by the courts. "The public's right to know has to be balanced with a family's right to privacy," he added.

The new legislation prohibits the reporting of information likely to identify the parties to the proceedings or any children to whom the proceedings relate. Breaches of this prohibition will constitute a criminal offence and those found guilty may be liable to a maximum fine of €50,000 and/or a term of imprisonment up to three years.

Minister Shatter: 'Public's right to know has to be balanced with a family's right to privacy'

Part 2 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013* amends section 40 of the *Civil Liability and Courts Act 2004*. The change means that *bona fide* representatives of the press will be allowed to be present in court during such proceedings. This will allow members of the media, researchers and legal professionals to gain access to valuable information on how family law operates in Ireland.

However, family courts will have the power to exclude representatives of the press from the court or restrict their attendance during hearings or parts of hearings. The court may restrict or prohibit the publication or broadcasting of evidence given or referred to during the proceedings, where a court is satisfied that it is necessary to do so:

- **In order to preserve the anonymity of a party to the proceedings or any child to whom the proceedings relate,**
- **By reason of the nature or circumstances of the case, or**
- **As is otherwise necessary in the interests of justice.**

Past-president, Judge Frank O'Donnell – RIP

The death has taken place of past-president of the Law Society and retired Circuit Court judge Frank O'Donnell, at the age of 72. Mr O'Donnell, a native of Burtonport, Co Donegal, was the son of the late Pa O'Donnell TD, who had also served as president of the Law Society.

A partner in Bell, Branigan, O'Donnell & O'Brien, which he helped found, he was one of the initial three practising solicitors to be appointed a judge of the Circuit Court, in 1996. He served as Law Society president in 1983-84.

To his wife Maeve and children David, James, Philip, Fiona and Deirdre, his brother Donal, sisters Terry and Clodagh, and family and friends, we extend our deepest sympathy.

Ar dheis Dé go raibh a anam dílis.

PIC: LENSMEN

The first practising solicitors to be appointed judges of the Circuit Court, in 1996, were *(l to r)*: Frank O'Donnell, John F Buckley and Michael White

Court fees

The Resource Management Directorate of the Courts Service has revised its court fee refund policy. All court fee refund applications received by the Courts Service from 1 January 2014 will be determined by the updated policy.

Court fees will only be refundable where a fee has been imposed, collected or overpaid arising from a mistake. Examples include:

- **The document on which the fee was paid does not require a fee under the court fees order,**
- **The court fee paid was in excess of what was required to be paid under the court fees order,**
- **A duplicate document is stamped in relation to the same case,**
- **There is an error on the face of a document and an amended document has been lodged with the relevant court office,**
- **The fee has already been paid by another paarty in relation to the same case.**

A fee is not refundable in the event that (a) following payment of the court fee, a decision has been made not to proceed with the application, or (b) an area exemption has been granted prior to a licensing application being made for a special exemption within the same area and during the same period.

No refund will be granted if the fee was stamped over six years prior to the refund application.

An unused stamp cannot be transferred for use on another future application.

Applications for court fee refunds should be made to: Finance Unit, Resource Management Directorate, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7, by completing the relevant application form (available from www.courts.ie) and attaching/enclosing the original stamped document.

LawCare's website gets some TLC

LawCare has recently redesigned its website to make it more accessible and user friendly. The service is synonymous with providing advice and support to lawyers, their immediate families and staff suffering from stress, depression and addiction.

Helpline numbers are easier to find, and the site contains a complete repository of all of LawCare's helpful information packs on alcohol, stress, depression, bullying, as well as sleep and eating disorders.

It's also easier to find help if worried about others. The 'give help' section offers advice to those looking to support colleagues, friends or family members.

Several of the pages on stress, alcohol and depression include a quick and simple self-test to help people gauge for themselves whether they might have a problem that needs to be addressed.

LawCare would like to hear your feedback on the website. Email your comments to mary@lawcare.ie.

stress testing

For a limited time, LawCare's coordinator in Ireland, Mary Jackson, is giving a second round of seminars to help lawyers cope with the stresses and strains involved in their job.

The Law Society has provided funding to cover the costs. Mary has already visited Kerry, Waterford, Kildare, Mayo and Galway, with more bookings for Monaghan and Meath in the diary in spring.

If you're interested in booking a seminar for your bar association event, please email her at mary@lawcare.ie or call 1800 991 801.

Four Courts rooms refurb recognised

The refurbishment work done on the Law Society's consultation rooms in the Four Courts was shortlisted for the 2013 Fit Out Awards in the category 'office (small)'.

The awards took place in December and the works achieved a finalist certificate. It's great to be included in company such as Google offices, the Morrison Hotel, Hanover Medical Centre and many others!

Goodbody's Chinese Lawyers Programme on the up

A&L Goodbody's ongoing development of its Chinese Lawyers Programme is helping it build its international business with that country. The first and only programme of its type run by an Irish law firm, its aim is to strengthen links with Chinese business.

Managing partner Julian Yarr said that "investment into Ireland is a key driver in the recovery of the Irish economy, and this initiative continues to be a key part of the firm's strategic international growth".

The programme was officially launched by Taoiseach Enda Kenny in March 2012 in Beijing. A&L Goodbody has agreements in place with a number of the top law firms and universities in China and, to date, over 30 senior Chinese lawyers have spent up to six months in the firm's Dublin office.


Participants in the A&L programme

Although the programme is a long-term investment by A&L Goodbody in developing Irish-Sino business, it has already enjoyed great success. The Chinese lawyers have proved to be a fantastic addition to the firm, both culturally and from a business development perspective.

Zuhuan Huang, who has just recently returned to Shanghai from A&L Goodbody, is very positive about her experience: "A&L's programme is one of the most creative and best organised among similar ones I've heard about."

As part of its Chinese University internship programme, A&L Goodbody is set to welcome students from East China University of Political Science and Law (ECUPL) in 2014. The first students will arrive in February 2014. ECUPL is one of the top universities in China and is a feeder university for top law firms and corporates there.

Ballyhaunis Courthouse shuts door on 139-year history

Tuesday 3 December 2103 saw the closure of Ballyhaunis Courthouse after 139 continuous years of service, *writes Evan O'Dwyer*. This continues the sequential closure of District Court venues in the county. Where once there were 21 venues in Mayo, there are now four. As a result, there are now more Tescos in Co Mayo than sitting courts!

The business of the court has now moved to Castlebar, in what is widely regarded as a jettisoning of District Courts in favour of the creation of a county court.

This closure has saved the Irish taxpayer the princely sum of €14,700 per annum, which is the cost of light, heat and insurance for the building. As against that, the cost of moving battalions of gardaí and State witnesses to a new court venue 60km away is as yet unknown, but is believed to be far greater.

PIC: JOHN O'GRADY

Inside the courthouse on its last day of service on 3 December 2013 *(from l to r)*: Michael Keane, Mary Teresa Griffin, Brian O'Connor, Conor O'Dwyer, Charlie Gilmartin, John Dillon Leetch, Sgt Kieran McNicholas, retired Judge Bernard Brennan, Judge Mary C Devins, Ailish McGuinness, Evan O'Dwyer, Superintendent Joe Doherty, Brendan Donnelly, Dermot Hewson, Mike Griffin

The closing of Ballyhaunis Courthouse now means that there is no purpose-built courthouse from Castlebar to Galway (a distance of 80km) or from Castlebar to Castlerea (68km). That means 5,200km² of countryside without an operating courthouse.

The purpose-built courthouse was constructed in 1872, with the first court session sitting in 1874.

Until 1957, the building acted as a District Court office, with the late Tim Forde being the last permanent District Court clerk assigned to Ballyhaunis. His office contains many original documents and summonses, warrants, recognisances and notices of appeal yet to be completed. The old typewriter that churned out the summonses and court day books still remains on Tim Forde's desk in the loft.

Ballyhaunis is not unique among courthouse closures. The history attaching to these venues is being lost forever, with the danger that stories of truth will become legendary tales, soon to be forgotten.

Who could believe in today's world that it was an offence to sell potatoes without a licence? This office defended a Peter Fitzmaurice of Bridge Street, Ballyhaunis, for selling potatoes without having the requisite certificate of registration to act as a retail dealer of potatoes.

All this priceless history of people's personal trials is set to be lost forever, archived, or shredded as the Office of Public Works takes possession of the building.

Travellers take complaint to Europe

Irish Travellers are seeking to have the State's failure to provide access to adequate and suitable accommodation for an estimated 30,000 Travellers in the Republic of Ireland to be held in breach of the Council of Europe's *Revised European Social Charter, writes Susan Fay (Irish Traveller Movement Independent Law Centre).*

Ireland signed and ratified the charter and accepted the collective complaint mechanism on 4 November 2000. The complaint is brought by the European Roma Rights Centre, an international non-governmental organisation with consultative status at the Council of Europe and an entitlement to submit collective complaints.

The complaint is based on research undertaken by the Irish Traveller Movement (ITM) and the Irish Traveller Movement Independent Law Centre (ITMILC). If the Government is found to be in breach of the charter, the Government would be pressurised to remedy any breaches upheld.

Solicitors, barristers and organisers who attended the Council of Europe Lawyer Training programme on Roma/Traveller Rights on 5 December 2013 at the Central Hotel, Dublin

The complaint sets out examples of evictions in practice, including the reported eviction of a family in South County Dublin on a Christmas Eve morning and the reported eviction of a family of five in Waterford City without offering alternative permanent accommodation, in circumstances where one member of the family had Down Syndrome and other medical needs, and another had serious heart problems.

Practitioners interested in learning more about the work of the ITMILC, or who are interested in taking public interest law cases on behalf of members of the Traveller community, should contact the law centre by email: susan.fay@irishtravellermovement.ie or tel: 01 679 6577.

ROSCOMMON BAR ASSOCIATION

The Roscommon Bar Association hosted a function recently to mark the appointment of William Lyster as a judge of the Insolvency Courts. Over 60 practitioners from the Roscommon, Leitrim, Longford and Sligo bar associations, and from the Roscommon Courts Service, enjoyed a reception and dinner, followed by a jazz session till the early hours. Judge Lyster was accompanied by his wife Mary and their two daughters, Ita and Helen, both of whom are practising solicitors. Presentations were made on behalf of the Roscommon Bar Association to Judge Lyster

TD receives parchment

Labour TD for Galway West, Derek Nolan is the newest member of the Oireachtas to become a member of the solicitors' profession. Derek was elected during the 2011 general election. He was nominated by the Labour Party topping the poll in Galway West as a first-time candidate following the election as President of Ireland of Michael D Higgins. He is seen here at his parchment ceremony with High Court judge Mr Justice Michael Peart and Law Society director general Ken Murphy

Insolvency book launch

At the recent launch of the book *Buying and Selling Insolvent Companies and Businesses in Ireland* were the authors (*l to r*): Ted Harding (barrister), Bill Holohan (senior partner, Holohan Solicitors) and Gerard O'Mahoney (partner, PwC)

At the annual gala dinner of the IWLA were *(from l to r)*: Attracta O'Regan (Law Society Skillnets), Maura Butler (chairperson, IWLA), Claire Loftus (Director of Public Prosecutions, IWLA Honoree 2012), Ms Justice Maureen Clark (president, IWLA) and Máire Whelan SC (Attorney General, IWLA Honoree 2011)

The IWLA president, standing committee and strategy advisor at the IWLA annual dinner *(centre front, l to r)*: Maura Butler (chairperson) and Ms Justice Maureen Clark (president). *(Back, l to r)*: Aoife Redmond, Sarah Harmon, Denise Roche, Rosemary Rodgers, Grainne O'Neill, Nicola O'Neill (MD Harvest Resources Ltd), Jane Murphy, Edel Ryan, Elaine Conlan, Sile Larkin and Aoife McNickle

Chief Justice Mrs Justice Susan Denham was the guest speaker at the Kerry Law Society's annual function on 7 December in Tralee, where she met with some of the society's members

Attending a highly successful CPD event in Castleblayney, organised by Monaghan Solicitors' Bar Association towards the end of 2013, were *(l to r)*: Lynda Smyth (Coyle Kennedy MacCormack), Sarah Gormley, Daniel Gormley, Claire Gormley (Gormley Solicitors, Monaghan) and Justine Carty (Barry Healy & Co) in the Glencarn Hotel, Castleblayney

The *Hibernian Law Journal's* annual lecture took place on 26 November 2013 at the Education Centre, Blackhall Place. Among those attending were *(front, l to r)*: Mr Justice Michael Peart, David Leigh, Prof John Horgan and Gerry Beausang (Eversheds). *(Back, l to r)*: Dannie Hanna (Arthur Cox), James Lawless (Arthur Cox), Rob Vard (Eversheds), Naomi Barker (Eugene F Collins), James Roche, Eltin Ryle and Thomas Ryan (all ByrneWallace), Brendan Curran (A&L Goodbody), Rosemary Hennigan (McCann FitzGerald) and Cathy Grant (Mason Hayes & Curran)

ILHS HOLDS WINTER DISCOURSE IN STORMONT

The Irish Legal History Society held its AGM in the Stormont Hotel on 8 November 2013, *writes Robert D Marshall*. In addition to approving the reports, it elected its officers and council for the year 2013/14 and amended and restated its constitution. Full details of the new council and the constitution can be found on the society's website at www.ilhs.eu.

Following the meeting, by invitation of the Minister of Justice and leader of the Alliance Party Mr David Ford MLA, a reception for members of the society and their guests was held in the Long Gallery of the Parliament Buildings at Stormont. Sponsored by the Law Society of Northern Ireland, the reception was a celebration of the 25th anniversary of the foundation of the society in 1988. The society was honoured to welcome its two patrons, the Lord Chief Justice of Northern Ireland Sir Declan Morgan, and the Chief Justice of Ireland Mrs Justice Susan Denham.

At the reception, a volume to commemorate the 25th anniversary entitled 'Changes in Practice and Law' was launched. Before introducing the speakers, Sir Donnell Deeny, a vice-president of the society and a High Court judge in Northern Ireland, spoke briefly about the Parliament Buildings. He noted how, upon the purchase of the Stormont demesne in 1921, the then government of Northern Ireland had envisaged a parliamentary, judicial and administrative complex, but that the judiciary had preferred to locate the courts at an independent location and the courts had been built at Chichester Street.

Daire Hogan solicitor, David Ford MLA, Prof Colum Kenny, Chief Justice Susan Denham, Dr Conor Mulvagh and Sir Declan Morgan

Mr Ford in launching the volume spoke of his perceptions of the law and the changes that he had seen since he had been involved in social work, and how these perceptions had assisted him in his work as minister of justice. He commended the volume as a record of some of the changes in practice and personnel in the law, particularly in legal education and the role of women. He wished the society well in its continuing endeavours.

'Winter discourse'

Dr Conor Mulvagh then delivered the winter discourse, speaking to the title 'Legislative Landmine? Evaluating the Third Home Rule Bill'. This groundbreaking paper examined the bill introduced in 1912, enacted in August 1914, but suspended for the duration of the First World War. Having outlined how it had built upon Gladstone's first two 'Home Rule Bills', Dr Mulvagh examined the bill in detail, particularly the consequences for parliamentary arithmetic of continuing Irish representation at Westminster. The discourse also set the bill in the context of legislation establishing parliaments in the dominions of the British Empire and was supported by helpful slides depicting the personalities involved and relevant section text.

The society looks forward to publishing Dr Mulvagh's discourse in its next collection of addresses and papers.

The 2014 spring discourses will take place in the Ulster Museum on 21 and 22 February. Professor Lord Bew will speak about 'Parnell and the Law' on Friday and Professor Peter Gray will speak on the Saturday morning about enacting a 'Poor Law' for Ireland, Sir Anthon Hart about 'The Law in Action in Ulster in 1898' and Dr Thomas Mohr on 'The Oath in the Anglo Irish Treaty of 1921'. Further details are on www.ilhs.eu. All are welcome to these discourses.

New Council elected

President: **Robert D Marshall;** ***council members:*** **Prof Norma Dawson (*ex officio*), Dr David Capper, Dr Kevin Costello, Sir Donnell J Deeny, Dr Seán Patrick Donlan, Dr Kenneth P Ferguson BL, Hugh Geoghegan, Dr Patrick Geoghegan, John G Gordon, Sir Anthony R Hart, Prof Desmond Greer QC (hon), Dr Robin Hickey, Daire Hogan, Dr Niamh Howlin, Prof Colum Kenny, Felix M Larkin, John Larkin QC, Brett Lockhart QC, John Martin QC, James I McGuire MRIA, Dr Thomas Mohr, Yvonne Mullen BL and Prof J Ohlmeyer.**

DIPLOMA IN LEGAL FRENCH

Guests and lecturers attending the conferral of the Diploma in Legal French were: Simon Murphy (chairman, Education Committee), Dr Geoffrey Shannon (senior lecturer, family law), Freda Grealy (diploma manager), Deirdre Flynn (course leader, diploma co-ordinator), Kevin O'Connor (member of the Alliance Française Dublin board of directors), Philippe Milloux (director, Alliance Francaise Dublin), François-Christophe Crozat (corporate service manager, Alliance Francaise) and Flavien Corolleur (lecturer, diploma in legal French)

DIPLOMA IN CORPORATE LAW AND ENFORCEMENT

Guests and lecturers at the conferring of the Diploma in Corporate Law and Enforcement included: Simon Murphy (chairman, Education Committee), Dr Geoffrey Shannon (senior lecturer, family law), Mr Justice Peter Charleton (High Court), Freda Grealy (diploma manager), Olga Gaffney (course leader, Diploma Centre) and Stephen Dowling BL. Those conferred included: William J Brennan, David C Byrne, Edel Coughlan, John Donovan, Bob Frewen, Kevin Geraghty, Cathal Hester, Justine Keane, Jacinta Lambert, John J Lupton, Cillian MacDomhnaill, Sinead MacBride, Richard Margetson, Laura Melody, Aisling O'Donovan and Ronan Wall

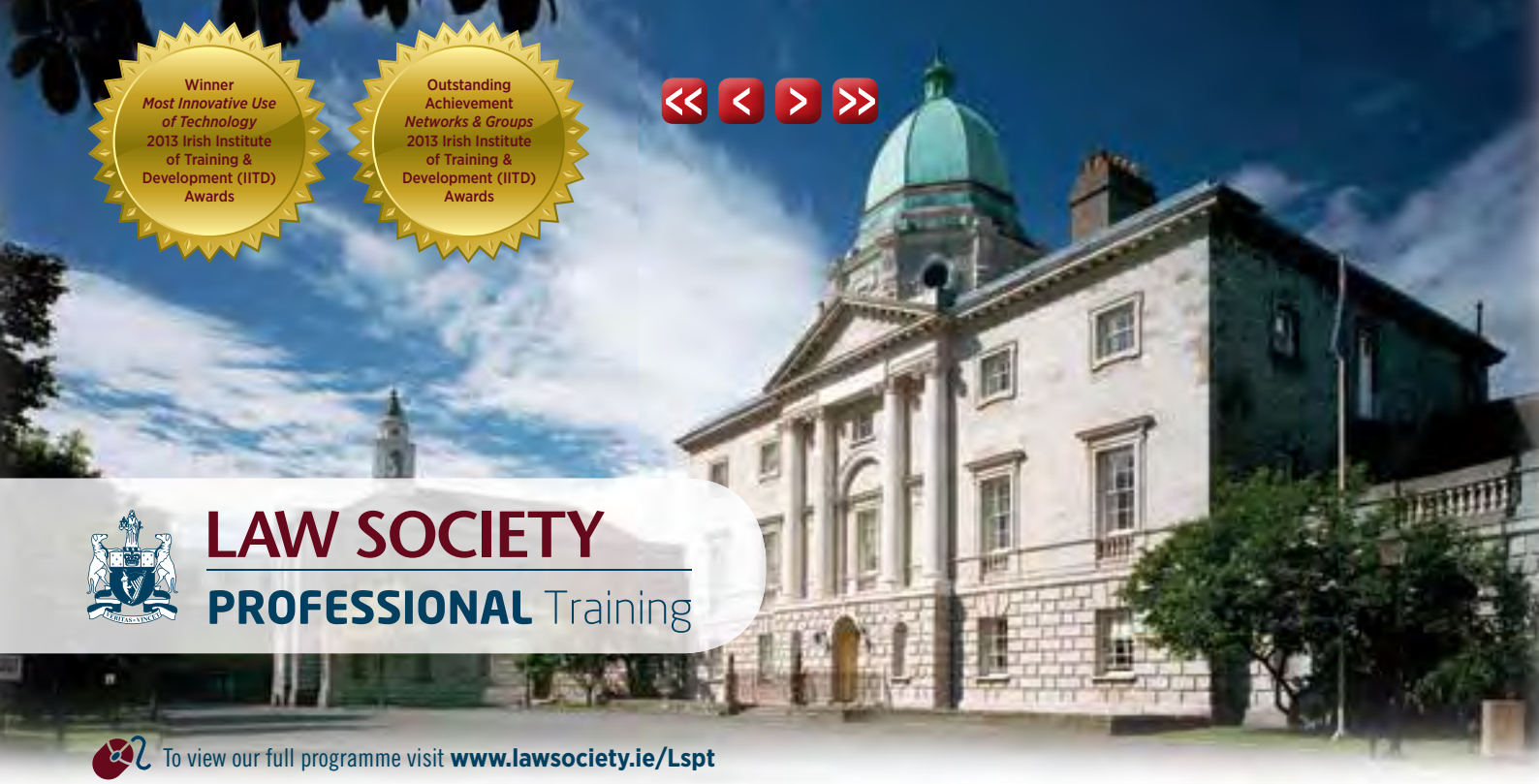
On the move

Mason Hayes & Curran has appointed Maureen O'Neill as partner in its EU and antitrust team. Maureen joins the firm with more than ten years' experience in Irish, British and European merger control, antitrust, state aid and regulatory law. She has particular expertise in the telecoms and energy sectors.

Berrymans Lace Mawer LLP's (BLM) Dublin office has appointed Lisa Collins as its new professional indemnity partner and has promoted managing solicitor Rhona McGrath to partner.

Lisa will provide a London market service to resolve claims in Ireland and specialises in acting for insurers in PII claims as well as related coverage issues.

Rhona has extensive experience in procedural and strategic defence of personal injury litigation.



LAW SOCIETY PROFESSIONAL Training

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

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
4 March - 19 July	Certificate in Adjudication (Law Society of Ireland Certified Adjudicator)	€960	€1,280	Full CPD Requirement for 2014 (Provided relevant sessions attended)
8 March	Judicial Review - Recent developments and challenges	€102	€136	3 General (by Group Study)
Starting April	Post-Graduate Certificate in Learning Teaching and Assessment in partnership with DIT and Law Society Skillnet	€960	€1,280	Full CPD requirement for 2014 (Provided relevant sessions attended)
Starting May	Diploma in Legal Practice & Risk Management	€1,695	€2,260	Full CPD requirement for 2014 (Provided relevant sessions attended)
ONLINE COURSES: To Register for any of our online programmes OR for further information email: Lspt@Lawsociety.ie				
Online	How to use an iPad for business and lifestyle	€136		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	How to use a Samsung for business and lifestyle	€136		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	Twitter for Lawyers	€55		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	The LinkedIn Lawyer: The "How to" Guide	€55		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	Facebook for Lawyers: The "How to" Guide	€55		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	How to create an eNewsletter	€90		Approx. 5 hours Management & Professional Development Skills (by eLearning)
Online	New Terms of Business - Contract Precedent	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	Responding to a Regulatory Investigation	€45		Approx. One Hour Regulatory Matters (by eLearning)
Online	Microsoft Word – All Levels, PowerPoint - All levels, Touch Typing & Excel	From €40		Approx. Up to 5 Hours Management & Professional Development Skills (by eLearning)

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

letters

Solicitors sick of 'secretarial tasks' for institutions

From: Frank Friel, Frank Friel & Co, Clonskeagh, Dublin 14

I was at a meeting of the DSBA on Tuesday 1 October last in Blackhall Place.

At that meeting, considerable concern was expressed by those in attendance of the various 'secretarial tasks' we were doing on behalf of banks, building societies, the Office of the Revenue Commissioners, and so on.

On enquiring with Bank of Ireland, who requested we produce a copy of our professional indemnity insurance, they advised that they had agreed this with the Law Society.

When enquiring with AIB of their new requirements in relation to CJA (producing extract from passports, utility bills, and so on, in relation to uplifting moneys in administration of an estate), they again advised that they had agreed this with the Law Society in March 2013.

In sales/purchase of properties, we have now to become the advisors to both vendors and purchasers in relation to their local property tax. The Revenue Commissioners advise that this was done in consultation with the Law Society.

Who, on our behalf, is entering into the agreements with the various institutions? Have they sought instructions from the various members of the Society to do so? I have no doubt that, if a poll were taken among the ordinary members of the Society, they would state that they object to acting in these roles and, in effect, are merely providing secretarial service for the various institutions.

I would be grateful for your advices.

A response from the director of regulation

From: John Elliot, Registrar of Solicitors and Director of Regulation

Regarding Bank of Ireland, as far as the Regulation Department (which is where responsibility for such matters rests) is concerned, we are unaware of any such agreement. Who in Bank of Ireland said this, and when? Can Bank of Ireland produce evidence of such an agreement? Third parties sometimes allege or imply that they have made an agreement with the Law Society when that has not happened.

As a result of the Society's interventions with AIB, the potential administrative burden on solicitors and legal personal representatives when administering estates has been greatly reduced.

Prior to the Society's interventions, legal personal representatives had to attend at each branch of AIB where a deceased may have held an account for the purposes of verification of identity to comply with statutory anti-money-laundering requirements. Following meetings with Law Society representatives, AIB changed this policy to allow for solicitors to forward to AIB certified copies of a legal personal representative's anti-money-laundering documentation. It is likely that, in any event, the solicitor will already have the documentation to be certified on file pursuant to their own anti-money-laundering best practice/statutory requirements.

The Law Society initiated this representative work following requests from members and, to date, the Law Society's efforts in this regard have been welcomed by members. An e-zine article announcing this development was circulated by the Law Society in March 2013 (http://bit.ly/1eBHSSp).

Legislation provides that any unpaid local property tax (LPT) payable by a vendor is a charge on the property to which it relates. Therefore, LPT is a matter that requires consideration as part of the conveyancing process to ensure that a property does not pass to a purchaser subject to such a charge.

The Law Society did not agree with Revenue that the legislation would be a charge on the property. That was a decision taken by the legislature. However, after the law was passed, the Law Society engaged with Revenue on how the tax would be treated for conveyancing purposes, for taxation purposes, and from the point of view of solicitors using the technology associated with payment of the tax and production of evidence of payment.

Such engagement is a normal part of the work of the Law Society in an effort to ensure that the profession has some input to the system, with a view to streamlining the process from a solicitor's perspective. I think that the Law Society might be rightly criticised if it did not do this.

viewpoint

COURTS MUST EXPLOIT SOCIAL MEDIA'S DEMOCRATIC CAPITAL

The Chief Justice of the Supreme Court of Victoria, Marilyn Warren, argues that judges must embrace digital media if they are to counter the continued decline in the public's confidence in the courts

Marilyn Warren is Chief Justice of the Supreme Court of Victoria, Australia

Courts all over the world are recognising the need to enter the era of digital media in order to safeguard the operation of the principle of open justice. The Supreme Court of Victoria now has active Facebook and Twitter accounts, as well as a planned Supreme Court blog. It uses those media to inform the public about how justice is done in the courtroom and to provide up-to-date information about law and justice sector issues.

These efforts to directly engage the community represent a historic shift away from judicial reluctance to explain or defend the way court's work to the public.

What has driven this shift in the communications practices of judges? What are the risks for the judiciary in adopting these fast-paced and interactive new media forums?

Traditional relationship

Traditionally, the courts have relied on newspaper court reporters to interpret complex proceedings and guarantee open justice for the public. These reporters have developed strong relationships with court media liaison officers in order to gain access to information, interviews and assistance. Due to their high professionalism, experience and interest in an ongoing relationship with the courts, court reporters exercise care with the accuracy of information they publish. Court reporters are also typically assigned to particular courts for long periods of time, and so build up a body of research and knowledge about the legal system. The quality of court reporting and level of information provided to the public is, therefore, often very high.

> **'The loss of the expertise of many dedicated court reporters will have far-reaching implications for the ability of the courts to preserve open justice'**

However, declining revenues and redundancies at major news publishers, driven by the decentralisation of the press into new media forums, have had a noticeable impact on the numbers of court reporters covering legal issues. The loss of the expertise of many dedicated court reporters will have far-reaching implications for the ability of the courts to preserve open justice.

Public confidence

The question of how the courts respond to these changes to the traditional court/media relationship is one of vital importance. Openness contributes to the legitimacy of the judiciary as a democratic institution – it allows the public to monitor the probity of judicial action and, by so doing, ensures the public's confidence in the proper functioning of an unelected judiciary.

Because openness and transparency is a fundamental feature of democracy, the courts have a duty to ensure that the community is able to observe the operation of justice through their preferred medium. These days that means using digital media tools to reach the public in a more direct manner.

Changing expectations

With the rise of social media, community expectations of the judiciary in terms of its style of communication have also changed. Because of the highly interactive nature of new media, the public have access to and can contribute to the public debate in ways that were previously impossible. With new media, the community has been promised a future of consultation where their concerns are heard and responded to by public figures. The judiciary are under more public scrutiny than ever before and are facing increasing pressure to engage with the community on issues of community concern.

The 2007 Australian Survey of Social Attitudes showed that, although the Australian community places high value on the work of the courts, it generally has low confidence in them, particularly with regards to sentencing and criminal matters. Perhaps reflecting the community's concerns regarding sentencing decisions, the survey concluded that the public has more confidence in the courts' ability to protect the rights of defendants in criminal trials than the ability to protect the rights of victims.

This finding points to the need for more community education and communication

SLICE OF LIFE

chief justice marilyn warren

Chief Justice Marilyn Warren grew up in Melbourne. She studied law at Monash University, graduating with a B Juris and LLB (Hons) in 1973 and 1974 respectively and a Master of Laws in 1983. Chief Justice Warren has been a Supreme Court judge for 15 years. In 2003, she became the first female Chief Justice in Australia.

In her ten years in that role, she has adopted a number of innovative approaches to promote openness and accessibility in Victoria's justice system, including the development of a Supreme Court communications strategy and reform of the court's engagement with the community.

PIC: THINKSTOCK/GAZETTE STUDIO

Facebook has provided an important opportunity for the Supreme Court of Victoria to reach younger generations who are less likely to receive information through newspapers or the television news

on the part of the courts to explain judicial decision-making processes in order to increase public confidence in the judicial system. Research on community perceptions of sentencing in Britain and Australia has highlighted this premise: the more people know about the justice system, the more likely they are to support it and the work of judges.

Victorian response

There is momentum among courts globally towards using the internet to directly address misunderstandings about the judicial process and to meet community requirements for increased communication.

Web-streaming of trials and sentencing remarks is one way to fill the void left by the decline in traditional court reporters. Members of the community can check for themselves what transpires in the courtroom and see accurate accounts of what members of the judiciary actually do when they administer the law. Audio-sentences expose the public to the complexity and thoroughness of the sentencing process, which is not always adequately captured by sensationalist media headlines about 'soft' sentences and 'out-of-touch' judges. The Supreme Court of Victoria is now web-streaming sentencing remarks in criminal trials and proceedings in selected civil cases.

The court's website forms the primary digital vehicle for communication with the public. The community is able to view information about the most important cases, sentences and justice sector issues from the homepage.

The website is also to feature a 'retired judge blog', which a retired judge writes in non-technical language, explaining topical judgments that have been handed down by the court. The blog also educates the community in a general way about complex law reforms and judicial processes, such as factors that judges are required by law to take into account when sentencing.

Embracing Facebook

The Supreme Court of Victoria has also embraced both Facebook and Twitter. The interactive nature of Facebook presents particular risks and challenges for the court. Many social media users may lack knowledge about the legal system, are not subject to any form of editorial control, and do not have the long-term interest of court reporters in producing accurate assessments of the legal system. Social media sites could, therefore, attract uninformed, negative public comments that might have the effect of reducing public confidence in the judiciary, rather than increasing it.

However, with 11.5 million Australians now using Facebook, these are risks the courts must take in the interests of preserving open justice. Facebook has provided an important opportunity for the Supreme Court of Victoria to reach younger generations who are less likely to receive information through newspapers or the television news. There has been a large amount of interest in the page from university students, young professionals and educational institutions that use the forum for educational and professional purposes.

This shift in the communications practices of judges are symptomatic of the challenges, but also, importantly, the opportunities that new media pose for democratic institutions in the technological age. The traditions of the judiciary, including the set-up of the courtroom and even the robes that judges wear, have changed very little over the centuries. However, the means by which courts can communicate – and therefore open justice up – have changed dramatically. There is now an expectation that open justice involves the judiciary adopting new media technologies and engaging in a direct dialogue with the community. The judiciary must find a way to meet these expectations. Otherwise the courts risk a continued decline in the basis for judicial authority – public confidence.

viewpoint

CIRCUIT COURT TO THE RESCUE OF SMALL BUSINESS?

Will the *Companies (Miscellaneous Provisions) Act 2013*, which introduces Circuit Court examinerships, help struggling businesses to fight against the insolvency tide, asks Bill Holohan?

Bill Holohan is senior partner in Holohan Solicitors, Cork and Dublin, and is the author of several books on insolvency

SME businesses are often described as the backbone of the Irish economy. While it may be true that the US multinational presence and direct investment in Ireland supports 100,000 jobs, the fact is that over one million jobs in Ireland depend on the SME and family business sector. Five years after the collapse of Lehman Brothers, many SMEs are still dealing with screwed balance sheets and legacy issues. Low-cost ECB money may have propped up some of those businesses, but for many SMEs carrying a historical debt load, they "can see no light at the end of the (apparently never-ending) tunnel".

Examinership is a court-protected rescue process that allows a struggling company, which does have a prospect of survival, a chance to restructure its liabilities and business plans. The concept of the process is simple. A fundamentally good (but insolvent) business finds itself in financial difficulty. The reasons do not really matter. It could be the unsustainable rent of a huge business premises, which is no longer fit for purpose, or it could be the unsustainable mortgage on what was to be a trophy purchase.

Whatever the reasons, the concept of examinership is to allow the otherwise insolvent company to restructure its liabilities while maintaining employment, thereby saving the jobs of the business for the benefit of the broader community. Creditors may suffer a write-down, but society at large benefits.

Circuit Court process

What about the new proposals involving the Circuit Court? Up to now, examinership has been a High Court process, involving huge expense and legal costs. Now the process faces major structural changes. The President signed the *Companies (Miscellaneous Provisions) Act 2013* into law on Christmas Eve last. Under this act, and specifically section 2, the process is to be moved from the High Court to the Circuit Court.

> **The real advantage now is going to be regional accessibility for local businesses where the costs of, and the practicalities of, accessing the High Court in Dublin on repeated occasions has led to a very low take-up of the process**

Section 2 of the 2013 act amends section 2 of the *Companies (Amendment) Act 1990* by providing that small private companies (which are to be treated as small companies by virtue of section 8 or 9 of the *Companies (Amendment) Act 1986*) are to be allowed to apply directly to the Circuit Court to have an examiner appointed – and will not be required to apply to the High Court.

Applications, perhaps, should be dealt with by the newly appointed specialist Circuit Court insolvency judges (with the exception of examinership for large companies, which will remain in the High Court). However, the 2013 act provides that the new Circuit Court jurisdiction is to be exercisable by "the judge of the Circuit Court … for the circuit in which the registered office of the company is situated at the time of the presentation of the petition or in which it has, at that time, its principal place of business".

To illustrate the point, 24 of the 27 examinerships in 2012 could have been heard locally in the Circuit Court if the system had been operational then, rather than being heard in the High Court. However, challenges remain. Will there be a cohort of sufficiently experienced insolvency practitioners (solicitors, barristers and accountants) around the country who can rise to the challenge of providing services?

In his 11 October press release, Minister for Jobs, Enterprise and Innovation Richard Bruton said that the measure (which is part of the Government's action plan for jobs) is aimed at reducing the costs associated with an application for examinership and enabling increased numbers of businesses – in particular SMEs – to apply for examinership as a route out of their particular difficulties. In particular, businesses with large potential for growth and job creation, but who are being held back by legacy debt issues, are intended to benefit from the move.

The rules of the new regime are relatively straightforward. SMEs that can now apply to their local Circuit Court for the process are those defined as such in company law, meaning that they must satisfy at least two out of the following three conditions:

- The balance sheet must not exceed €4.4 million,
- The turnover must not exceed €8.8 million, and
- Employees must not exceed 50 in total.

Drop in legal costs

Through this rescue process, it is hoped that a company that previously could not have contemplated examinership because of the prohibitive costs involved, but which is nonetheless a fundamentally good business, can now be saved. The major advantage being pointed to is that the legal costs of the process should decrease. Whether the costs of other professionals will decrease is debatable.

PIC: THINKSTOCK

> **In Ireland, less than 2% of insolvencies are resolved through examination, compared with nearly a quarter of insolvencies in the USA that enter Chapter 11 – a comparable process**

The real advantage now is going to be regional accessibility for local businesses where the costs and practicalities of accessing the High Court in Dublin on repeated occasions has led to a very low take-up of the process. In Ireland, less than 2% of insolvencies are resolved through examination, compared with nearly a quarter of insolvencies in the USA that enter Chapter 11 – a comparable process.

"There is a tide in the affairs of men, which, taken at the flood, leads on to fortune." These words from Shakespeare's *Julius Caesar* illustrate that an opportunity now exists for knowledgeable and experienced insolvency practitioners in Ireland to market their services as independent experts and insolvency service providers, whether they be solicitors, barristers, or accountants. However, to prepare, practitioners need to up-skill.

For the scheme to succeed, it will be vital for local practitioners to become intimately familiar with the processes involved, or to avail of the expert services of specialist (legal and accounting) insolvency practitioners on a consultancy basis, and to work to ensure that the scheme truly becomes available to all businesses in Ireland. The Circuit Court system will become meaningless unless local practitioners up-skill to the level where they can give their clients the advice they need, or establish business links with specialist insolvency practitioners.

Also, members of the Circuit Court judiciary face a similar challenge. As well as having to come to grips with the *Personal Insolvency Act*, they will need to familiarise themselves with the examinership process so that protection can be given to those companies that deserve a breathing space and can demonstrate the reasonable prospect of survival required by the act.

Change of mind-set

Furthermore, a change of mind-set will be required among banks and other secured creditors regarding the examinership process. No examiner can unfairly prejudice a bank, yet the 'house view' persists in most banks to oppose the very concept of examinership, if at all possible. Banks do not recognise that entrepreneurs take risks every day in business – but so do banks! This is despite looking for security in the form of belts, braces, the piece of string and safety pin in trying to keep up security's trousers. Banks typically prefer the ability to privately control the level of write-down they suffer in a receivership process, even if the return to the bank is less than would be achieved under the going-concern process of examinership. They need to recognise that they too must be prepared to take risks.

A total of 716 SME jobs in Ireland were saved in the first nine months of 2013 through the process of examinership. The number of jobs saved can only increase with the move to the Circuit Court system if practitioners, banks, and the business community as a whole embrace this Government initiative.

Bill Holohan has recently published Buying and Selling Insolvent Companies and Businesses in Ireland, *co-authored by barrister Ted Harding and accountant Ger O'Mahoney.*

human rights watch

CHALLENGES FOR HUMAN RIGHTS IN THE 21ST CENTURY

The Society's Annual Human Rights Conference took place in October 2013. The *Gazette* provides a snapshot of the day's deliberations

Organised by the Human Rights Committee in association with the Irish Human Rights Commission, speakers at the 2013 human rights conference examined key human rights challenges facing Ireland, including austerity, surrogacy, end-of-life issues and hate speech online.

The first session dealt with freedom of expression and hate speech. All panellists spoke about the challenges involved in achieving a balance between freedom of expression and debate and the protection from abuse of vulnerable minority groups. David Joyce BL, who chaired the session, expressed the view that hate speech is an escalating problem and that our domestic legislation contains inadequate safeguards and penalties.

Facebook's policy manager Siobhan Cummiskey spoke about the importance of a 'real name' culture in social media and of ensuring accountability for online communication. She said that Facebook tries to operate according to John Stuart Mill's 'harm principle' and therefore will intervene in communications only to the extent necessary to prevent harm. She stated that content that is merely offensive or in bad taste has to be tolerated, but that Facebook prohibits hate speech, bullying and harassment and is vigilant about protecting racial and other minorities.

Adam Weiss, legal director of the Budapest-based European Roma Rights Centre said that Roma people comprise the largest ethnic minority in Europe and are the frequent targets of overt hate speech. He spoke of his organisation's role in raising awareness of racism and its involvement in bringing cases on behalf of Roma people at both domestic and international level. He raised the question of whether it is possible to establish an obligation on states to curtail hate crime rather than merely to react to it.

Larry Olomofe, advisor on combating racism with the Organisation for Security and Cooperation in Europe, spoke about the contribution made by private individuals taking cases in response to hate speech and discrimination.

Siobhan Cummiskey – Facebook adopts John Stuart Mill's 'harm principle'. *(Above)* David Joyce BL – "Hate speech is an escalating problem"

Dr Julie McCandless

He commented that domestic anti-hatred laws have in many countries failed to keep pace with the advance of social media.

Reproductive rights

In the next session, the LSE's Dr Julie McCandless spoke on the question of what are 'reproductive rights' in the context of assisted human reproduction (AHR) and surrogacy. She highlighted trends across Europe and addressed the ethical and personal concerns emerging for the surrogate mother and intended parents.

Inge Clissmann SC explored the human rights implications of AHR and surrogacy. She said that it was "vital that practitioners familiarise themselves with this area of law and promote the sound regulation of it", concluding by addressing the question of state regulation of AHR and surrogacy. "If one piece of advice were to be offered to the legislature as regards regulation of AHR and surrogacy, it might be this: while legislation on the issue of surrogacy is urgently required

Brian Murray SC – analysed the issue of assisted suicide

Dr Geoffrey Shannon – addressed the rights of the child in the context of surrogacy

in order to provide guidance and certainty, it is important that such legislation is fully thought through."

Dr Geoffrey Shannon examined the issues surrounding the rights of the child in the context of surrogacy and AHR. He explored issues of parenthood, social, legal and ethical issues and feminist viewpoints, and analysed the different forms of surrogacy – genetic, gestational, altruistic and commercial. Dr Shannon highlighted that this area is under-researched in terms of the impact on children and stated that any new system has to be based on standards, supervision and cooperation.

End of life

Brian Murray SC, who litigated the issue of assisted suicide on behalf of the late Marie Fleming, started with the basic question: was there a right to take one's own life? If not, was the State obliged to prevent people from taking their own lives? Alternatively, if a person did have the right to commit suicide, was there a duty on the State to vindicate that right? Progressing from this, Murray reviewed the analysis of assisted suicide by courts internationally and highlighted the startlingly different conclusions reached in different countries on the same issue.

The medical contributors represented the two opposing sides in this debate. Geriatric medicine and stroke specialist Professor Des O'Neill's view was that assisting people to die was not justifiable and that allowing for this was open to abuse.

Dr Deirdre Madden, senior lecturer in medical law at UCC, argued the contrary, stating that, in her view, there was a right to choose the manner of one's death and that entitlements to personal dignity and autonomy necessarily included a right to end one's own life. It was not justifiable to deny incapacitated persons the means to exercise their right by denying them assistance when needed.

The last panel explored the impact of austerity on economic, social and cultural rights.

Dr Helen Johnston explored the social dimensions of the economic crisis, in particular the impact on unemployment, poverty, personal debt, health, services and the community. She commented that most people have been affected, at least to some extent, by the crisis: those who were least well off prior to the economic crisis remained so, and those who had lost jobs, had business failures, seen large falls in income or wealth, or who carried a large excess debt burden were "experiencing an effect of a different order". She also pointed out that while the distribution of effects through budgetary policy havd been largely progressive, some budgets had been regressive, with the greatest impact felt by those on the lowest incomes.

Noeline Blackwell spoke about the 'spirit level of inequality'

Noeline Blackwell examined how international human rights Law could be used to protect economic, social and cultural rights. She spoke of the "spirit level of inequality" and its social impact and highlighted the importance of promoting the active use of the *EU Charter of Fundamental Rights*, in particular article 1 – the right to dignity.

blinded by the LIGHT

How can you protect a right to light in the built environment? And what is a right to light? Terry O'Malley turns to the dark side

at a glance

- An owner of land burdened by a right to light is prevented from obstructing the light passing over his or her land in such a way that causes a nuisance to the owner of the land benefited by the right
- A right to light can prevent someone with an interest in the servient land from substantially interfering with the access of light on the dominant land
- There is a lack of statutory guidance and case law on an individual's right to light in Ireland, and this lack of precedent should cause developers deep concern

Terry O'Malley is a solicitor in the property department of Eversheds

PIC: THINKSTOCK

A right to light is a right enjoyed over land belonging to someone else. It benefits buildings on the dominant land, allowing them to receive light into those buildings through particular apertures (windows, skylights and glass roofs) across the neighbouring servient land.

Unlike most easements – such as rights of way and rights of drainage, which allow one landowner to do something on another's land – a right to light is said to be negative. A negative easement prevents a neighbour from doing something on his or her own land. So an owner of land burdened by a right to light is prevented from obstructing the light passing over his or her land in such a way that causes a nuisance to the owner of the land benefited by the right.

It is crucial to understand that a right to light is a legal right as opposed to a planning one. Notwithstanding any planning permission or planning exemption a landowner might have, a right to light could have a substantial impact on the future development of the land. A right to light can prevent someone with an interest in the servient land from substantially interfering with the access of light on the dominant land. A simple example of this is the construction of a building on the servient land, which would obstruct or reduce the light in a building on the dominant land.

A neighbouring landowner's right to light has the potential to frustrate development, leading to costly delays, so it is important that the risks associated with a right to light are made clear to the developer at the outset.

Dancing in the dark

A right to light can be established immediately by express or implied grant. An actual grant of a right of light is a rare thing, but they can be found as reservations in favour of land retained by the seller on a sale or in favour of a landlord's adjoining property on the grant of a lease.

An implied grant of a light to right can be established pursuant to section 40(1) of the *Land and Conveyancing Law Reform Act 2009*. The 2009 act abolished the rule in *Wheeldon v Burrows* and replaced it with a statutory formula that provides that an easement will be implied where such easement (a) is necessary to the reasonable enjoyment of the part disposed of and (b) was reasonable for the parties, or would have been if they had adverted to the matter, to assume as being included in the sale. There is no longer any requirement that the implied easement must have actually been used as a type of 'quasi-easement' by the landowner before the sale.

Historically, a right of light could be established over time under the *Prescription Act 1832*. The aim of the 1832 act was to alleviate the difficulties caused by common law prescription and the doctrine of lost modern grant. By virtue of section 3 of the *Prescription Act*, a right of light can be acquired if the right to light has been enjoyed without interruption for a period of at least 20 years without the consent of a third party.

> Property solicitors should advise their developer clients of the potential right to light risks that may arise on the development of land, especially in city-centre locations

The 2009 act repeals the 1832 act, which had been effective in Ireland since 1 January 1859. A key change in the 2009 act is that the requisite period of use to establish an easement has been reduced to a fixed term of 12 years. Therefore, any person who has enjoyed the benefit of a right to light (or any other easement) will be entitled to apply to the court to obtain an order confirming this right. Under the 2009 act, unless an action to obtain a court order confirming the right was brought within three years of 1 December 2009, the rights acquired under the 1832 act will have been lost and such a right will not be reacquired until 2021 at the very earliest.

This transitional period of three years was extended to 12 years under section 38 of the *Civil Law (Miscellaneous Provisions) Act 2011*. In addition, section 37(1)(b) of the act seeks to simplify matters further and provides for an application to be made directly to the Property Registration Authority under a new section 49A of the *Registration of Title Act 1964*, without the need to apply for a court order. The disadvantage of the extension is that the archaic provisions of the 1832 act will continue to apply until 2021 instead of 2012, as was intended.

Wrecking ball

The leading British case on an individual's right to light is the 1904 decision of the House of Lords in *Colls v Home and Colonial Stores Limited*, from which the principle was established that a right to light entitles a landowner to natural light through (usually) a window, and so enables him or her to prevent a neighbour from interfering with or blocking the natural light travelling over that neighbour's land.

There is a significant body of case law to suggest that mere interference with a right to light is not sufficient to result in an actionable injury. It is necessary to show that the interference has caused nuisance (*Higgins v Betts*).

However, it is the 2010 judgment of the English High Court in *HKRUK II (CHC) Ltd v Heaney* that stands as a clear warning to all property developers. An injunction was granted against a developer who infringed a neighbour's right to light, despite the fact that the development was completed and the owner of the building claiming the infringement (the dominant property) failed to take action for 18 months. The developer wanted to build a seven-storey building, which was two storeys higher than the previous building on the development

Law Society of Ireland

DIPLOMA CENTRE

Continuing professional education for the way you learn

onsite, online or on the move…

SPRING 2014 PROGRAMME	START DATE	FEE
Diploma in Employment Law *(iPad)*	Friday 28 February	€2,520
Diploma in Child Law	Wednesday 5 March	€2,200
Diploma in In-House Practice	Wednesday 19 March	€2,200
Certificate in Data Protection Practice *(online)*	Thursday 30 January	€1,200
Certificate in Legal French Law	Wednesday 5 February	€990
Certificate in Pension Law and Practice *(new)*	Thursday 13 February	€1,200
Certificate in Conveyancing and Property Law *(new)*	Tuesday 18 February	€1,200
Certificate in Commercial Contracts *(iPad)*	Thursday 20 March	€1,520

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

PIC: THINKSTOCK

site. Once building works were completed, the developer sought a declaration confirming the building was free from any rights to light, which resulted in a counterclaim of an infringement of a right to light. The owner of the dominant property had spent in the region of £3 million restoring the building.

It was agreed between the parties that the dominant property had a right to light that had been infringed and so a remedy was due. However, the dispute lay in what would be an adequate remedy – damages or an injunction. This decision surprised many property solicitors in Britain by actually granting an injunction requiring partial demolition of a building that obstructed a neighbour's right to light.

Many expected the court to decline that relief and award the payment of damages instead. As a result, it has become more difficult to resolve rights-to-light disputes swiftly and amicably in Britain. Those seeking to enforce a right-to-light claim could refuse to engage in negotiations or cause tactical delay in order to increase the sum that a developer might pay by way of settlement to avoid going to court and the risk of an injunction being granted.

> **The economic success of the 'Celtic Tiger' years, coupled with our increasing population, has resulted in high-density development in city centre locations, and the proper regulation of a neighbouring landowner's right to light has not been monitored with any great effect**

Lucky town

The economic success of the 'Celtic Tiger' years, coupled with our increasing population, has resulted in high-density development in city-centre locations, and the proper regulation of a neighbouring landowner's right to light has not been monitored with any great effect. The *Planning and Development Act 2000* is what the planning authorities rely on for the control of developments, but is not sufficient for dealing with an individual's legal right to light. The grant of planning permission is not in itself a 'right to build'. It cannot trump the legal entitlements of a neighbour.

The Irish courts have not dealt with the issue of a right to light in great detail, however, when considering how much light equates to 'comfortable use' and 'enjoyment'.

In a particular case, the courts will look to the current use of the building, the future use of the building, and the character of its location. In the decision of *Allen v Greenwood*, it was held that the plaintiff was entitled to a significantly higher degree of light for his greenhouse than would generally be required for residential use.

On the whole, there is a lack of statutory guidance and case law on an individual's right to light in Ireland, and it is this lack of precedent in the area that should cause developers deep concern. It won't be long until a challenge will be brought to the courts, based on the principles established in Britain, and the *Heaney* decision especially, and a result in favour of the applicant could lead to a flood of applications being brought by people claiming an infringement of their right to light.

Born to run

A failure on the part of a developer to take a claim for infringement of a right of light seriously could lead to any of the following consequences:

- The owner of a right of light obtaining an injunction,
- Costly delays to the development,
- Applying for a new planning permission in relation to a reconfigured development,
- Paying compensation to contractors and other parties due to a delayed development,
- Demolishing the constructed development.

For these reasons, property solicitors should advise their developer clients of the potential right-to-light risks that may arise on the development of land, especially in city-centre locations.

While the threat of a right-to-light claim in this country has never been explored in any great detail by the Irish courts, it doesn't mean such a right does not exist in Irish law, or that a landowner claiming infringement of a right to light could not frustrate property development here to the same extent as is possible in Britain.

look it up

Cases:

- *Allen v Greenwood* [1979 1 All ER 819]
- *Colls v Home and Colonial Stores Limited* [1904] 1 AC 179 at 185 to 186
- *Higgins v Betts* [1905] 2Ch 210 at 214-215
- *HKRUK II (CHC) Ltd v Heaney* [2010] EWHC 2245 (Ch)
- *Wheeldon v Burrows* (1879) LR 12 Ch D 31

Legislation:

- *Civil Law (Miscellaneous Provisions) Act 2011*
- *Land and Conveyancing Law Reform Act 2009*
- *Planning and Development Act 2000*
- *Prescription Act 1832*
- *Registration of Title Act 1964*

AID memoire

Pádraig Cullinane BL practises in the areas of medical and human rights law

The *Courts and Civil Law (Miscellaneous Provisions) Act 2013* addresses the need for publicly funded legal aid to the next-of-kin at inquests into deaths occurring in circumstances where it appears that agents of the State are implicated in some way. Pádraig Cullinane explains

At a time when economic considerations are leading to significant re-evaluation of the State's expenditure on the administration of justice, it may seem counterintuitive to see the terms of part 6 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013* as amending both the *Coroners Act 1962* and the *Civil Legal Aid Act 1995*. These provisions give rise to an entitlement to legal aid and/or advice to a family member of the deceased where an inquest is to be held and a death has occurred in certain circumstances.

The *Coroners Bill* was introduced in 2007 and responded to many of the recommendations in relation to reform of the coroners' system arising from the 2000 *Review of the Coroner Service*. In particular, the proposed section 86 of the *Coroners' Bill 2007* contained provision for legal aid for certain inquests – and is mirrored in these newer provisions. This demonstrates that the legislature was aware of the obligations on the State arising out of the increasing jurisprudence of the European Court of Human Rights in relation to article 2 of the *European Convention on Human Rights* (the right to life), as the enactment of the *ECHR Act 2003* placed a statutory duty on every organ of the State to perform its functions in a manner compatible with the State's obligations under the convention provisions.

> **'The coroner's enquiry has been seen to be of increasing public utility, providing a prompt and relatively inexpensive public exposition of the fact'**

Obligations on member states

The jurisprudence of the European Court of Human Rights (ECtHR) and British cases, such as *Osman* and *Middleton*, finds that article 2 of ECHR imposes a number of obligations on member states.

The ECtHR has repeatedly interpreted article 2 of the convention as imposing a substantive obligation not to take life without justification and also to establish a framework of laws, precautions and procedures, and means of enforcement that will – to the greatest extent practicable – protect life.

PIC: THINKSTOCK

PIC: PHOTOCALL IRELAND

The ECtHR has also interpreted article 2 as imposing a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances where it appears that agents of the state are, or may be, implicated in some way. In Ireland, the coroner's inquest fulfils the State's procedural obligations under the provisions of article 2.

In addition, there is an obligation to provide for the effective participation of the next-of-kin in such proceedings, where difficult issues arise. It has been held that the interests of justice demand that legal aid be available to next-of-kin where there has been, or may have been, State involvement in the death of the person that gave rise to the inquest.

The fact that the *Coroners' Bill 2007* was not enacted into law meant that legal aid for coroners' inquests had no statutory basis, although an *ad hoc* system of payment of legal representatives by the Department of Justice has been in operation in inquests into deaths where the State may have had some involvement.

High Court proceedings

The issue of legal aid at inquest proceedings had come before the Irish courts in *Magee v Farrell & Ors*. Legal aid was sought at the opening of an inquest in 2004. The applicant was advised that there was no provision for legal aid for inquests, and then instituted proceedings in the High Court and was successful in October 2005. On appeal by the State, however, the Supreme Court held in

at a glance

- There is an obligation on the State, arising out of ECtHR jurisprudence relating to article 2 of the *European Convention on Human Rights*, to provide for an effective independent investigation into the circumstances of any death occurring where the State may have been involved
- There is an obligation on the State to ensure that family members of the deceased can meaningfully participate in such an investigation
- The coroner's inquest can fulfil the above procedural obligation on the State
- New legislative provisions, enacted into law in July 2013, provide for publicly funded legal aid and/or advice to a family member at an inquest where the State may have been involved or where a matter of significant public interest is raised


PIC: THINKSTOCK

2009 that the right to publicly funded legal aid did not extend to inquests.

The applicant issued proceedings in the European Court of Human Rights, and the Irish Human Rights Commission made *amicus curiae* submissions advancing the position that, because it is unclear how families of deceased persons would become aware of the possibility of applying for legal aid or the procedure for applying, that an effective remedy needed to be put in place.

The decision of the Supreme Court in *Magee* has now been superseded by the enactment of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, in which part 6, section 24(a) amends section 29 of the *Coroners Act 1962* in relation to the furnishing of documents, while section 24(b) provides for an insertion of a new section 60 to the *Coroners Act 1962* as follows: "Where an inquest in relation to the death of a person is to be held under part III of this act, a family member of the deceased (in this section referred to as 'the applicant') may apply to the coroner for a request to be submitted by that coroner to the Legal Aid Board in relation to the granting of legal aid or legal advice, or both, to the applicant pursuant to the *Civil Legal Aid Act 1995*."

> **The new section 60(5) of the *Coroners Act 1962*, as amended, sets out a series of circumstances in which a death meets the requirements for a coroner to certify to the Legal Aid Board**

This varies from the procedure in the civil courts, in that the applicant must firstly apply to the coroner to certify that the proceedings attract legal aid. The application must be made before the commencement of the inquest. The coroner must determine the application within ten working days and the coroner may request the Legal Aid Board to provide legal aid and or legal advice. The Legal Aid Board makes the assessment in relation to means and reverts directly to the applicant. Only one legal-aid certificate may be granted in respect of any one death to a family member.

Notable development

The *Civil Legal Aid Act 1995* is amended by section 25 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, widening the provisions of the 1995 act to include a person in respect of whom a

SECTION 60 OF THE *CORONERS ACT*

when can a coroner certify to the legal aid board?

The new section 60(5) of the *Coroners Act 1962*, as amended, sets out a series of circumstances in which a death meets the requirements for a coroner to certify to the Legal Aid Board.

"A coroner shall not make a request referred to in subsection (4) unless:

a) The deceased was, at the time of his or her death or immediately before his or her death, in the custody of an Garda Síochána,

b) The deceased was, at the time of his or her death or immediately before his or her death, in custody in a prison within the meaning of section 2 of the *Prisons Act 2007*,

c) The deceased was, at the time of his or her death or immediately before his or her death, in service custody within the meaning of section 2 of the *Defence Act 1954*,

d) The deceased was, at the time of his or her death or immediately before his or her death, involuntarily detained under part 2 of the *Mental Health Act 2001* in an approved centre within the meaning of section 2 of that act,

e) The deceased was, at the time of his or her death or immediately before his or her death, detained in a designated centre within the meaning of section 3 of the *Criminal Law (Insanity) Act 2006* or was a person to whom section 20 of that act refers,

f) The deceased was, at the time of his or her death or immediately before his or her death, in custody in a remand centre within the meaning of section 3 of the *Children Act 2001* or detained in a children detention school within the meaning of that section,

g) The deceased was, at the time of his or her death or immediately before his or her death, a child in care, or

h) The coroner is of the opinion that the death of the deceased occurred in circumstances the continuance or possible recurrence of which would be prejudicial to the health or safety of the public or any section of the public such that there is a significant public interest in the family member of the deceased person being granted legal aid or legal advice, or both, for the purposes of the inquest concerned."

Subsection 5, paragraphs (a) and (g), clearly relate to deaths occurring in State custody or detention; however, of note is that the ultimate paragraph (h) is not a requirement on the State as a result of the jurisprudence of the European Court of Human Rights, as it falls outside its article 2 provisions, although there may clearly be an overlap.

Paragraph (h) provides for the discretion of a coroner to certify an inquest during which an issue of public interest arises as one that may attract legal aid. This power was also envisaged in the 2007 bill. An interpretation of public interest is not provided within the definitions, but is likely to capture circumstances similar to those in previous high-profile inquests.

request for legal aid or advice, or both, has been made by a coroner. This is a notable development. Practitioners are familiar with the inquisitorial proceedings of the coroner's court, including the provisions of section 30 of the *Coroners Act 1962*: "Questions of civil or criminal liability shall not be considered or investigated at an inquest and, accordingly, every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred."

This can be interpreted as causing the findings of a coroner's inquest to have no effect in law, beyond fulfilling the requirements of the *Civil Registration Act 2004*. However, the coroner's enquiry has been seen to be of increasing public utility, providing a prompt and relatively inexpensive public exposition of the facts, as in the recent inquest into the death of Ms Savita Halappanavar.

The *dicta* of Keane CJ in *Eastern Health Board v Farrell* should also be borne in mind: "It is clear that the inquest may properly investigate and consider surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to civil or criminal liability."

In addition, the scope of an article 2 compliant inquest is held to be broadened from establishing 'how' the death occurred to 'by what means and in what circumstances'.

In conclusion, the effective involvement of family members by way of legal representation before the coroner will assist them in achieving a full exposition of the facts and circumstances of the death and contribute to any recommendations made, while preserving their legal interests with respect to any subsequent legal proceedings and, if appropriate, allaying rumour and suspicion in relation to deaths in custody.

The provisions of the new part 6 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013*, which commenced on enactment on 24 July 2013, are to be welcomed as addressing a need for publicly funded legal aid to the next-of-kin in these important inquests.

look it up

Cases:
- *Eastern Health Board v Farrell* [2001] IESC 96
- *Magee v Farrell & Ors* [2009] IESC 60
- *Osman v United Kingdom* (87/1997/871/1083)
- *Ramseyer v Mahon* [2005] ISEC 82)
- *Regina (Middleton) v West Somerset Coroner* [2004] UKHL

Legislation:
- *Children Act 2001*
- *Coroners (Amendment) Act 2005*
- *Coroners Act 1962*
- *Civil Legal Aid Act 1995*
- *Coroners Bill 2007*
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013*
- *Criminal Law (Insanity) Act 2006*
- *Defence Act 1954*
- *ECHR Act 2003*
- *European Convention on Human Rights*
- *Mental Health Act 2001*
- *Prisons Act 2007*

Literature:
Review of the Coroner Service (Department of Justice, 2000)

GREEN light

Heather Murphy is a solicitor in the projects, energy and construction group at Matheson

The new *Energy Efficiency Directive* has broad implications for all building-sector stakeholders and their legal advisors. Heather Murphy gives the green light

Energy infrastructure has been at the forefront of public attention in recent months, in particular the upgrade of the national grid and the construction of windfarms in order to comply with renewable energy targets mandated under the EU *Renewable Energy Directive*. Improving energy efficiency and reducing energy costs has attracted less attention in Ireland, particularly compared with Britain, where the cost of energy was a political hot potato in 2013.

The position is set to change considerably this year with the introduction of legislation to comply with the new *Energy Efficiency Directive* (2012/27/EU), and the roll-out of the actions, programmes and policies under Ireland's second National Energy Efficiency Action Plan (NEEAP).

The new directive is very broad in its scope and addresses barriers to improving energy efficiency across the entire energy supply chain – from energy production, through to generation, distribution and final consumption. One of the main sectors targeted by the new directive is the building sector, which accounts for approximately 40% of the EU's total final energy consumption, and an estimated 12.6 million tonnes of Ireland's carbon emissions.

Ireland has set an indicative target of improving energy efficiency by 20% by 2020. Prior to the *Energy Services Directive* (2006/32/EC) (implemented into Irish law by SI 542/2009, as amended), much of the legislation that applied to the energy efficiency of buildings related to regulating the energy performance standard of buildings themselves, principally pursuant to part L of the *Building Regulations*.

> **'The requirement of the new directive for 'large enterprises' – non-SMEs – to carry out an energy audit by 5 December 2015, and every four years thereafter, is a significant new legal obligation for such enterprises'**

For many solicitors, the only day-to-day impact of energy efficiency legislation on their practice was the requirement for all buildings offered for sale or rent to have a building energy rating (BER) certificate. The new directive – which repeals and replaces the previous *Energy Services Directive* – will have much broader implications for all building-sector stakeholders and their legal advisors. Given the broad scope of the new directive, what follows is an outline of some of the key new measures legal advisors should become familiar with.

Cost-saving carrots

The new directive introduces a number of measures to increase awareness of energy consumption and inform consumers about opportunities for saving energy, thereby enabling them to make informed decisions in their financial interest.

In particular, article 8 of the new directive requires member states to promote the availability of high-quality, cost-effective energy audits to all final customers, including domestic consumers, SMEs and large enterprises.

The scope of an energy audit is wide in nature and

PIC: THINKSTOCK

at a glance

- New legislation is set to be introduced to comply with the new *Energy Efficiency Directive*. Actions, programmes and policies will be rolled out under Ireland's second National Energy Efficiency Action Plan
- The new directive repeals and replaces the previous *Energy Services Directive* and requires member states to promote the availability of high-quality, cost-effective energy audits to all final customers,
- The European Commission has indicated that a BER assessment cannot automatically be considered equivalent to an energy audit

PIC: THINKSTOCK

assesses "the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation, or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings".

While certain legal requirements in respect of energy audits, BER assessments and energy auditors already applied under the current Irish regulations (SI 542/2009 as amended and SI 243/2012), the European Commission has indicated that a BER assessment cannot automatically be considered equivalent to an energy audit.

Mandatory energy audits

The requirement under article 8(4) of the new directive for 'large enterprises' (that is, non-SMEs, as defined) to carry out an energy audit by 5 December 2015, and every four years thereafter, is a significant new legal obligation for these enterprises.

Exemptions apply for large enterprises that have an energy-management system in place that has been certified by an independent body in accordance with relevant European or international standards, provided certain criteria have been fulfilled.

For many large enterprises, energy consumption is audited in-house. However, such audits will not meet the requirements of the new directive unless the in-house expert(s) who carry out these audits are sufficiently independent – that is, not engaged directly in the audited activity. This is likely to have significant implications for such organisations, which will now be required to engage external energy auditors unless the above exemptions apply.

PIC: THINKSTOCK

> Article 5 of the new directive sets a 3% annual renovation target for public buildings owned and occupied by central government

Cutting costs

It is recognised that SMEs have an enormous energy-saving potential. Indeed, recent research by Amárach indicates that energy costs account for at least 9% of operating costs for most Irish businesses. Reducing energy costs can impact on the bottom line for all business – legal services included.

Article 8(2) of the new directive places an obligation on member states to develop programmes to encourage SMEs to undergo energy audits and to implement audit recommendations.

Perhaps the strongest indication of a growing awareness of the value of improving energy efficiency is the recent launch by AIB of a dedicated €100 million fund for businesses wishing to invest in measures to improve their energy efficiency.

Energy performance contracting

In line with obligations under the new directive, one of the key actions in Ireland's second NEEAP is the promotion of 'energy performance contracting' as a means of realising energy efficiency projects.

'Energy performance contracting' is defined by the new directive as "a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure, verified and monitored during the whole term of the contract, where investments (work, supply or service) in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion, such as financial savings".

In order to promote the market for energy performance contracting in Ireland, the Government has launched a national energy services framework. The framework, which is currently being tested by 21 exemplar projects, will provide a suite of tools, including guidance documents, model forms and templates.

In conjunction with the framework, the Government has also launched a new energy efficiency fund that will provide funding for investment in energy-efficient projects in the public and private sector in Ireland, in particular for energy performance contracting. The government has provided €35 million of the fund's capital, with the aim of attracting matching private sector monies. The fund will be operated on a wholly commercial basis by Sustainable Development Capital LLP

PUBLIC SECTOR ROLE

leading by example

With an estimated annual energy spend amounting to some €500 million, the Irish public sector stands to benefit from reducing its energy costs, thereby freeing up public moneys for other purposes.

In light of this, and the fact that the public sector can help to drive the development of the energy-service market, the new directive requires the public sector to fulfil an 'exemplar role' in the context of energy efficiency. Article 5 of the new directive sets a 3% annual renovation target for public buildings owned and occupied by central government. The energy efficiency of these renovated buildings must meet minimum energy-performance requirements set down by the *Recast Energy Performance of Buildings Directive* (the *EPD Directive*). Alternatively, member states may take other measures, including deep renovation and behavioural changes to achieve equivalent savings.

Article 6 of the new directive requires that member states ensure that central government only purchase buildings and rent premises with a high energy efficiency. While there are a number of exceptions under the new directive, it should be noted that article 9(1) of the *EPD Directive* requires that, after 31 December 2018, all new buildings owned and occupied by public authorities are "nearly zero-energy buildings", except in specific cases where the cost-benefit analysis over the life cycle of the building is negative. A 'nearly zero-energy building' is a building with a very high energy performance calculated in accordance with annex 1 of the *EPD Directive*.

Ireland has set a separate, indicative target of improving the energy efficiency of the public sector by 33%. These new obligations supplement the current obligations on public bodies under SI 542/2009 (as amended) in respect of energy audits, energy efficient procurement and energy-efficiency buildings.

Another key action under Ireland's second NEEAP is the introduction of a 'pay-as-you-save' scheme to replace the current exchequer-funded grant schemes for energy efficiency improvements for households and business. A similar scheme – the 'Green Deal' – has been adopted in Britain. Essentially, it enables the cost of energy efficiency improvements to be paid for over time through energy bills for the premises and is based on the 'golden rule', whereby anticipated saving in the energy costs should be higher than the costs of implementing the improvements.

In Britain, the Green Deal is available to both rented and owner-occupied premises and, in this regard, is an attempt to overcome the split incentive between landlords and tenants to invest in improving energy efficiency.

Historically, there have been few incentives for landlords to invest in improving energy efficiency if this was likely to result in reduced energy costs for tenants without a corresponding increase in rent. Based on the experience in Britain, the introduction of a pay-as-you-save scheme in Ireland would have implications for the sale and rental of residential and non-residential properties.

With the exception of the obligations placed on central government and the creation of an energy-efficiency obligations scheme for energy distributors and retail energy-sale companies (which is beyond the scope of this article), the new directive is light on 'sticks', opting instead for the 'carrot' approach. It would appear that this approach is based on the premise that, by informing energy consumers and putting in place the correct framework, consumers will chose to improve energy efficiency in order to realise the potential energy cost savings.

It is arguable that this is the correct approach, in the sense that investment in energy efficiency to retrofit existing buildings should be cost effective, whereas new buildings should comply with specific standards. The development of the energy services market in Ireland represents an opportunity for all building-sector stakeholders, including their legal advisors.

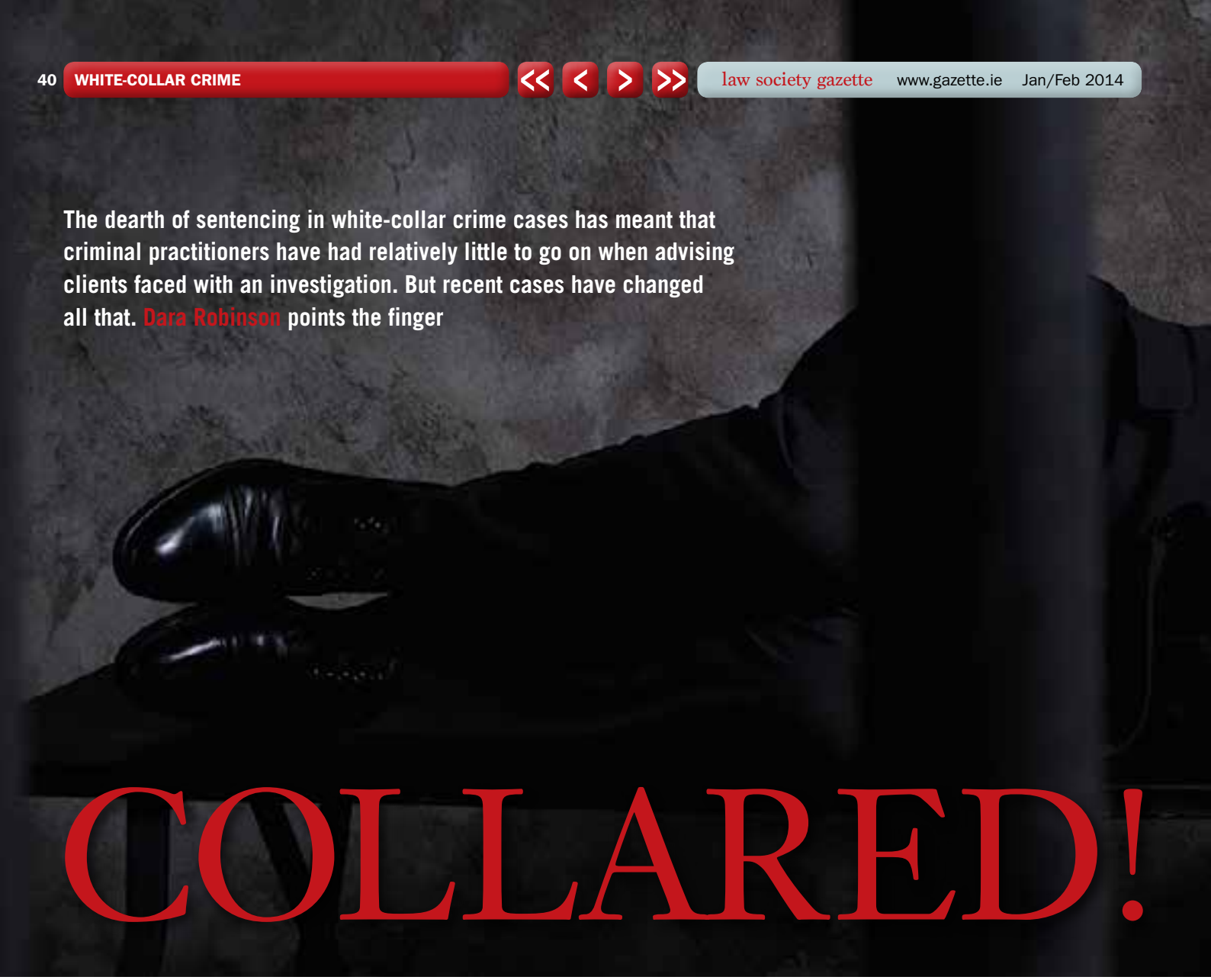
look it up

Legislation:

- *Building Regulations*
- *Energy Efficiency Directive* (2012/27/EU)
- *Energy Services Directive* (2006/32/EC)
- *Recast Energy Performance of Buildings Directive* (2010/31/EC)
- *Renewable Energy Directive* (2009/28/EC)
- SI 243/2012 (*European Union (Energy Performance of Buildings) Regulations 2012*)
- SI 542/2009 (*European Communities (Energy End-Use Efficiency and Energy Services) Regulations 2009*)

Literature:

- National Energy Efficiency Action Plan



The dearth of sentencing in white-collar crime cases has meant that criminal practitioners have had relatively little to go on when advising clients faced with an investigation. But recent cases have changed all that. Dara Robinson points the finger

COLLARED!

Dara Robinson is partner in the Dublin law firm Sheehan & Partners

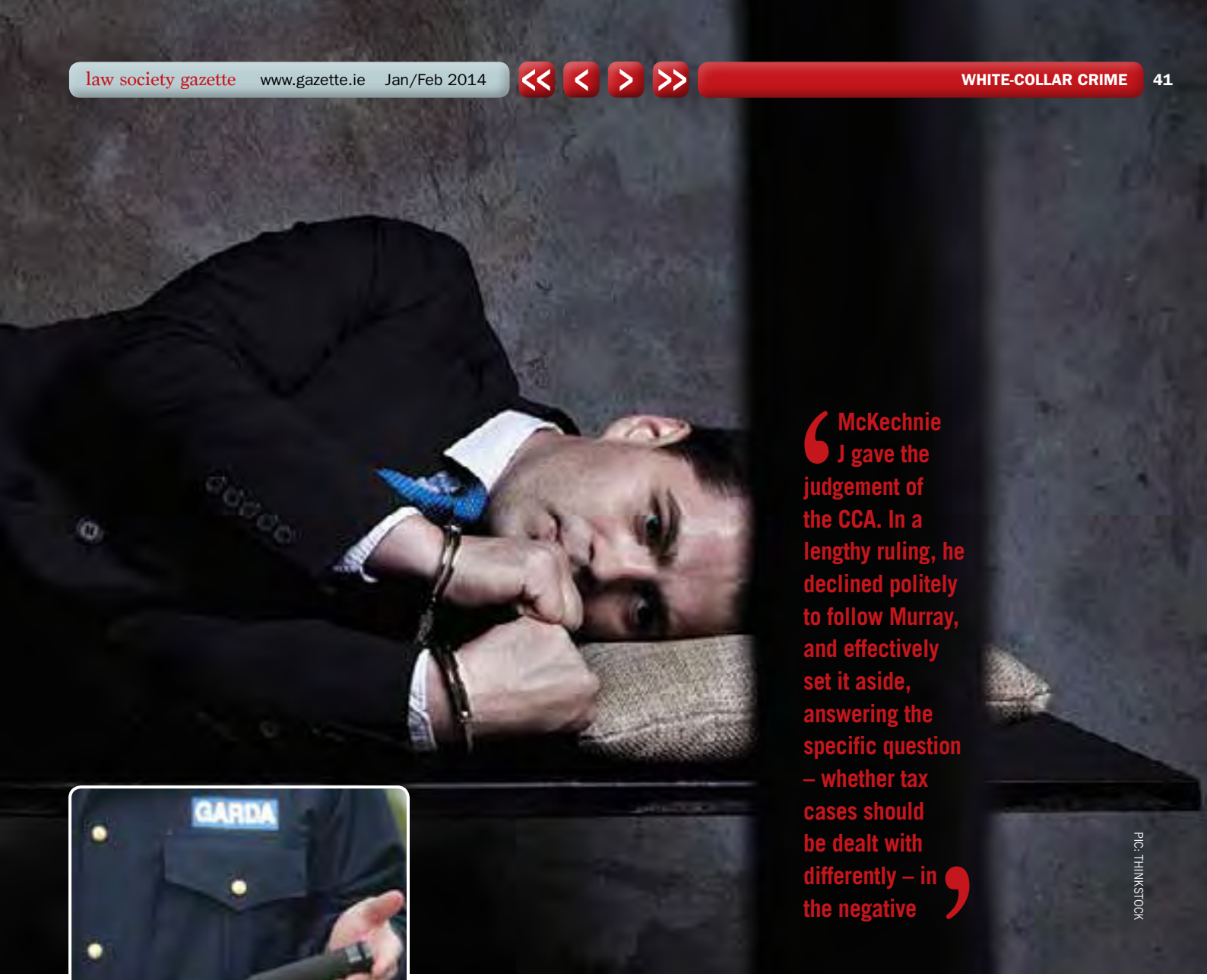
Traditionally, the investigation and prosecution of white-collar crime in Ireland has formed but a modest proportion of the caseloads of the criminal courts and of criminal law practitioners. In recent years, however, cases brought by the Garda Bureau of Fraud Investigation, the Competition Authority, the Department of Social Protection, and most especially by Revenue, have increased in number and have resulted in a cogent and coherent body of law as to how such cases, many of them high-profile, should be disposed of in the event of conviction. In addition, the partly commenced *Criminal Justice Act 2011* underlines the State's determination to mount an increasing offensive against what is seen as hitherto under-prosecuted offending behaviour.

Looking at the agencies referred to above, perhaps the most obvious changes to the traditional role are to be seen within Revenue. Historically seen as collectors of taxes, even where there was default amounting to offending, such as under-declaration of taxes due, the last decade or so has seen a greatly beefed-up Investigations and Prosecutions Division at Revenue, coupled with a willingness to prosecute that is at odds with the familiar approach. A dedicated section of the Revenue website outlines the prosecutions, albeit with very limited information, brought over the last few years – many of which are prosecutions on indictment resulting in prison sentences.

Moreover, a number of such cases have now been considered by the Court of Criminal Appeal (CCA), and coherent threads of jurisprudence have emerged that will no doubt be further developed, but which offer a good indication of those factors considered most significant in the sentencing process in this kind of case.

Start me up

A useful starting point was the case of *DPP v George Redmond*, an early example of the DPP exercising the right to appeal the purported undue leniency of first-instance sentences, using section 2 of the *Criminal Justice Act 1993*. Redmond had been fined by the Circuit Court for tax offences. The discussion in the CCA was wide ranging, but a clear principle as to what constituted 'punishment' emerged in the case, being the cumulative nature of



> McKechnie J gave the judgement of the CCA. In a lengthy ruling, he declined politely to follow Murray, and effectively set it aside, answering the specific question – whether tax cases should be dealt with differently – in the negative

PIC: THINKSTOCK

PIC: PHOTOCALL IRELAND

hardship suffered by an accused, which included loss of reputation and, perhaps more pertinently, any payment of interest and penalties, over and above the unpaid taxes, which had been discharged as part of a settlement with Revenue. The court also reiterated the traditional approach, that any sentence imposed must be proportionate to the gravity of the offences and to the personal circumstances of the offender.

A further important case was that of *DPP v Colm Perry*. Here, the accused, a building contractor, pleaded guilty to 21 specimen charges relating to VAT and income tax offending over a period of some eight years. Prior to his sentencing date, he had discharged a tax liability of some €500,000, with a further €200,000 in penalties and interest. He was sentenced to 20 months in the Circuit Court. On appeal to the CCA four months later, the court held that he had been sufficiently punished by the time already served in prison. Hardiman J, giving the ruling of the court, had no doubt that the "financial penalty", being payment over and above the tax due, was "in the nature of a punitive consequence", and had been insufficiently so considered by the trial judge.

Fidelity to the nation

Large-scale social welfare fraud fell to be considered by the CCA in *DPP v Murray*. By far the most serious offending of its kind in Irish legal history, Murray involved a prolonged, well-organised, systematic and lucrative fraud, involving multiple false identities and forged documentation over a period of some five years.

After illegally obtaining just under €250,000, Murray received 25 consecutive sentences of six months each – a total of 12-and-a-half years – on a guilty plea in the Circuit Court. In an occasionally

at a glance

- The investigation and prosecution of white-collar crime in Ireland is increasing
- Cases brought by State agencies in recent years have resulted in a cogent body of law
- A number of such cases have now been considered by the Court of Criminal Appeal, and coherent threads of jurisprudence have emerged that offer a good indication of the factors considered most significant in the sentencing process

MUSICI IRELAND
CONCERT

Thursday 20th March at 7.30pm

Gleeson Theatre, Kevin Street, Dublin

in aid of

THE FRIENDS of ST LUKE'S Cancer Care

and in memory of Reggie Redmond

Guest Director and Soloist: Helena Wood (Newly appointed concertmaster of the RTE National Symphony Orchestra)

Tickets €20

available at the door on the night, or from

www.friendsofstlukes.ie

www.musici.ie

PROGRAMME

Liam Bates "Vivo"

Vivaldi "Tempesta di Mare"

Grieg "Holberg Suite"

Britten "Simple Symphony"

Holst "St. Paul's Suite"

RAFFLE PRIZES TO INCLUDE: A private concert by Musici Ireland. A piece of bespoke handmade furniture up to the value of €500. A watercolour painting by artist Ian McNinch. Full day's deep sea fishing trip for 10 people worth €650.

PIC: THINKSTOCK

splenetic judgment in the CCA, Finnegan J noted the "time of crisis for the public finances" and the appellant's constitutional duty (as a citizen) of "fidelity to the nation and loyalty to the State".

The court reduced the overall sentence to one of eight years, all the while indicating that such a sentence tended to be reserved for grave crimes against the person. The ultimate emphasis, according to Finnegan J, called for severe punishment for Murray's departure from the "high level of social solidarity" required at this time of "pressing national need".

However, Finnegan J attempted to go further, and to lay down guidelines for future courts, calling for "an immediate and appreciable custodial sentence" in all such cases. This latter approach, while not unknown in comparable jurisdictions, had long ago been expressly discouraged by the Supreme Court in *Tiernan* (1988) and was the subject of further adverse comment in *Begley* (see below) and cannot be seen as a correct statement of law.

'The CCA, after considering and rejecting a number of other grounds of appeal, held that 'when considering sentence, however, it would be an obvious injustice if a person were not entitled to invite a court to take into account the extent of financial reparations he has been compelled to make on the civil side'

'Emptied the cupboard'

Both *Perry* and *Murray*, among others, were considered by the CCA in *DPP v Hughes*. Hughes, a car dealer, had pleaded guilty to a number of sample counts of VAT evasion and had been sentenced to four years by the Circuit Court. He had no previous convictions, a feature common to many such cases. Most significantly, he had "emptied the cupboard", in the memorable phrase of the CCA, to discharge taxes, interest and penalties, including the sale of a modest property portfolio. The last tranche of such payment, in excess of €200,000, had been paid over to Revenue on the morning of the sentence hearing.

The CCA, after considering and rejecting a number of other grounds of appeal, held that "when considering sentence, however, it would be an obvious injustice if a person were not entitled to invite a court to take into account the extent of financial reparations he has been compelled to make on the civil side".

There were two related aspects to this issue: firstly, the penalty involved in making the payments themselves; secondly, the effect on a man the age of the appellant (and on his family) of being, as it were, set back to square one financially. The court also began the process, continued in the *Begley* case, of distancing itself from *Murray* and its significance as an authority for swingeing sentences for fraud on the State.

Pungent case

DPP v Begley was unusual in that it attracted a good deal of media comment, much of it critical of the seeming harshness of the sentence. Popularly known as the 'garlic case' (see *Gazette*, May 2013, p22), the accused had been sentenced to six years by the Circuit Court, including one term of five years – the maximum available – on a guilty plea. The alleged offences had concerned a fraud over several years, misdescribing garlic as other goods in customs declarations in order to attract a lower rate of import duty.

As a result of the investigation, it was considered that approximately 1,413 tonnes of garlic, valued at €1.1 million, were imported from China during the period in question. It was estimated that €1.6 million in duty was thus evaded. The appellant came to an arrangement with the Revenue to repay the sum of €1.6 million in instalments, commencing with the payment of a lump sum of around €219,000 to Revenue in December 2009, with a payment schedule of €24,000 per month up to December 2011 and €33,000 per month thereafter being subsequently agreed upon.

By the time of sentence, all payments had been made promptly and the outstanding balance was on course to be fully discharged within the agreed timeframe. In addition, the accused had demonstrated an extraordinary level of cooperation with the investigation.

Incentivising cooperation

McKechnie J gave the judgment of the CCA. In a lengthy ruling, he declined politely to follow *Murray*, and effectively set it aside, answering the specific question – whether tax cases should be dealt with differently – in the negative. More significantly, he emphasised "the incentivising" of cooperation and restitution by appellants in the position of Mr Begley. Without saying as much, it was clear that the State has a vested interest in securing such assistance. Were it otherwise, advisers would have to consider what merit there would be in advising cooperation and what value, for a suspect, would lie in assisting the investigation or in making substantial repayments. The court spelled out, lest there be any doubt, that "restitution may have a level of high legal significance in fraud cases".

It seems almost inevitable that cases of this kind will continue to grow in number. Various factors, among them a recorded increase in informing to the Department of Social Protection and widespread whistle-blowing obligations imposed by section 19 of the *Criminal Justice Act 2011*, can only lead to new allegations being brought to the attention of the relevant authorities.

It is clearly incumbent on practitioners who find themselves asked to advise suspects in such cases to familiarise themselves with the relevant sentencing principles, so as to enable their clients to make the best possible decisions when faced with an investigation by a white-collar crime agency.

look it up

Cases:
- *DPP v Begley* [2013] IECCA 32
- *DPP v Colm Perry* [2009] IECCA 161
- *DPP v George Redmond* [2001] IR 290
- *DPP v Hughes* [2012] IECCA 85
- *DPP v Murray* [2012] IECCA 60
- *People (DPP) v Tiernan* [1988] IR 250

Legislation:
- *Criminal Justice Act 1993*
- *Criminal Justice Act 2011*

Literature:
- *Law Society Gazette*, May 2013, pp22-25

When he retired last December, Bandon-based solicitor Edward O'Driscoll was one of the longest-serving practitioners in the country. Mark McDermott met him at the office founded by his father and discovered a man with a brilliant mind, a gift for storytelling, and a love of the theatrical

MEMORY *man*

ALL PICS: DENIS BOYLE

at a glance

- Third-longest serving solicitor
- Rebel burnings in Bandon
- Wake-up call at 24
- The cut-and-thrust of the District Court
- Cases of local and national interest

Mark McDermott is editor of the Law Society Gazette

Edward O'Driscoll is the kind of man you don't forget. He has immense presence, is very direct, eyeballs each person he meets, owns a strong voice that wouldn't be out of place on the stage, and is a fabulous raconteur. I also discover that he has a memory to match Jimmy Magee's – Bandon's very own 'memory man'.

When he retired last December, he was the third longest-serving practitioner in the country, after Law Society past-president William Osborne of Naas (admitted to the profession in 1947), and Joseph Quirke of Carrick-on-Suir (admitted in Hilary of '48). Edward entered the profession in Michaelmas of the same year.

The eldest son of solicitor PJ O'Driscoll – the founder of the family's practice – Edward says that due to marrying late, his dad seemed in a great hurry to get him qualified.

At the time when his own dad qualified in 1899, there were nine solicitors practising in Bandon – only two of them Catholic. "The Essex Regiment was based in Bandon at that time," says Edward. "The man in charge was Major Percival. He had the honour of surrendering the British Forces to the Japanese Imperial Army in Singapore in 1942," he adds with a heavy helping of sarcasm.

"This is the Rebel County, and the heart of rebel feeling was here when my father was in practice," he says. "There were many non-Catholic businesses in town and, at one stage, there was a threat to burn certain buildings. These buildings were marked with a white cross on the doors. My father's office at number 4, South Main Street, was a small rented office and it got marked. Of course, a lot of people didn't like him.

"The rebel movement was behind it. He had a close friend, though, called Sonny, who was very well connected with the rebels. PJ contacted him: 'They marked my office,' he told him.

'Who did that now? That wasn't supposed to be marked at all,' he replied. "I'll look after that," he reassured PJ.

"All the marked offices were burned," says Edward, "but my father's office was not. That kind of political and social tension is not felt or fully appreciated now at all! That was part of life and business in Ireland at that time before the foundation of the new State."

Wake-up day

Was it a given, then, that Edward was going to take over from his father? "He decided it for me," says Edward. "I had no option." Did he ever regret that? "No, I did not. No, because I was very much among people."

He began working with his father as soon as he had qualified. "Alas, my father only lived for four more years. He died in 1952, suddenly, when I was in a courtroom in Cork. A phone call came to the county registrar and a note was passed to the judge who said he was adjourning the case and wished to retire to his room. He invited me to join him in his chambers, which I did, only to be told that my father had died suddenly at home and that my mother wanted me.

"I came home and, my, that was my wake-up day! My father was gone. I had to make all the decisions from there on. I was 24.

"People used to say, 'Ah, he's only a young fella. What does he know?' That stung me. God, I made sure I got to know and started to work to monopolise the District Courts around here for a good number of years."

What does he mean by 'monopolise'?

"Well, you see, solicitors considered the District Court beneath them – a lot of them anyway. Beneath them! So they'd send out the apprentice or the least busy individual in the office. But goodness me, from the District Court everything sprung! Because in litigation cases, clients would be asked if they had been hurt. And if they had been hurt, well, there was the question of what damages might follow. Damages claims followed, very often, with a High Court case."

Can a cat swim?

Slowly but surely, Edward started making a name for himself. "I was the kind of person who believed that you should be heard in court. And you should be logical in the questions you asked – that it was important that all the bystanders listening in court, of whom there were many in bygone days, would hear what you said and understood why you were asking a question, or what points you were making."

> **'My most famous local case concerned the issue of whether a cat could swim or not. I'll ask you the question, do you know whether a cat can swim?'**

Many of the cases in which he was involved started getting publicity in the local papers. "My most famous local case concerned the issue of whether a cat could swim or not. I'll ask you the question, do you know whether a cat can swim?"

I fudge the answer by saying that I suspect so, but can't be certain. It doesn't take much to imagine Edward in full flow in a packed courtroom as he retorts: "Do you know that all four-legged animals can swim because their body weight will be kept up by the water's buoyancy. And they learn to swim – even if they have never previously had the experience!

"Anyway, some young boys coming home from school spied the school mistress's cat – a big overfed, underused tomcat. And one boy said to the others, 'Do you think a cat can swim? Oh, I think a cat can swim and I'll have a bet.'

They made the bet and they caught the cat and threw him into the river at Adrigole Bridge and, of course, the cat swam out and went home to the school ma'am. When she saw the conditin of her tabby, she blew a fuse and got onto the local sergeant, who charged the three lads with cruelty to animals – and he had to charge their parents as they were underage. They consulted me. So down we go, 70 miles to the District Court, and I decide to make a case of this.

"I asked the sergeant, 'Sergeant, can a cat swim?' He objected to the relevancy of the question. And I replied: 'But that's what this case is all about! Can a cat swim or

Two new titles from Bloomsbury Professional

Local Authority Enforcement

by John J Morrissey BL, BA, MRUP, Dip Arb

This new book takes eight Acts that govern many important local authority functions, and considers the possible offences that could be committed under each.

It discusses the prosecution of those offences, including:

- Gathering of evidence
- Initiating of proceedings
- Presentation of the case

You will also find insightful coverage of topics such as:

- Strict and absolute liability offences
- Ascribing intention to corporate bodies
- Shifts of burdens of proof

Finally, the work addresses the consequences of conviction: eg the loss of a right to a licence or the application of the Proceeds of Crime Acts.

This book will provide an essential reference for solicitors with an interest in local authority law.

ORDER YOUR COPY TODAY

ISBN: 978 1 78043 252 6
Pub Date: Feb-14
Format: Hardback
Price: €185 + €5.50 P&P

Registration of Deeds and Title in Ireland

by John Deeney

An up-to-date, comprehensive and practical guide to deeds and land registration practice written by one of Ireland's foremost authorities on the subject.

Registration of Deeds and Title in Ireland provides you with an updated and comprehensive account of the current law relating to the registration of deeds and title in Ireland.

Comprehensive coverage includes:

- A full account of the Land Registration Rules 2012–2013, keeping you up to date with the latest legal developments
- A comprehensive chapter on effecting first registration – giving you the practical solutions you need
- Electronic registration and electronic conveyancing – how going online will save you time and effort
- Land Registry mapping practice in the digitised environment
- Changes to land registration practice effected by the Land and Conveyancing Law Reform Act 2009 – make sure you're operating best practice

ORDER YOUR COPY TODAY

ISBN: 978 1 78043 228 1
Publication Date: Feb-14
Format: Hardback
List price: €190 + €5.50 P&P

TO ORDER A COPY OF THESE BOOKS

Contact Jennifer Simpson, Bloomsbury Professional. **Tel:** +353 (0) 1 637 3920 **Fax:** +353 (0) 1 662 0365
Email: jennifer.simpson@bloomsbury.com **Web:** www.bloomsburyprofessional.com

Edward O'Driscoll with the partners, solicitors and staff of PJ O'Driscoll, Solicitors

> "Running between cases, a colleague commented: "Gosh, Ned, you're having a great day today. You're threshing in both haggarts!"

not? Does the sergeant know that much or is he in ignorance of it?' And, of course, I laid stress on that aspect so that the jury would titter and come over to my side.

"Eventually he said he didn't know. 'Well,' says I, "if you were 11 years old, wouldn't it show that you had some prospects if you were interested in trying to ascertain whether a cat could swim or not?!'

"The judge thought it comical and realised that there was no malice in the intent and dismissed all charges. I was almost cheered out of court!"

Fishy tales

"That was the time when I used to get fish as a bonus for my fee – fish! And one day I got four tuna, which are a very big fish! I brought them home to my wife, Kathleen, and she put her foot down: 'Don't you ever bring home tuna to me again!'

"I used to get paid in all sorts. I got a ton of oats and, on another occasion, two tons of oats for fees. I got a grand pony one time, from a tough fella from Dunmanway who was charged with larceny. It was a criminal trial and he couldn't pay the fee. So I got a pony, – but it turned out to be a great pony and I sold it afterwards for a good price of £200 or £300!"

Edward continued to prosper in court. On one occasion, out of 24 cases on the list for the Cork High Court personal injury list, he had 15 – an all-time record. He had a tough time that day, trying to manage it so his cases wouldn't clash: "Running between the two High Court rooms, a colleague commented to him: 'Gosh, Ned, you're having a great day today. You're threshing in both haggarts!'"

The best advice he received as a lawyer came from his father. "His advice about going to court was to make sure that you were the person in the court that knew most about your case and, above all, to know the exceptions of your case. I would never go into court and do a case that I was handed that morning. I always wanted to understand my case."

Probably the biggest case he was involved in – in terms of legal impact – related to a marriage break-up that took place in the High Court in Dublin.

"The solicitor against me, for the wife (and plaintiff), was none other than Alan Shatter, now minister for justice. There were 22 days at hearing before Mr Justice William Ellis. The counsel against me included Mary Robinson SC, subsequent President of Ireland, and Iarflaith O'Neill, who became a High Court judge.

"On my side, I had Declan Budd SC and Mary Irvine who acted as his junior (both of whom would become High Court judges). I instructed both of them. Alan Shatter, in his book *Family Law in the Republic of Ireland*, mentions that case as the reason why the *Judicial Separation and Family Law Reform Act 1989* was necessary. We had no option at that time but to deal separately with the issues of children, maintenance, alimony, guardianship, property.

"The 1989 act allowed all of those issues to be addressed as one. God above, what a case! Each day, I was so exhausted I'd go for a swim in the evenings at the 40-foot, for all 22 days of the case in July."

Accurate finisher

What does it take to be a successful solicitor? "Be an accurate finisher – and that means work completed, costs paid, tax paid, no stupid undertakings outstanding – no stupid undertakings outstanding. Be an accurate finisher."

Was that something Edward learned from hard-won experience?

"It was more to do with witnessing other solicitors who got into difficulties," he replied. On a number of occasions, he was asked by the Law Society to take over certain practices that had got into trouble. He maintains that the chief difficulty he encountered in these practices was their failure to finish cases properly.

Having retired, Edward is now facing into a new phase in his life. Does he have any unfulfilled ambitions? "No. I don't think, given another chance, that I could have done a whole lot differently – no."

Has he any regrets? "Regrets? Oh God, that I was suspended by the GAA [for playing a 'foreign game' in Dublin, leading to him missing out playing with the Cork Minors]. That was an awful regret."

What will they say about him in his retirement? "That I was a colourful practitioner – and that I created drama when perhaps there was no need for it – but that I was never intimidated or fearful of the court. The client knew that I was his man and that I was trying my best for him."

Consolidated Bankruptcy and Personal Insolvency Legislation

Bill Holohan and Keith Farry. Round Hall (2013), www.roundhall.ie. ISBN: 978-0-41403-145-6. Price: €115.

This book is an essential addition to the library of anyone involved in the personal bankruptcy arena in Ireland. The primary piece of bankruptcy legislation, namely the *Bankruptcy Act 1988*, has been extensively amended by various acts. The authors identify them all, with the exception of the amendments introduced by the *Companies (Miscellaneous Provisions) Act, 2013*, which was signed into law on Christmas Eve last. Additionally, the authors have also, quite painstakingly, combed the statute books in order to identify any legislative provisions that would have a bearing on the interpretation or application of the primary legislation.

For example, other than by reviewing this publication, how else would one know that any debts arising from the application of the levies referred to in articles 49 and 50 of the *European Coal and Steel Community Treaty*, which shall have fallen due within the period of 12 months next before the date of the order of adjudication of the bankrupt was made, and any surcharges in respect of delay in paying those levies, referred to in article 3 of the Commission recommendation, are to be regarded as preferential debts for the purposes of section 81 of the 1988 act, and consequently are afforded a priority when it comes to payment of the bankrupt's debts?

In the same vein – but more likely to arise – payments due under the *Maternity Protection Act 1994*, the *Adoptive Leave Act 1995*, the *Employment Equality Acts 1988-2008*, the *Parental Leave Act 1998*, the *National Minimum Wage Act 2000*, the *National Training Fund Act 2000*, and the *Carers Leave Act 2001* are also afforded equal priority. Would you have known that? This very practical publication

identifies all such issues.

Even though the *Personal Insolvency Act 2012* is relatively recent, it has already been amended by no less than four subsequent acts, with some of its provisions being amended even before they came into force. The potential for confusion is obvious. However, the authors tread a careful path through the legislative minefield, and show the safe way to proceed.

This book is a comprehensive consolidation of all of the bankruptcy and personal insolvency legislation in Ireland up to the beginning of December 2013 and shows the amendment history of each section that has been amended. It also has a useful introductory chapter comprising a review summarising the reform of bankruptcy and insolvency law in Ireland. There is a useful commentary on the key provisions of the *Personal Insolvency Act*. The authors highlight those sections of the act where the High Court's interpretation could generate a significant impact on personal insolvency. The book also has a useful discussion on alternatives to Irish bankruptcy, and briefly discusses forum shopping and individual voluntary arrangements in Britain.

Up to recently, there were less than ten bankruptcies a year in Ireland. Many thousands a year are expected in the coming years. They and their advisors will have a steep learning curve. The authors, who are at the top of that curve already, have done a great service to those struggling to come to terms with a vast body of legislation.

Jim Stafford is managing partner of specialist insolvency firm Friel Stafford.

READING ROOM

almost 6,000 book loans in 2013

Members borrowed 5,799 books from the Society's library during 2013. Members may borrow up to five books for a ten-day period – one renewal is allowed, provided books are not overdue or reserved by another reader.

Loans can be collected from the library or can be delivered by the DX's tracked courier service for delivery to your office address the following working day during business hours. There is a delivery charge of €5 per packet for this service.

new books available to borrow

- Abrahamson, William *et al*, *Discovery and Disclosure* (2nd ed; Round Hall, 2013)
- Byrne, Mema, *Landlord and Tenant Law: The Commercial Sector* (Round Hall, 2013)
- Crowley, Louise, *Family Law* (Round Hall, 2013)
- Esplugues, Carlos and Silvia Barona, *Global Perspectives on ADR* (Intersentia, 2013)
- Evans, Malcolm D, *Blackstone's International Law Documents* (OUP, 2013)
- Dowling, Karl and Karen McDonnell, *Civil Procedure in the Circuit Court* (2nd ed; Round Hall, 2013)
- Franconi, Francesco and James Gordley, *Enforcing International Cultural Heritage Law* (OUP, 2013)
- Holohan, Bill and Keith Farry, *Consolidated Bankruptcy and Personal Insolvency Legislation* (Round Hall, 2013)
- McDonnell, Martin, *The Law of Firearms and Offensive Weapons* (Clarus Press, 2014)
- O'Malley, Thomas, *Sexual Offences* (2nd ed; Round Hall, 2013)
- Toghda, Sean, *European Arrest Warrant Acts 2003 and 2012: Annotated and Consolidated* (Round Hall, 2013)
- Samad, Mahmud, *Court Applications Under the Companies Acts* (Bloomsbury Professional, 2013)
- Todd, Richard and Elisabeth Todd, *Todd's Relationship Agreements* (Sweet & Maxwell, 2014)

Banking Law

John Breslin. Round Hall (3rd edition, 2013), www.roundhall.ie. ISBN: 978-0-4140-313-71. Price: €547.35 (incl VAT).

In his preface to this third edition, the author notes that the law relating to banks has become front-page news. It has also become a central area of practice for many firms. This text provides a useful guide for any practitioner called on to advise on the enforcement of a loan, or on banking law more generally, breaking down complex issues and explaining them in a comprehensible manner, particularly by reference to recent case law.

The text first considers the framework of financial regulation for banks (including a useful overview of the legislative measures adopted to deal with the financial crisis) and then explores, in varying degrees of detail, the issues arising between a bank and its customer, including the application of the law of contract, liability in negligence, the duty of confidentiality, as well as the law relating to bank accounts, cheques and letters of credit.

The second half of the text considers the law relating to various forms of security. These later chapters are essential reading for most firms, given the increase in the number of debt-recovery cases before the courts in recent years and the distinct issues that can arise, depending on the particular form of security granted.

Given the volume of issues considered in this text, some of them (by the author's own admission) are only considered in brief, for example, anti-money-laundering legislation and the law relating to NAMA, as well as general areas like the law of contract and tort. For such issues, while this text provides a useful overview, it should be read in conjunction with more detailed texts on the relevant area.

As one would expect, banking law is not standing still, and practitioners must be cognisant of ongoing legislative changes and recent case law, such as the enactment, since the publication of this text, of the *Central Bank (Supervision and Enforcement) Act 2013* (it should be noted that Mr Breslin does draw attention to relevant provisions of the bill in the text, but these sections must be read in conjunction with the wording of the act as ultimately enacted), as well as future changes to the framework within which banks currently operate, like the planned establishment of the single supervisory mechanism by the European Central Bank.

Tracy Lyne is a solicitor in the enforcement directorate of the Central Bank of Ireland.

council report

Council meeting 13 December 2013

Motion: *Solicitors' Accounts (Amendment) Regulations 2013*
Proposed: Martin Lawlor
Seconded: Christopher Callan
The Council approved amending the *Solicitors' Accounts Regulations* to provide for the handling of clients' moneys by solicitor personal insolvency practitioners.

Thomas Byrne

The Council noted, with approval, the recent imprisonment of Thomas Byrne. The Council noted the extensive media coverage that had followed in its wake, which had ranged from reasonable commentary to inaccurate reportage. The distinction between the Law Society and the Solicitors Disciplinary Tribunal had been missed by many and, on more than one occasion, there had been a considerable disconnect between the headlines on articles and the content of those articles. There was little recognition of the fact that detecting fraud by an individual who was so cunning and clever was virtually impossible, and there appeared to be a naïve belief that this task would be more easily performed by the new Legal Services Regulatory Authority. The Council acknowledged that, while the profession was understandably ashamed and embarrassed by Mr Byrne, it was important to remember that the vast majority of the profession were honourable, decent people who did the best job for their clients.

Submission on family law

Following a presentation by the Society's deputy director of education, Dr Geoffrey Shannon, the Council approved a comprehensive draft submission on the future of family law, which placed greater emphasis on a less adversarial approach, on judicial leadership and culture, and on case management.

Practising certificate regulations

The Council approved the practising certificate regulations and fees for 2014, with the level of fees being maintained at those pertaining for 2013.

Extraordinary members

The Council approved the appointment of Richard Palmer, Michael Robinson, Arleen Elliott, Imelda McMillan and Brian Speers as extraordinary members of the Council, representing the Law Society of Northern Ireland.

Professional indemnity insurance

The chairman of the PII Committee, Stuart Gilhooly, reported on the most recent renewal process. It was noted that most solicitors appeared to have received cheaper premiums, although there had been a small number of complaints from sole practitioners about very high premiums. Some concerns were expressed about the increasing market share of unrated insurers. It was agreed to have a full discussion on all aspects of PII at the February Council meeting, when the renewal process had concluded and more information would be available.

Fourth Anti-Money-Laundering Directive

The chairman of the Business Law Committee, Paul Keane, briefed the Council on a submission expressing concerns about the beneficial ownership requirements contained in the *Fourth Anti-Money-Laundering Directive*. A further submission expressing concerns about the treatment of solicitor client accounts in the same directive had also been made. Both submissions had been sent to Gay Mitchell MEP and to the Departments of Justice and Finance. The Society would continue to make representations in relation to both matters, both at national level and at EU level, both directly and through the CCBE.

Gazette awards

On behalf of the Council, the president congratulated the *Gazette* team and the *Gazette* Editorial Board on securing awards for 'Best Magazine' and 'Best Cover' at the annual Irish Magazine Awards.

TECHNOLOGY COMMITTEE

Interaction with government online

The Technology Committee continues to monitor and review the interaction of the profession with the wide range of Government online services. The committee is aware of difficulties that practitioners may have with the range of access or login protocols and payment procedures operated by different Government online services. The committee continues to pursue a more consistent approach from the various relevant agencies that would assist practitioners in their use of these services, and which would also be consistent with best practice at international level. A more consistent approach would also reflect the principles set out in the *Strategy for E-Government 2012-2015*.

The range of Government online services includes Revenue Commissioners (e-stamping, local property tax, and so on), Property Registration Authority (Land Direct, e-filing), and the Companies Registration Office (e-filing).

The multiplicity of access and payment systems across Government departments and agencies results in an inefficient interaction between users and the agencies involved and imposes unnecessary administrative burdens on users – in many cases, solicitors.

The Technology Committee is issuing this guidance note to assist practitioners with security and authorisation issues related to the use of Government online services.

Many Government online services will require the delivery and verification of personal information on behalf of a client. In all such instances, a practitioner should ensure that a full authorisation has been obtained from the client and that the relevant details have been confirmed before the data is delivered to the Government online services.

Where payment is to be made to a Government online service in electronic form, practitioners should ensure that the client is in funds to meet the amount being paid, and that any accounting or payment procedures conform to the *Solicitors' Accounts Regulations*. Personal data that is obtained from a client for submission to a Government online service should only be retained in conformity with data-protection requirements or with the express consent of the client. Practitioners are advised to retain either electronic or printed copies of all relevant information submitted on behalf of a client to a Government online service.

Access details (including user IDs and logins) for the range of Government online services should be adequately secured and protected against misuse. Practitioners should ensure that appropriate steps are taken to secure and protect access details where employees have left the firm or practice. Consideration should be given to amending or changing passwords for access to Government online services on a regular basis.

The committee will continue to engage with Government online services to encourage a more consistent approach to access and verification procedures that would observe European and international standards, simplify procedures and assist practitioners in their work. The committee is also supportive of any particular arrangements to acknowledge the status and responsibilities of solicitors as they increasingly interact with Government online services on behalf of clients.

CONVEYANCING COMMITTEE
TAXATION COMMITTEE

VAT on property: amendments to Pre-Contract VAT Enquiries and Special Condition 3

Last year, practitioners were invited to make submissions regarding amendments or refinements to Law Society's Pre-Contract VAT Enquiries (PCVE) and Special Condition 3 of its standard contract for sale in relation to VAT on property in order to improve their efficiency and fitness for purpose. The Law Society Taxation and Conveyancing Committees have decided to make the following amendments.

Special Condition 3

1) Clause 3.2.2, 3.3.1, 3.5 and 3.6.2 includes a reference to section 94(7) of the *VAT Consolidation Act 2010* to ensure that the provisions for the exercise of the joint option to tax includes liquidators/receivers/MIP type sales,
2) Clause 3.7 is amended to include the words 'of the Subject Property' after 'Sale' for clarity purposes,
3) Clause 3.9, 3.10 and footnote 11 have been amended for greater clarity regarding legacy leases. They now read as follows:

"3.9. On the Assignment or Surrender of an interest in an occupational lease (which is not a legacy lease) for a premium…",

"3.10. On the Assignment or Surrender of an interest in an occupational lease (legacy or otherwise), the Vendor…",

Footnote "11 Required only if Special Condition 3.7 or 3.10 are used…"

PCVE

1) "and enquiries 2.2 and 2.3" are deleted from Clause 1.2 for clarity purposes.

The updated PCVE and Special Condition 3 are now available on both the Conveyancing and Taxation Committees' web pages in the members' area of the Society's website (www.lawsociety.ie).

LITIGATION COMMITTEE

Increase in limit for solatium

The maximum amount of damages for mental distress that can be awarded to the dependants of a deceased person in wrongful death cases under part IV of the *Civil Liability Act 1961* (as amended) has been increased from €25,394.76 to €35,000 with effect from 11 January 2014 (SI 6/2014). This new limit for solatium reflects the increase in the CPI since the limit was last modified in 1996.

LITIGATION COMMITTEE

Moneys lodged in court on behalf of a minor plaintiff

The Litigation Committee's attention has been drawn to an instance of an award of €74,500 being lodged in court on behalf of a minor plaintiff in August 2012 that, when paid out of court in June 2013, was reduced to €72,825.44. The reduction resulted primarily from stamp duty totalling €1,683.60 levied on the investment and the payment out, as well as exit tax on the realised gain.

In instances where an award is made in favour of a minor plaintiff who will shortly attain majority, the Litigation Committee recommends that, in appropriate cases, consideration be given to applying to the court to have the moneys paid to a responsible adult to hold as trustee, rather than having moneys lodged in court.

practice notes

CONVEYANCING COMMITTEE

Conveyancing requirements regarding cohabitants: deeds of confirmation

The committee has been asked what the correct position is as regards cohabitants executing deeds of waiver or deeds of confirmation in cases where they are not on title.

A cohabitant who has no equity in a property should make a family law declaration to this effect for a conveyancing transaction, including a mortgage transaction.

However, where a cohabitant who is not on title (whether a qualified cohabitant or not) has equity in a property, or if there is a doubt as to whether or not the cohabitant has such equity, the family law declaration should reflect this fact, and the cohabitant should execute a deed of confirmation in favour of either the purchaser or the mortgagee as appropriate.

It should be noted that, in circumstances where it is established that a cohabitant has equity in a property, it is not possible for them to 'waive' their interest: the appropriate deed is a deed of confirmation, as above.

The question arises as to how a solicitor can be certain that an equitable interest has not accrued in any particular situation and that, therefore, a deed of confirmation is not necessary. The view of the committee is that, if a cohabitant cannot make a declaration that he/she has no equitable interest, he/she should sign a deed of confirmation. Where a deed of confirmation is to be signed by a cohabitant, he/she should be advised to obtain independent legal advice.

Even in a case where it is established that a cohabitant has no equitable interest, a family law declaration is required in any case in order to exclude the possibility of proceedings under the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

LITIGATION COMMITTEE

Jurisdiction of the civil courts changed on 3 February

The changes to the monetary jurisdictions of the civil courts provided for in section 2(1) and part 3 of the *Courts and Civil Law (Miscellaneous Provisions) Act 2013* took effect on 3 February 2014.

From that date, the new limits of the civil jurisdictions will be:

- **District Court – €15,000,**
- **Circuit Court in civil proceedings other than personal injury actions – €75,000,**
- **Circuit Court for personal injury actions as defined in section 2 of the *Civil Liability and Courts Act 2004* – €60,000.**

The commencement date of 3 February 2014 has been established by the *Courts and Civil Law (Miscellaneous Provisions) Act 2013 (Jurisdiction of District and Circuit Court) (Commencement) Order 2013* (SI 566 of 2013).

These jurisdictional changes are accompanied by new court rules, including the *Superior Court Rules* (*Rules of the Superior Courts (Courts and Civil Law (Miscellaneous Provisions) Act 2013) 2014* (SI 16 of 2014)) and fees orders for all courts.

The *District Court (Civil Procedure) Rules 2014* (SI 17 of 2014) make significant changes to District Court civil procedure, including the manner of commencement of such proceedings and the application of a new scale of costs. From 3 February 2014, a District Court civil proceeding must be commenced by the filing for issue and service of a 'claim notice' or PI summons (as appropriate), and this will remain valid for service for one year after the day it is filed.

The following new fees orders also operate from 3 February:

- ***District Court (Fees) Order 2014* (SI 22 of 2014)**
- ***Circuit Court (Fees) Order 2014* (SI 23 Of 2014)**
- ***Supreme Court and High Court (Fees) Order 2014* (SI 24 of 2014).**

CONVEYANCING COMMITTEE

Consent required for registration of leases as a burden on charged lands

Prior to the coming into force of the *Land and Conveyancing Law Reform Act 2009* on 1 December 2009, which applies to mortgages created after that date, the law on the power of a mortgagor to grant a lease of mortgaged lands was governed by section 18 of the *Conveyancing Act 1881*.

Section 18 of the 1881 act provided a statutory power for a mortgagor of land while in possession of same to grant a lease of the mortgaged land. This power was subject to same not having been excluded by the terms of the mortgage. A lease created by a mortgagor without the consent in writing of a mortgagee, where the requirement for such consent is expressly stipulated in the mortgage deed, is void as against the mortgagee and the mortgagee is not bound by it.

Section 112 of the 2009 act changed the law in respect of mortgages created after 1 December 2009 and provides in section 112(1) that: "A mortgagor of land, while in possession, may, as against every other incumbrancer, lease the land with the consent in writing of the mortgagee, which consent shall not be unreasonably withheld."

Section 112(2) provides that: "A lease made without such consent is voidable by a mortgagee who establishes that (a) the lessee had actual knowledge of the mortgage at the time of the granting of the lease, and (b) the granting had prejudiced the mortgagee."

Practitioners should note that, in the case of registered land, the Land Registry is now seeking, since the end of September 2013, the consent of the owner of the registered charge to the creation of the lease or, in the alternative, a deed of postponement or partial discharge.

CONVEYANCING COMMITTEE

Producing evidence of an instrument or burden on a folio

The committee wishes to clarify that, in registered title cases, where it is appropriate to produce Land Registry instruments as evidence of the content of burdens registered on folios, a vendor should produce official Land Registry copies of such instruments.

The committee also wishes to clarify that, in cases where a purchaser's solicitor (rather than get the official copy Land Registry instrument) is satisfied to accept a copy of the transfer on foot of which the burden was registered, the vendor's solicitor should furnish:

- A certified copy of the relevant deed of transfer, and
- His/her certificate confirming that all the covenants and conditions affecting the property are comprised in the said deed of transfer.

Because of the onerous nature of such a certificate, it is recommended that a vendor's solicitor would only give it where the matters certified are within his/her own personal knowledge of the title. If in any doubt, the Land Registry instrument should be furnished.

CONVEYANCING COMMITTEE

Certificates of waiver/exemption/discharge or declaration that legislation does not apply: NPPR, household charge, LPT

It appears to the committee that there is significant confusion among practitioners about the circumstances in which certificates of waiver/exemption/discharge from the NPPR charge or the household charge must be obtained, and when it is appropriate to obtain a declaration from a vendor (or a purchaser in some cases) as to the non-applicability of the relevant piece of legislation. It appears to the committee that exemptions (from a charge or tax that would otherwise be due) are being confused with situations where the relevant act does not apply at all.

It is necessary to distinguish between:

1) **Situations where the relevant legislation makes statutory provision for a specific exemption or waiver and provides for the issue of a certificate in relation to same or where it provides for issue of a certificate of discharge following payment of the relevant charge or tax, and**
2) **Situations where a property does not come within the ambit of the relevant legislation because, for example, it does not meet the definition of 'residential property' or 'relevant residential property' as set out in the different pieces of legislation (either because it is uninhabitable, is part of trading stock, and so on), in which case the relevant act does not apply and the property is not subject to the charge. This second situation is not an exemption situation and a certificate of exemption is not necessary and will not be issued.**

The committee wishes to clarify that its practice note published in the June 2013 issue of the *Gazette* (p50) relates to cases that come within the ambit of the relevant legislation and where the legislation provides for a waiver or exemption in certain circumstances or where the charge or tax is paid and there is statutory provision for issuing a receipt, that is, cases described in paragraph 1 above. The committee confirms that certificates of waiver/exemption/discharge should be obtained in those cases, as there is specific statutory provision for them and, if they are not obtained, a purchaser cannot be certain that a property is not subject to a charge for any unpaid NPPR or household charge. A declaration from a vendor as to entitlement to a waiver or exemption is not sufficient, and a receipt for payment by itself is not sufficient in these cases.

To deal with the situations described in paragraph 2 above, the committee's first practice note on NPPR published in the September 2009 *Gazette* (p44) recommended that a statutory declaration should be obtained if it is claimed that the charge does not apply. Although not repeated in subsequent practice notes, the committee understands that this has also become common practice in relation to cases where it is claimed that the household charge and the local property tax do not apply, and the committee recommends this extension of this practice.

The committee has set out in a table the circumstances in which the various certificates or declarations are appropriate. This can be accessed in the members' area of the Society's website by clicking on 'Committees', 'Conveyancing Committee', 'Resources' (in the box titled 'Additional information') and scrolling down the Resources page to click on 'Conveyancing guidelines'.

legislation update

12 November 2013 – 9 January 2014

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. The links below are to the web page for the various stages of the bill; the PDF for the final version of the act appears at the end of each web page. Recent statutory instruments are available in PDF at http://www.attorneygeneral.ie/esi/esi_index.html

ACTS PASSED

Adoption (Amendment) Act 2013
Number: 44/2013
Extends the period of declarations of eligibility and suitability that apply to the Russian Federation for one year to 31/10/2014 for those prospective adoptive parents who held such declarations on 31/10/2013.
Commencement: 20/12/2013

Appropriation Act 2013
Number: 43/2013
To appropriate to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act 1965*, to make provision in relation to deferred surrender to the central fund of certain undischarged appropriations by reference to the capital supply services and purposes as provided for by section 91 of the *Finance Act 2004* and, for the purpose of maintaining a sufficient amount of moneys in the Paymaster General's supply account so as to enable the discharge of particular liabilities, to make provision for repayable advances from the Central Fund.
Commencement: 20/12/2013

Child and Family Agency Act 2013
Number: 40/2013
Provides for the establishment of the Child and Family Agency; provides for the dissolution of the Family Support Agency and the National Educational Welfare Board and the transfer of the functions of those bodies to the Child and Family Agency; provides for the transfer of certain functions of the Health Service Executive to the Child Family Agency; and provides for related matters.
Commencement: 1/1/2014, as per SI 502/2013

Companies (Miscellaneous Provisions) Act 2013
Number: 46/2013
Amends section 2 of the *Companies (Amendment) Act 1990*. It provides for small private companies to be allowed to apply directly to the Circuit Court to have an examiner appointed, instead of to the High Court. Amends ss7, 17 and 18 of the *Companies (Amendment) Act 1986* and section 128 of the *Companies Act 1963* to facilitate e-filing with the Companies Registration Office by companies and removes the obstacles currently faced by them in doing so. Amends s18 of the *Company Law Enforcement Act 2001* and will further facilitate the disclosure to the Director of Corporate Enforcement of information relating to offences under the *Companies Acts* for the purpose of the discharge of the director's functions. Amends s14 of the *Companies (Auditing and Accounting) Act 2003* to provide for a levy on statutory auditors and audit firms of Public Interest Entities (PIEs) in order to defray the costs to the Irish Auditing and Accounting Supervisory Authority (IAASA) for carrying out the functions of external quality assurance in respect of these public interest entities. Provides an enabling provision for the minister to make regulations for the application of investigation and penalty systems to certain third country auditors and audit entities that carry out the audit of companies incorporated in specific third countries and territories whose transferable securities are admitted to trading on a regulated market in the State.
Commencement: Commencement order(s) to be made as per s8(3-6) of the act

Credit Reporting Act 2013
Number: 45/2013
Makes provision for the establishment, maintenance and operation of a Central Credit Register for the holding of information about credit applications and credit agreements and parties to them. Makes provision about the information to be provided for entry on the register, for access to the information held on the register for the assessment of creditworthiness and other purposes. Imposes duties on parties to credit agreements, and provides for related matters.
Commencement: Commencement order(s) to be made as per s1(2) of the act

Finance (No 2) Act 2013
Number: 41/2013
Provides for the imposition, repeal, remission, alteration and regulation of taxation, stamp duties and duties relating to excise and otherwise to make further provision in connection with finance including the regulation of customs.
Commencement: Various commencement dates, see text of act

Gas Regulation Act 2013
Number: 39/2013
Provides for the reorganisation of Bord Gais Éireann's transmission and distribution operations and energy business, and for that purpose provides for the establishment of subsidiaries of Bord Gais Éireann. Provides for the continued public ownership of natural gas networks. Provides for the further implementation of Directive 2009/73/EC by providing for the disposal of Bord Gais Éireann's energy business and for the reorganisation of the ownership of Bord Gais Éireann. Amends the *Gas Act 1976*, the *Gas (Amendment) Act 1987*, the *Gas (Amendment) Act 2000*, the *Gas (Interim) (Regulation) Act 2002* and the *Water Services Act 2013*, and provides for related matters.
Commencement: Commencement order(s) to be made for all sections, other than s47, as per s1(2) of the act

Health (Alteration of Criteria for Eligibility) (No 2) Act 2013
Number: 42/2013
Amends the *Health Act 1970* (as amended) to change the eligibility rules for medical cards for persons aged 70 years and over.
Commencement: 18/12/2013

Health Insurance (Amendment) Act 2013
Number: 48/2013
Amends the *Health Insurance Act 1994* to specify the amount of the hospital bed utilisation credit and the amount of risk equalisation credits in respect of age, gender and level of cover that is payable to insurers from the Risk Equalisation Fund from 1/3/2014. Makes consequential amendments to the *Stamp Duty Consolidation Act 1999* to revise the stamp duty levy required to fund the risk equalisation credits for 2014. In addition, makes some technical amendments to the *Health Insurance Acts 1994-2012*.
Commencement: 25/12/2013

Public Service Management (Recruitment and Appointments) (Amendment) Act 2013
Number: 47/2013
Enables the redeployment of members of staff in the public

service to other positions in the public service. Broadens the definition of public service body to encompass all public service employers except commercial State bodies and their subsidiaries and includes a schedule to the *Public Service Management (Recruitment and Appointments) Act 2004* listing the commercial State bodies that are excluded from the definition. Provides for related matters.
Commencement: Commencement order(s) to be made as per s9(2) of the act

Pyrite Resolution Act 2013
Number: 51/2013
Provides for the making of a scheme for certain dwellings affected by pyrite. Provides for the establishment of the Pyrite Resolution Board to manage the implementation of such scheme, and provides for connected matters.
Commencement: Commencement order(s) to be made as per s1(2) of the act

Social Welfare and Pensions Act 2013
Number: 38/2013
Amends and extends the *Social Welfare Acts* and the *Pensions Act 1990*. Gives legislative effect to a range of social welfare measures announced in the budget statement of 15 October 2013 that are due to come into effect in early 2014.
Commencement: Commencement order(s) to be made for ss13 and 14 as per s1(4) of the act

Social Welfare and Pensions (No 2) Act 2013
Number: 49/2013
Amends the *Social Welfare Consolidation Act 2005* to provide for two technical changes. Amends s48 of the *Pensions Act 1990* to make additional provision for the discharge of the liabilities in the winding up of certain occupational pension schemes and to provide for the discharge of liabilities of such schemes where employers are insolvent on or before the date of the wind up of such schemes. Provides for the payment, in certain circumstances, by the Minister for Finance of moneys to secure the discharge of certain liabilities in respect of certain occupational pension schemes that are being wound up where certain employers are insolvent on or before the date of the wind up of such schemes. Amends s50 of the *Pensions Act 1990* to make additional provision for the restructuring of certain occupational pension schemes and for that purpose provides for the reduction in the benefits being paid to certain persons under such schemes. Provides for related matters.
Commencement: 25/12/2013

Water Services (No 2) Act 2013
Number: 50/2013
Makes provision for, and in relation to, the imposition of charges by Irish Water in respect of the provision by Irish Water of water services. Provides for the transfer, in part, of the functions of water service authorities under the *Water Services Act 2007* to Irish Water. Repeals the *Local Government (Delimitation of Water Supply Disconnection Powers) Act 1995*, certain provisions of the *Water Services Act 2013* and, for certain purposes, certain provisions of the *Water Services Act 2007*. Amends the *Water Services Act 2007* and certain other enactments, and provides for related matters.
Commencement: Commencement order(s) to be made as per s1(3) of the act

SELECTED STATUTORY INSTRUMENTS

Civil Partnership (Recognition of Registered Foreign Relationships) Order 2013
Number: SI 490/2013
Declares certain classes of registered foreign relationship to be entitled to be recognised in the State as a civil partnership. The order is made on the basis of the Minister for Justice and Equality being satisfied that the class of foreign relationship complies with subsection (1) of section 5 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.
Commencement date: 10/12/2013

European Union (Consumer Information, Cancellation and other Rights) Regulations 2013
Number: SI 484/2013
Give effect to Directive 2011/83/EU of the European Parliament and of the Council on consumer rights. Subject to a number of specified exclusions, the regulations apply to contracts concluded between a trader and a consumer. Some of the provisions of the regulations apply only to on-premises contracts, some only to off-premises contracts, some only to distance contracts, and some only to sales contracts. Definitions of these different types of contract are included in the regulations. The regulations specify the substance and form of the information that traders must provide to consumers before the consumer is bound by a contract. In the case of distance and off-premises contracts, the trader must also provide the consumer with a copy or confirmation of the contract within a reasonable time of the conclusion of the contract. Subject to a number of specified exclusions, the regulations give consumers the right to cancel off-premises and distance contracts within 14 days of the delivery of the goods in the case of sales contracts and 14 days of the conclusion of the contract in the case of service contracts. The duration of this cancellation period is extended by up to 12 months where the trader fails to inform the consumer of the right to cancel the contract. Other provisions set out the rights and obligations of the parties in the event of cancellation. The regulations contain provisions regulating the fees charged by traders in respect of the use of a given means of payment and the cost of calls by consumers to customer helplines, as well as provisions governing payments by consumers additional to the remuneration agreed for the trader's main obligation under the contract. The regulations amend the provisions of the *Sale of Goods Act 1893* on the passing of risk, and certain of the act's rules on delivery, in contracts of sale where the buyer deals as consumer. The regulations also amend the provisions of the *Sale of Goods and Supply of Services Act 1980* on the supply of unsolicited goods or services to a consumer.
Commencement date: 13/6/2014

Housing (Sale of Houses) (Amendment) Regulations 2013
Number: SI 507/2013
Amend the *Housing (Sale of Houses) Regulations 2012* (SI 420 of 2012) by substituting 30 June 2014 for 31 December 2013 as the end date for purchase schemes adopted by housing authorities under the 1995 tenant purchase scheme for local authority houses. This amendment has the effect of giving housing authorities a further six months in which to finalise sales to tenants under the 1995 scheme, which closed for applications on 31 December 2012.
Commencement date: 19/12/ 2013

Prepared by the Law Society Library

one to watch

Inquiries Act 2013

The *Houses of the Oireachtas (Inquiries, Privilege and Procedures) Act 2013* provides a statutory framework to assist the houses in conducting inquiries into matters of public importance.

In the run-up to the commencement of the act, Minister for Public Expenditure and Reform Brendan Howlin commented: "It is crucial that the terms of reference for an inquiry be narrow and specific to ensure that a focused inquiry can be effectively conducted within the timeframe available."

Any inquiry must be completed within the lifetime of the current Dáil and Seanad sessions. It is indicated that any inquiry should be modular in nature due to the scale and complexity of the issues to be examined.

The minister stated: "Autonomy rests with the Oireachtas to determine the requirement for a formal inquiry, the terms of reference of that inquiry, the appropriate committee to conduct the inquiry and the procedural and organisational aspects of the inquiry."

There are a number of key actions that are necessary before an inquiry can commence:

- A committee proposing to conduct an inquiry must prepare a proposal for the designated person,
- The Committee on Procedures and Privileges (CPP) must then examine the proposal and prepare a report for the house and make recommendations to the house,
- The report of the CPP must include (a) whether the inquiry should be held and (b) if so, by which committee and in what manner,
- The house must then pass a resolution to establish an inquiry and confirm the terms of reference.

The act stipulates the different elements of a parliamentary inquiry:

- The inquiry may record, report and make recommendations. It may make findings of fact where facts are not contradicted or an individual engages in relevant misbehaviour, such as refusing to give evidence to the inquiry.
- The inquiry may compel witnesses to give evidence at a time and place specified in the direction and any document in his or her possession or control specified in the direction.
- The inquiry may direct the provision of documents on oath by way of discovery of any documents that are or have been in that person's possession or control relating to any matter relevant to the proceedings of the committee.
- The inquiry may direct the provision of wide-ranging documentation, and there are extensive provisions regarding the preservation of 'relevant material' once the establishment of an inquiry can be reasonably inferred by a person. 'Relevant material' is defined as "a document, or other information in any form, relating to any matter within the terms of reference for the inquiry".

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 Mark Cronin, solicitor, formerly practising as Cronin Kenneally & Company and as Cronin Mungovan, The Square, Macroom, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [10550/DT127/12 and 2013 no 85 SA]

Law Society of Ireland (applicant)
Mark Cronin (respondent solicitor)

On 6 June 2013, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Allowed a deficit in client moneys of €249,364 as of 24 January 2012,
b) Misappropriated €48,500, being the balance of a deposit in a conveyancing transaction, set out in paragraph 4.2 of the Society's report of 26 January 2012,
c) Altered a photocopy of a bank draft in the above conveyancing transaction by €100,000, as set out in paragraph 4.2 of the above report of 26 January 2012,
d) Misappropriated €170,000 received in respect of the purchase proceeds of a holiday home for a client in 2011, as set out in the Society's report of 14 February 2012,
e) Misappropriated €30,864 of client funds in a probate matter, as set out in paragraph 4.3 of the above report of 26 January 2012,
f) Misappropriated €32,275 of funds of €38,249 received from a client at a time when there were no funds in the client account on 27 May 2011, as set out in paragraph 6 of the Society's memorandum of 14 February 2012,
g) Altered a photocopy of a bank draft by changing it from €223,500 to €323,500 in September 2010, as set out in the Society's investigation memorandum of 29 March 2012, in order to conceal misappropriation of client funds,
h) Engaged in a practice of teeming and lading to hide the misappropriated client moneys,
i) Caused claims of €250,000 to be paid from the compensation fund to date in respect of his practice.

The tribunal ordered that the Society bring their findings to the High Court and, on 14 October 2013, the High Court ordered that:

a) The respondent solicitor's name should be struck from the Roll of Solicitors,
b) The respondent solicitor make restitution to the Society's compensation fund in respect of all funds paid for claims in respect of his former practice,
c) The Society recover €2,500 from the respondent solicitor as a contribution towards the Society's costs of the proceedings before the disciplinary tribunal,
d) The respondent solicitor pay to the Society the cost of the proceedings in the High Court, to be taxed in default of agreement.

In the matter of Simon W Kennedy, a solicitor of Simon W Kennedy & Co, 4 Charles St, New Ross, Co Wexford, and in the matter of the *Solicitors Acts 1954-2008* [2980/DT52/11]

Named client (applicant)
Simon W Kennedy (respondent solicitor)

On 5 December 2012, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to act in the best interests of his client,
b) Allowed two motions to be issued in default of discovery being made at a time when the solicitor was in possession of the documents being sought in discovery,
c) Allowed orders for discovery to be made and orders for costs to be obtained against the client,
d) Allowed the defence of the client to be struck out in default of compliance with an order for discovery,
e) Failed to bring an application to reinstate the defence of the client or failed to file an appeal against the striking out of the defence,
f) Allowed the plaintiff's claim to be brought on for hearing against the client without the defence being reinstated,
g) Allowed an order for costs to be made against the client when the Circuit Court judge allowed the case to be adjourned to allow an application to be made to reinstate the defence,
h) Failed to advise the client of the orders having been made against him and the implications of same for the Circuit Court proceedings issued against him,
i) Advised the client that the matter before the High Court was a procedural matter,
j) Failed to advise the client as to the implications of the refusal of the application for an adjournment,
k) Allowed a substantial number of orders and orders for costs to be obtained against the client as a result of the failures of the solicitor set out above.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,
b) Pay a sum of €3,000 to the compensation fund,
c) Pay a contribution of €3,000 towards the whole of the applicant's costs.

(The solicitor was adjudicated a bankrupt on 18 June 2012.)

NOTICES: THE HIGH COURT

In the matter of Peter Kenny, a solicitor practising as Kenny Associates, College Street, Carlow, Co Carlow, and in the matter of the *Solicitors Acts 1954-2011* [2013 no 94 SA]

Take notice that, by order of the High Court made *in camera* on 25 October 2013, it was ordered that the respondent solicitor shall be suspended from practising as a solicitor until further order of the court. Publication of this matter was permitted by order of the High Court on 16 December 2013.

16 December 2013

In the matter of Angela Farrell, a solicitor practising as Farrell Solicitors, 28 North Great Georges St, Dublin 1, and in the matter of the *Solicitors Acts 1954-2011* [2013 no 113 SA]

Take notice that, by orders of the President of the High Court made on 16 December 2013 and 20 December 2013, it was ordered that the respondent solicitor shall be suspended from practising as a solicitor until further order of the court.

20 December 2013

In the matter of John Kilraine and in the matter of the *Solicitors Acts 1954-2011* [2013 no 103SA]

Take notice that, by order of the High Court made on Monday 13 January 2014, it was ordered that the name of John Kilraine, solicitor, be struck off the Roll of Solicitors.

23 January 2014

In the matter of Ruairi O'Ceallaigh and in the matter of the *Solicitors Acts 1954-2011* [2013 no 115SA]

Take notice that, by order of the High Court made on Monday 13 January 2014, it was ordered that the name of Ruairi O'Ceallaigh, solicitor, be struck off the Roll of Solicitors.

23 January 2014

In the matter of Michele O'Keeffe and in the matter of the *Solicitors Acts 1954-2011* [2013 no 109SA]

Take notice that, by order of the High Court made on Monday 13 January 2014, it was ordered that the name of Michele O'Keeffe, solicitor, be struck off the Roll of Solicitors.

21 January 2014

John Elliot,
Registrar of Solicitors,

eurlegal

Edited by TP Kennedy, Director of Education

COPYRIGHT, TECHNOLOGY, AND PROPORTIONALITY

On 19 September 2013, Advocate General Sharpston delivered her opinion in Case C-355/12, *Nintendo v PC Box Srl*, a case referred by the Tribunale di Milano (Milan District Court) to the Court of Justice of the European Union for a preliminary ruling.

Broadly speaking, the case concerned copyright and related rights in the information society. More specifically, it concerned the interpretation of article 6 of Directive 2001/29/EC and the notion of effective technological measures contained in that provision. The aim of the directive is to harmonise the level of legal protection extended to copyright and related rights, with particular emphasis on the information society.

Under article 6(3) of the directive, technological measures are described as any technology, device or component designed to prevent/restrict acts that have not been authorised by the copyright holder. In short, technological measures are put in place to protect copyright work. Article 6(1) obliges the EU's member states to provide adequate legal protection against acts/activities that circumvent effective technological measures.

Technological measures are generally deemed effective where the use of protected material is controlled by copyright holders through an access control or protection process such as encryption, scrambling or a copy control mechanism.

Donkey Kong Country

The national proceedings were brought by three companies in the Nintendo group, which produce video games and consoles, against PC Box Srl, a company that markets mod chips and game copiers via its website. Mod chips (short for modification chips) are small electronic devices used to alter or disable artificial restrictions of computers or entertainment devices. They are frequently used to circumvent digital rights management systems in copyright works.

Both mod chips and game copiers enable video games other than those manufactured by Nintendo or by independent producers under licence from Nintendo to be played on Nintendo consoles.

The referring court provided a certain amount of technical detail (as did Nintendo) as to how PC Box's devices enable games other than Nintendo and Nintendo-licensed games to be played on Nintendo consoles.

The main proceedings concern two types of console manufactured by Nintendo – DS consoles and Wii consoles – as well as the Nintendo and Nintendo-licensed games that are designed for them. Games for DS consoles are recorded on cartridges that are slotted into the console, while games for Wii consoles are recorded on DVDs that are inserted into the console. Both the cartridges and DVDs contain encrypted information that must be exchanged with other encrypted information contained in the consoles in order for the games to be played on those consoles.

In the domestic proceedings, it was not disputed that PC Box's devices could be used to circumvent the blocking effect of the required exchange of encrypted information between, on the one hand, Nintendo and Nintendo-licensed games and, on the other hand, Nintendo consoles. Nor was it disputed that the blocking effect of Nintendo's measures prevented games other than Nintendo and Nintendo-licensed games from being played on Nintendo consoles, and that PC Box's devices were capable of circumventing those measures.

Nintendo claimed to have equipped its consoles and games with technological measures lawfully in order to ensure that unauthorised copies of Nintendo and Nintendo-licensed games could not be used with its consoles. It also asserted that the principal purpose or use of PC Box's devices was to circumvent its technological measures.

> The principle of proportionality is of prime importance when determining whether technological measures qualify for protection under article 6 of the directive

PC Box submitted that it markets original Nintendo consoles with a software pack comprising applications specifically created by independent producers for use on such consoles in conjunction with mod chips or game copiers designed to disable the blocking mechanism built into the console. PC Box also asserted that Nintendo's true purpose was to prevent the use of independent software unconnected with the illegal video game copies sector, and to compartmentalise markets by rendering games purchased in one geographical zone incompatible with consoles purchased in another.

It therefore challenged Nintendo's application of technological measures not only to its video games but also to hardware, which it considers to breach article 6(3) of Directive 2001/29/EC.

Super Mario Kart

Mercifully, the advocate general interpreted and simplified the questions referred to Luxembourg by the Milanese Court, as, in the advocate general's own words, the questions were not posed "quite as clearly as might have been desired".

The first question comprised two parts. Firstly, do 'technological measures' within the meaning of article 6 of Directive 2001/29/EC include not only those that are physically linked to the copyright material itself (in this case, by incorporation in the cartridges or DVDs on which the games are recorded), but also those that are physically linked to devices required in order to use or enjoy that material (in this case, by incorporation in the consoles on which the games are played)?

Secondly, do such measures qualify for protection under article 6 where (or even if) their effect is not merely to restrict unauthorised reproduction of the copyright material, but also to preclude any use of that material with other devices or of other material with those devices (this is, in effect, the interoperability issue)?

The second question concerns the criteria to be applied when assessing the purpose or use of devices such as those of PC Box (which can in fact circumvent technological measures) and the determination as to whether they fall within article 6(2) of the directive.

Advocate General Sharpston inferred that the Italian court wished to establish, firstly, whether Nintendo's technological measures qualified for protection because they are designed to prevent/restrict acts that are not authorised by the right holder, even if they also restrict interoperability. Secondly, if the technological


PIC: THINKSTOCK

measures do qualify for protection, whether that protection must be provided against the supply of PC Box's devices because they allow or facilitate the performance of such unauthorised acts. In the advocate general's mind, the two issues could not be entirely separated, and factors mentioned in relation to one could be relevant to the solution of the other.

The Legend of Zelda

As regards the first part of Question 1, the advocate general stated that nothing in the wording of article 6 excluded measures such as those in issue, which are incorporated partly in the games media and partly in the consoles and which involve interaction between the two. She was of the view that the definition of technological measures in article 6(3) was sufficiently broad to cover the incorporation of technological measures in the cartridges or DVDs on which the games are recorded and incorporation of technological measures in the consoles on which the games are played. To exclude measures that are, in part, incorporated in devices other than those that house the copyright material itself (that is, the consoles) would be likely to deny to a broad range of technological measures the protection that the directive seeks to ensure.

In the context of the second part of Question 1, Nintendo submitted that the fact that a technological measure prevents or restricts acts that do not require authorisation is immaterial, provided that such an effect is only occasional or incidental to the main aim and effect of preventing/restricting acts that do require authorisation. Unsurprisingly, PC Box relied heavily on the principles of proportionality and interoperability as set out in recitals 48 and 54, respectively, in the preamble to Directive 2001/29/EC. They argued that technological measures that go beyond what is necessary to protect the copyright material itself or that exclude interoperability should not benefit from the protection of the directive.

Advocate General Sharpston agreed that a test of proportionality be applied, but stated that such a test could not be reduced to a mere assertion that interference with legitimate activity be deemed immaterial provided it is only incidental (Nintendo's argument) or that any restriction of interoperability be deemed necessarily disproportionate (PC Box's argument).

As regards the second question, the advocate general summarised that as follows: the national court wishes to know which type of criteria – quantitative and/or qualitative – should be relied on in order to assess whether PC Box's mod chips or game copiers "have only a limited commercially significant purpose or use other than to circumvent" the technological measures put in place by Nintendo.

Referring to the quantitative criterion, the advocate general stated that the extent to which PC Box's devices may be used for purposes that do not involve infringement of exclusive rights will be a factor to be taken into account when deciding:

- Whether those devices fall within article 6(2) of Directive 2001/29/EC, and
- Whether Nintendo's technological measures meet the test of proportionality.

If it can be established that they are used primarily for such non-infringing purposes (and that task will fall to the national court to decide), then that will be a strong indication that the technological measures are not proportionate. In contrast, however, if it can be established that PC Box's devices are used primarily to infringe exclusive rights, then that will be a strong indication that the technological measures are proportionate.

The advocate general suggested that a quantitative assessment be carried out to determine the ultimate purposes for which the technological measures are circumvented by PC Box's devices. Such quantitative assessment would be relevant in determining both whether Nintendo's technological measures qualify in general for legal protection and whether protection should be given against the marketing of PC Box's devices.

As regards the question of qualitative criteria, the advocate gen-

eral noted that it had hardly been addressed by the observations to the court. She continued her analysis by stating that it may be important in some cases that the implementation of technological measures that protect exclusive rights should not interfere with users' rights to carry out acts that require no authorisation. However, to the extent that the latter are not fundamental rights, then the importance of protecting copyright and related rights must also be given recognition. Summing up, the advocate general said that qualitative criteria should be viewed in the light of the quantitative criteria – namely, the relative extent and frequency of uses that do and those that do not infringe exclusive rights.

Street Fighter

In an admittedly complex opinion, Advocate General Sharpston came down on the side of copyright owners. This is demonstrated by her broad interpretation of the notion of 'technological measures' to cover such things as measures incorporated in devices (consoles) designed to allow access to copyright works.

The principle of proportionality is of prime importance when determining whether technological measures qualify for protection under article 6 of the directive. It is for the national court to decide whether the application of technological measures is proportionate, and this assessment must be made in the light of the current state of technology. Clearly, if the technological measures prevent/restrict perfectly legal acts in relation to the copyright material, then they will lose the protection of the directive.

Should the CJEU follow the advocate general's opinion, its ruling will be welcomed by copyright owners operating in the computer games sector. It will mean that the use of technological measures in consoles and games will be permissible, even if they block non-proprietary but lawful games, so long as such measures are deemed proportionate.

Mark Hyland is a solicitor who lectures and researches in the field of intellectual property law in Bangor University Law School, Wales.

Recent developments in European law

CONSUMER LAW

Case C-478/12, *Armin Maletic and Marianne Maletic v lastminute.com GmbH and TUI*, 14 November 2013

Two Austrian consumers (the Maletics) booked and paid for a package holiday to Egypt on the website of lastminute.com.

On the website, lastminute.com, whose registered office is in Munich, stated that it acted as the travel agent, but that the trip would be operated by TUI, which has its registered office in Vienna.

The booking concerned the Jaz Makadi Golf & Spa hotel in Hurghada. That booking was confirmed by lastminute.com, which passed it on to TUI. TUI sent a confirmation email mentioning the name another hotel in Hurghada. It was only when the applicants arrived at the original hotel that the mistake was noticed. They paid a surcharge of €1,036 to be able to stay in the hotel initially booked on lastminute.com.

They brought proceedings in the Austrian courts seeking to recover the surcharge with interest and costs. The Austrian court accepted jurisdiction over lastminute.com on the basis of article 15 of the *Brussels I* jurisdiction (the consumer protection provision). However, that court declined jurisdiction over TUI, as it was an Austrian company. It ruled that the regulation did not apply to a domestic dispute and that another Austrian court had jurisdiction under Austrian civil procedure.

Ultimately, the Court of Justice disagreed. It held that the dispute was international in character. Even if this transaction could be broken down into two contractual relationships, the two are interlinked and one of them is accepted by all parties as being international in character.

Furthermore, the objective of the consumer provisions in the regulation is to protect the consumer as the weaker party to the contract. Thus, the court held that the consumer provisions relating to where a consumer can sue the 'other party to the contract' in circumstances such as these cover the contracting partner of the operator with which the consumer concluded that contract and which has its registered office in the member state in which the consumer is domiciled.

professional notices

WILLS

Breslin, Cormac (deceased), late of 2B The Glen, Boden Park, Rathfarnham, Dublin 16, and previously of 42 Hillside Park, Rathfarnham, Dublin 16. Would any person having knowledge of a will made by the above-named deceased, who died on 9 August 2012, please contact Eamonn Bennett, solicitor, 61/63 Dame Street, Dublin 2; tel: 01 677 3591, email: ebennettsolicitor@gmail.com

Carter, Ashley (deceased), late of 110 Ashlawn Park, Ballybrack, Co Dublin, who died on 28 August 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding the same, please contact Thomas Montgomery and Son, Solicitors, 5 Anglesea Buildings, Dun Laoghaire, Co Dublin; tel: 01 280 8632, email: david@montgomerysolicitors.ie

Casserly Maureen (deceased), late of Flat 7, 54 Tritonville Road, Sandymount, Dublin 4, formerly of Boston in the county of Suffolk and Commonwealth of Massachusetts, USA, who died on 16 June 2013. Would any person having knowledge of any will executed by the above-named deceased, or if any firm is holding same, please contact John Nash Solicitors, Abbey Street, Loughrea, Co Galway; tel: 091 841442, fax: 091 841230, email: john.nash@nashsolicitors.ie

Colgan, Eileen (deceased), late of 28 Derrynane Square, Lower Dorset Street, Dublin 7, and formerly of 4 Belvedere Place, Dublin 1, and 1A Whitworth Place, Dublin 3. Would any person having knowledge of any will made by the above-named deceased, who died on 14 October 2013, please contact Gartlan Winters, Solicitors, 56 Lower Dorset Street, Dublin 1; DX 105004 Dorset Street; tel: 01 855 7434, email: peter@gartlanwinters.ie

Conry (o/w Conroy), Patrick (deceased), late of Meadowlands Nursing Home, Dunmore Road, Cloonfad, Co Roscommon, and formerly of Moigh Upper, Kiltullagh, Cloonfad, Co Roscommon, who died on 26 September 2013. Would any person having knowledge of any will made by the above-named deceased please contact Eric Gleeson & Co, Solicitors, Shop Street, Tuam, Co Galway; DX 116013 Tuam; tel: 093 52396, fax: 093 25745, email: carla@ericgleeson.ie

Corcoran, Patrick (deceased), late of Cadamstown, Birr, Co Offaly. Would any person having knowledge of any will made by the above-named deceased, who died on 17 January 2012, please contact Noonan & Cuddy, Solicitors, 12 Society Street, Ballinasloe, Co Galway; tel: 090 96 42344, fax: 090 96 42039, email: info@noonancuddy.com

Fabianich, John George (deceased), late of Portacarron, Oughterard, Co Galway, who died on 15 September 2013. Would any person having knowledge of the whereabouts of the original will, or of any will made by the above-named deceased, please contact Peter Keane, solicitor, Keane Solicitors, Hardiman House, Eyre Square, Galway; tel: 091 566 767, email: pkeane@pmkeane.ie

Flanagan, John (otherwise Sean) (deceased), late of 59 Parnell Square, Dublin 1. Would any person having any knowledge of any will made by the above-named deceased, who died on 21 October 2013, please contact CBW Boyle & Son, Solicitors, 70 Middle Abbey Street, Dublin 1; tel: 01 873 1588, fax: 01 873 0706, email: office@boylesolicitors.ie

Gallagher, Daniel (otherwise Dan Joe) (deceased), late of Killycolman, Rathmullan, Co Donegal, who died 11 November 2013. Would any person having knowledge of a will made by the above-named deceased please contact Margaret McGinley of McGinley & Co Solicitors, Milford, Co Donegal; tel: 0749 153 233, fax: 0749 153 563, email: mcginleysolmil@eircom.net

Hilton, Morna (deceased), late of Ardrinane Cottage, Annascaul, Co Kerry. Would any person having knowledge of a will made by the above-named deceased, who died on 10 May 2013, please contact Murphy Ramsay Walsh, Solicitors, 12 Ashe Street, Tralee, Co Kerry; tel: 066 712 6883, fax: 066 712 2221, email: canicewalsh@mrwsol.com

Larkin, Michael (deceased), late of Kilcullen, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased,

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 March 2014 *Gazette*: 19 Feb 2014. 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

who died on 24 January 2013, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 5611, fax: 053 923 5234

Lawlor, Bridget (deceased), late of Beechwood Nursing Home, Leighlinbridge, Co Carlow, and formerly of Ballycabus, Goresbridge, Co Kilkenny, and sometime resident at Tullow Hill, Tullow, Co Carlow. Would any person having knowledge of a will made by the above-named deceased, who died on 20 October 2012, please contact Seamus Brennan, solicitor, No 1 The Spires, Dean Street, Kilkenny; tel: 056 778 6905, email: abbeybridge@gmail.com

Le Faou, Pierre (deceased), late of Mounteensudder, Glengarriff, Co Cork, who died on 3 November 2013. Would any person having knowledge of a will made by the above-named deceased, or any firm holding same, please contact O'Mahony Farrelly O'Callaghan, Solicitors, Wolfe Tone Square, Bantry, Co Cork; tel: 027 50132, fax: 027 50603, email: ROCallaghan@omahonyfarrelly.com

O'Brien, Patrick Joseph (deceased), late of Ballycullen, Mullinahone, Thurles, Co Tipperary, who died on 23 September 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Kearney, Roche & McGuinn, Solicitors, 9 The Parade, Kilkenny; tel: 056 772 2270, fax: 056 776 3298, email: info@krmsolrs.com

O'Callaghan, Siobhan (deceased), late of Block 10, Apartment 111, Brook Lawn, Strandville Avenue, Clontarf, Dublin 3. Would any person having knowledge of any will made for the above-named deceased, who died on 25 November 2013, please contact PG Cranny & Company, Solicitors, 230 Swords Road, Santry, Dublin 9; tel: 01 842 2919

O'Keeffe, Elizabeth (deceased), late of Central Stores, Rathmore, Co Kerry. Would any solicitor holding or having knowledge of a will made by the above-named Elizabeth O'Keeffe, who died on 9 November 1996, please contact Niall Brosnan & Co, Solicitors, 5 St Anthony's Place, College Street, Killarney, Co Kerry; email: info@brosnanandco.ie

Phelan, Seamus (deceased), late of Mannin (otherwise Mannion), Pike-of-Rushall, Portlaoise, Co Laois, who died on 20 December 2013. Would any person having knowledge of the whereabouts of any will made by the deceased please contact Butler Cunningham & Molony, Solicitors, Templemore, Co Tipperary; tel: 0504 31122/31569, fax: 0504 31635, email: info@bcmtemplemore.ie

Redmond, James (deceased), late of Regaile, Thurles, Co Tipperary, who died on 22 October 2013. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Kelly Colfer Son & Poyntz, Solicitors, Delare House, South Street, New Ross, Co Wexford; DX 37001; email: info@kellycolfer.ie

Reidy, Maurice (deceased), late of Milltown, Charleville, Co Cork, who died on 19 November 2013. Would any person having knowledge of a will made by the above-named deceased please contact James Binchy & Son, Solicitors, Charleville, Co Cork (ref: OMB/EL); tel: 063 81214, fax: 063 81153, email: owen.binchy@jamesbinchy.com

Ringwood, Noelle (otherwise Noelle Murray) (deceased), late of 40 Connawood Drive, Bray, Co Dublin, who died on 7 October 2012. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline Kennedy, solicitor, of 3 Drummartin Road, Goatstown, Dublin 14; tel: 01 299 3100

Roberts, David Lewis (deceased), late of 11 Boyne Street, Westland Row, Dublin 2, and also late of 107 Park, Carmarthen, SA31 1JG, Wales. Would any person having knowledge of any will made by the above-named deceased, who died on 3 December 2013, please contact Leo Buckley & Co, Solicitors, 78 Merrion Square, Dublin 2; tel: 01 678 5933, email: leo@leobuckleysolicitors.com

Stacey, Terence Thomas (deceased), late of Barrystown, Wellingtonbridge, Co Wexford, who died on 23 March 2013. Would any person having knowledge of a will made by the above-named deceased please contact Doyles Solicitors of 7 Glena Terrace, Spawell Road, Wexford; tel: 053 912 3077, fax: 053 912 3071, email: info@doylesolicitors.ie

Townsend, Martin, (deceased), otherwise known as Thomas Martin Townsend, late of Ballypierce, Kildavin, Bunclody, Enniscorthy, Co Wexford. Would any person having knowledge of a will executed by the above-named deceased, who died on 26 November 2013, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, Co Wexford; tel: 053 923 5611, fax: 053 923 5234

professional notices

Ward, Margaret (deceased), late of 86 Bangor Road, Crumlin, Dublin 12. Would any person having knowledge of a will made by the above-named deceased, who died on 24 May 2013, please contact Cullen & O'Beirne, Solicitors, Suite 338B, The Capel Building, Mary's Abbey, Dublin 7; tel: 01 888 0855, fax: 01 888 0820, email: info@cullenobeirne.ie

Whelan, Patrick (deceased), late of Clondadoran, Portlaoise, Co Laois. Would any solicitor holding or having knowledge of a will made by the above-named deceased, who died on 19 November 2013, please contact Rollestons, Solicitors, 4 Wesley Terrace, Portlaoise, Co Laois; tel: 057 862 1329, email: info@rollestons.ie

Whyte, Mary (deceased), aka White, late of Sacre Couer Nursing Home, Tipperary, and formerly of Ardnamoher, Galbally, Co Limerick, who died on 16 May 1985. Would any solicitor holding/having knowledge of a will made by the above-named deceased please contact William Fitzgibbon, solicitor, Shinnick Fitzgibbon & Co, Solicitors, Baldwin Street, Mitchelstown, Co Cork; tel: 025 84081, email: billy@shinnickfitzgibbon.ie

Whyte, Thomas (deceased), aka White, late of Ardnamoher, Galbally, Co Limerick, who died on 13 November 1961. Would any solicitor holding/having knowledge of a will made by the above-named deceased please contact William Fitzgibbon, solicitor, Shinnick Fitzgibbon & Co, Solicitors, Baldwin Street, Mitchelstown, Co Cork; tel: 025 84081, email: billy@shinnickfitzgibbon.ie

MISCELLANEOUS

Westside Bookkeeping Services Need a bookkeeping/accounting service? Check out our website, www.westsidebookkeeping.ie. Specialising in all aspects of solicitors' bookkeeping/accounts/payroll. Experienced personnel available on a contract basis – on site. Excellent references available. Contact: Michelle Ridge; tel: 087 293 0347, email: mridge@indigo.ie

RECRUITMENT

Busy Northwest established solicitors' practice requires assistant solicitor. Position would be suitable for qualified solicitor seeking practical experience. Apply with curriculum vitae to **box no 01/01/14**

TITLE DEEDS

Cremin, Joan (deceased), late of 22 St Finbarr's Terrace, Greenmount, Co Cork. Would any person having knowledge of the title documentation to 22 St Finbarr's Terrace, Greenmount, Co Cork, please contact JW O'Donovan, Solicitors, 53 South Mall, Cork; tel: 021 730 0200, fax: 021 427 3704; ref: CMD/CMK/4329/1

Anyone knowing the whereabouts or holding title documents on behalf of the late William (Bill) Linehan (OB: 11/10/2013) or Maeve Linehan (OB: 29/11/2013), both late of 15 Castlepark, Castleknock, Dublin 15, please contact David M Murphy of Corrigan & Corrigan, Solicitors, 3 St Andrew Street, Dublin 2; tel: 01 677 6108, fax: 01 679 4392, email: david.murphy@corrigan.ie

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005*, and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of an application by Ian McClean and the premises known as 29 Lower Hatch Street, Dublin 2

Take notice that any person having an interest in the freehold estate or any superior leasehold estate in the following property: all that lot or piece of ground on the south side of Hatch Street in the city of Dublin, upon which the premises now known as number 29 Lower Hatch Street now stands, being the entire of the premises comprised in an indenture of sub-lease dated 16 June 1944, made between Annie Sherry of the one part and Sybil Good and Myer Woolfson of the other part. And being portion only of the premises comprised in a superior lease dated 6 June 1867 made between the Right Honourable Maziere Brady of the one part and Thomas Tierney and Mary Ann Tierney of the other part, which said premises are situate in the parish of Saint Peter and city of Dublin and are hereinafter referred to as 'the premises'.

Take notice that Ian McClean (the applicant) intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of all superior interests including the freehold interest in the premises, and any party asserting that they hold a superior interest in the premises are called upon to furnish evidence of their title to the premises to the below named within 21 days from the date of this notice.

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

Date: 7 February 2014

Signed: Hayes Solicitors (solicitors for the applicant), Lavery House, Earlsfort Terrace, Dublin 2 (AOS/JC)

quantum meruit

Sci-fi horror probe

A New Mexico man, David Eckert, has claimed in a federal lawsuit that he was forced to submit to enemas, a colonoscopy, X-rays and several cavity searches after he was pulled over … for failing to yield for a stop sign. Then he was billed for his pains.

The lawsuit says that a police officer patted him down and began to question him. Other responding officers inspected Eckert's vehicle with a drug sniffer dog, which allegedly reacted, leading the police to suspect there were drugs on board. The police seized the car, but opinions differ over whether consent was given for the vehicle search. Apparently, no drugs were found.

The arresting officer then obtained a search warrant that authorised an anal cavity search and transported Eckert to an emergency room in Deming, where the attending physician refused to do the procedure. Eckert was then taken to a second hospital. His lawsuit maintains that three enemas, two X-rays, and a colonoscopy and cavity searches were performed. The hospital billed Eckert for the examinations.

"This is like something out of a science fiction film – anal probing by government officials and public employees," Eckert's lawyer told KOB4 television station. The lawyer says the search warrant was issued without probable cause, was too broad, was invalid in the county where the second hospital was located, and had expired before the colonoscopy was performed.

Roaches have rights too

People for the Ethical Treatment of Animals has asked the Michigan attorney general and state regulators to take action against a company that sells a 'RoboRoach kit' for $99, contending that the kit amounts to practising veterinary medicine without a license, *Time* magazine reports.

The so-called 'research' kit uses a remote control device to control a cockroach's movements, but upcoming versions will allow an insect to be controlled via a smartphone.

Co-founder Greg Gage, of Backyard Brains, says his company's product is legal and has no permanent adverse effect on the insect's life.

Lawyer Jared Goodman commented that the kit encouraged mistreatment of the insects. "It's not okay to torture and mutilate cockroaches," he says.

Watchoo talkin' about, Willis?

A British woman tried to sue her former lawyers for professional negligence, claiming that they failed to advise her that finalising divorce proceedings would inevitably cause her marriage to end, *The Independent* reports.

Jane Mulcahy argued that the lawyers should have made it clear that a divorce would cause her marriage to be terminated – something she apparently wanted to avoid.

Lord Justice Briggs said: "The most striking of Mrs Mulcahy's many allegations of negligence against her solicitors was that, having regard to her Roman Catholic faith, [the solicitors] had failed to give her the advice that was requisite in view of her firmly held belief in the sanctity of marriage."

Mrs Mulcahy said that her lawyers should have recommended judicial separation as an alternative course of action.

The claim was dismissed.

Bouncing bullet kills mugger on the rebound

A 16-year-old mugger was killed after a bullet fired by an accomplice ricocheted off the victim's face, the *Huffington Post* reports.

The incident happened when a group accosted the man at a housing complex in San Francisco and demanded he hand over his possessions, police said.

The man complied, but one of them pulled a handgun and fired at him. The bullet struck his face, bounced off, and hit one of the other robbers, Clifton Chatman. The other gang members fled, and Chatman was later pronounced dead at the scene.

The muggers' victim was taken to hospital with serious injuries but is expected to survive.

A 16-year-old has since been arrested on suspicion of murder and attempted robbery.

CASES (FOR CHANGE)

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

EMPLOYMENT ASSOCIATE — Ref BD50

Acting for high profile domestic and multinational businesses in Ireland, the employment law group of this top tier firm now seeks to appoint an ambitious senior associate to its booming practice. In joining the team, you will work on the full range of contentious and advisory matters and will enjoy a high degree of autonomy. The appointee will have a partnership career trajectory. 6 years relevant experience.

TAX SOLICITOR — Ref BD52

This high profile tax team advises on a broad range of tax issues including domestic acquisitions and MBOs, foreign direct investment, cross border M&A, aircraft financing, the tax components of debt capital markets, tax litigation matters and Revenue powers. The Partners now wish to appoint an ambitious associate to the team who has the ability and hunger to ultimately become a partner. 2 years relevant experience.

JUNIOR QUALIFIED | CORPORATE — Ref NQ01

The corporate department of this Tier 1 firm deals with a broad range of work for international FDI companies doing business in Ireland, including M&A, privatisations, JVs, corporate reorganisations in addition to advising on ongoing corporate, company law and governance issues. Applicants must have excellent academics and have completed a corporate rotation with a top tier law firm in Dublin or London. Salary Scale: Newly Qualified Level.

SOLICITOR | IN-HOUSE — Ref JS33

Advising on diverse legal aspects of large scale loan portfolios, the scope of this role includes drafting and negotiating restructuring agreements, implementation of enforcement options and managing litigation including judgement proceedings. This broad role will also include advices on insolvency remedies. Expertise in banking/commercial property or restructuring is essential, with a track record advising on significant transactions. 3+ years relevant experience.

BANKING ASSOCIATE — Ref BD51

This firm's transparent management structures, mentoring programme, bonus system and unique partnership track programme are some of the reasons why it continues to attract top talent from every other Tier 1 firm in Dublin. In joining the firm's impressive banking team, you will enjoy a healthy mix of local and global banking work, participate in meaningful client management activity as well as mentoring more junior team members. 6 years relevant experience.

INSURANCE SOLICITOR — Ref BD53

The corporate insurance group of this top tier firm is widely regarded as the market leader in Ireland. As a member of the team you will be involved in high profile and complex cross border insurance mergers, ongoing advice, regulatory issues and commercial agreements. A stable and growing team, suitable candidates will come from either a corporate M&A or a non contentious insurance background. 3 years relevant experience.

JUNIOR QUALIFIED | PRIVATE CLIENT — Ref NQ02

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

LEGAL COUNSEL | IN-HOUSE — Ref JS42

Working for this multinational biopharma organisation, the successful candidate will lead negotiations and draft a broad spectrum of commercial agreements, managing legal aspects on multijurisdictional transactions. Counsel will also have responsibility for the implementation and monitoring of compliance procedures and standards, liaising with senior management and providing guidance on legal and compliance issues. 5+ years relevant experience.

For a confidential discussion on any of these opportunities, or other non-advertised positions please contact:

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

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

www.hrmrecruit.com

HRM RECRUIT

www.benasso.com

Recognising talent's one thing...

finding the truly successful fit is another

Talk to the Irish Legal Recruitment Specialists

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

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

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

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

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

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

Construction/Procurement (Non-contentious): Assistant to Associate
Top flight practice requires a solicitor with previous experience in this practice area to join a first rate team.

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

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

Professional Support Lawyers (Corporate and Litigation): Senior Associate
Top tier pracrtice requires experienced practitioners in both these specialisations.

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

Benson & Associates
Legal Recruitment Specialists