Law Society Gazette

Regulars

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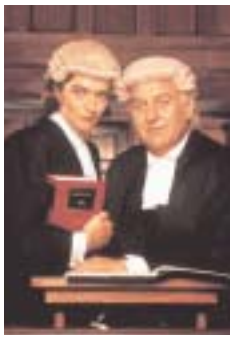

Cover story

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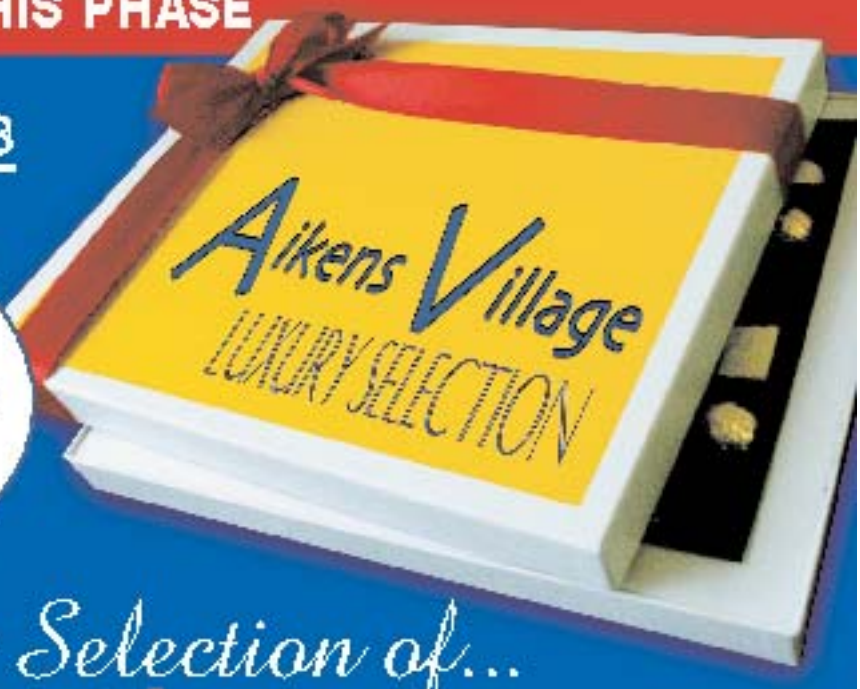

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NATIONWIDE
News from around the country

DUBLIN

Meeting the judges

Later this month, Orla Coyne, president of the Dublin Solicitors' Bar Association, and her council colleagues will host a dinner for members of the Dublin Circuit Court bench, led by Circuit Court president Mr Justice Esmond Smith.

'It is a good and healthy thing for practitioners to meet both members of the bench and also each other in an out-of-court setting', says DSBA secretary Kevin O'Higgins. Such social 'get-to-know-you' functions with the judiciary foster greater understanding, and were the initiative of last year's DSBA president John O'Connor.

Walking in Memphis

Later this month, a large group of lawyers from Memphis, Tennessee, will be visiting Ireland and will be briefed on the Irish legal system and our courts by the DSBA.

'We'll bring them around the Four Courts and show them Irish courts in session', said Orla Coyne, adding that members of the judiciary had been very helpful in making the arrangements and have agreed to receive the US lawyers in their chambers. The DSBA held a very successful (and enjoyable) conference in Memphis under Dominic Dowling's presidency more than a decade ago.

Residential tenancy agreement

Last month saw the highly successful launch of the new DSBA residential tenancy agreement. This is available on CD-ROM to members at a cost of €363. For more information, contact maura@dsba.ie.

Do I know you?

The DSBA president and her council plan to travel around Dublin city and county meeting colleagues and hearing the views of fellow practitioners on the issues facing the profession.

'Meeting colleagues in their own neighbourhoods is something that has worked very well for us in the past', says Coyne. She added that it provides the sort of information that the DSBA council needs to help colleagues in their everyday working lives.

One such meeting was held recently in north county Dublin, including Swords, Portmarnock and Malahide, and a further meeting will be held shortly with colleagues in the Tallaght area.

Graceland: it's in Memphis

LAOIS

Tempus fugit

The retirement of James E Cahill after 27 years as county registrar in Laois was marked recently with a well-attended dinner and presentation at Durrow. Tributes were paid by solicitors and others, noted Christina Dobbyn, secretary of the Laois Solicitors' Association.

Mr Cahill, a former solicitor, heard his former master John Bolger talk of his prowess as an eager solicitor's apprentice. Mr Bolger, who qualified in 1942, is still with Bolger White Egan & Flanagan in Portlaoise and who is reputed to be in his 80s, spoke eloquently of times past.

Mr Cahill was presented with a silver salver by the bar association president, Philip Meagher. Circuit Court judge Anthony Kennedy, chief superintendent Kevin Donohoe and Donal Dunne, state solicitor for Laois, were among those who attended to mark the passing of an era in Laois legal circles. Mr Cahill's replacement has not yet been announced.

LOCAL AUTHORITIES

Down by the Lee

Next month, local authority solicitors in England, Scotland, Wales and Northern Ireland will join colleagues in this jurisdiction for the annual spring seminar of the Local Authority Solicitors' Bar Association in Cork.

A paper on money laundering and local authorities will be considered by the assembled lawyers at Cork's City Hall. 'We are looking forward to an exciting exchange of ideas and information with solicitors from the neighbouring jurisdictions', noted Bryan F Curtin of Dun Laoghaire Rathdown County Council, who is secretary of the association.

Developers

The battle between developers and local authorities in relation to affordable housing and the implementation of part V of the *Planning Act, 2002* is one that involves some very complex issues, according to Curtin.

'In our local authority, we deal with large, medium and small-sized firms. This act concerns more than just the big firms', he said. 'We all need to be better informed on this complex legislation'.

When the local authorities take their 20% for affordable housing in accordance with the legislation, the recipients from the local authorities will be ordinary people looking for their solicitors on the high street. Perhaps now is the time to be getting prepared, he suggested. Part V of the 2002 act might be a suitable subject for a CPD seminar.

LONGFORD

Conveyancing costs

'How can we give a conveyance the required amount of time and attention and do the work properly if we cannot get reasonable fees?', asks Karen Clabby, secretary of the Longford Bar Association.

The situation with cut-price conveyancing among colleagues has now reached such serious levels in Longford that they intend to seek the help of the Law Society in addressing what is now a serious problem for practitioners. There is now a general feeling among practitioners that something has to be done.

Community activists

However, solicitors also have lives outside the office. 'We are part of the community and we should make the effort to help with local clubs and associations', according to Ms Clabby. That is why they are hosting a table at Punchestown on the 27th of this month, with funds raised going to Longford GAA Club. G

Nationwide *is compiled by Pat Igoe, principal of the Dublin law firm Patrick Igoe & Co.*

Wall Street to White House?

The lawyer who, speculation says, will be the next governor of New York and a future candidate for the US presidency gave an interesting lecture on a visit to Blackhall Place recently.

The attorney general of New York state, Eliot Spitzer, is known as 'the man who cleaned up Wall Street' following his successful prosecution of high-profile corporations engaged in conflicts of interest in advice given on investments. 'We have to be able to distinguish between the results of market risk on the one hand and fraud on the other', he told an audience of government lawyers, practising solicitors and students in the society's Education Centre.

Spitzer was on a trade mission to Ireland, in the course of which he met senior political figures both north and south of the border.

Director general Ken Murphy, New York attorney general Eliot Spitzer, Law Society past-president Pat O'Connor and Maura Butler of the Law School

'The man who cleaned up Wall Street'

Thanking him for his address, director general Ken Murphy presented him with an inscribed copy of *Portrait of a profession*, the book that celebrates the 150th anniversary of the charter of the Law Society of Ireland. 'We expect to see it some day in your presidential library', said Murphy. Laughing, Spitzer replied that this was a remark on which he would make no comment whatsoever.

RETIREMENT TRUST SCHEME

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Gardaí say that 96% of interviews are now recorded

Almost all garda interviews are recorded, according to statistics from a Dáil-appointed committee. The snappily-titled Steering Committee on Audio & Audio/Video Recording of Garda Questioning of Detained Persons, chaired by Circuit Court president Esmond Smyth, says that between January and November 2003 a total of 16,126 interviews were conducted and, of these, 15,032 were recorded. The committee reports that 'over 96% of interviews were recorded under the Criminal Justice Act, 1984 *(electronic recording of interviews) regulations 1997*'.

According to justice minister Michael McDowell, 'This scheme, which is operating in every garda division in the country, provides very definite safeguards to those being interviewed and also gives valuable protection to gardaí against unfair and unfounded accusations of oppressive or unfair interviewing techniques'.

ONE TO WATCH: NEW LEGISLATION

Maternity Protection (Amendment) Act, 2004

The act follows through on government commitments made in the *Government action programme for the millennium* and the *Programme for prosperity and fairness*, and is a statutory part of the work/life balance programmes that the government is committed to under *Sustaining progress*. All sections except section 24 were commenced on 18 October 2004 by SI 652/04 and SI 131/05 commences the remainder of the act on 10 April 2005.

This act amends the *Maternity Protection Act, 1994*. The standard period of maternity leave was already extended from 14 to 18 consecutive weeks by statutory instrument, and this longer period is now incorporated in the new act. Power is reserved to the minister for justice, equality and law reform to extend this period further.

Leave must now commence at least two weeks before the date of expected confinement, instead of four weeks as was the case previously. A new mother may opt to take an additional eight weeks (unpaid) leave, double the previous period of four weeks, and this period may be extended by the minister in the future.

A new provision is introduced to allow for termination of additional maternity leave in the event that the employee/mother gets sick. She may request her employer in writing to terminate the additional leave, and the employer may agree, and must notify his decision promptly. In the event that the maternity leave is terminated, the employee's absence is treated the same as any ordinary absence, and the employee forfeits her right to whatever additional leave she has not yet taken. This brings the employee/mother back into the social insurance system and allows her to be paid during her sick leave.

Another new provision allows for suspension of maternity leave or additional maternity leave in the event that the newborn child is hospitalised. The mother employee must make a request in writing to her employer, and must have already taken a minimum of 14 weeks, of which four weeks were after confinement. The employer must respond promptly, and the employee can return to work without forfeiting her entitlement to the remaining leave due. The remaining leave, if taken, must be for a continuous period commencing no later than seven days after the child is discharged from hospital. If the employee gets sick during the period of postponed leave, her absence is taken as a resumption of leave unless she promptly

Government finally appoints solicitor to chair a tribunal of inquiry

All of the judges appointed by the government to chair major tribunals of inquiry over the years were barristers before they became judges, *writes Ken Murphy*. Most people, including many barristers, would say that the organisational and management skills necessary to successfully chair a tribunal of inquiry are much more likely to be developed in the solicitors' branch of the profession than in practice at the bar.

Although the state's many tribunals of inquiry have been the subject of particularly strong criticism in recent times for their marathon meanderings – so much so that the whole concept of tribunals of inquiry appeared to have gone out of fashion – the government has just established another one. This time, for the first time, the judge who has been put in charge of the tribunal is from the solicitors' branch of the profession.

The killing in March 1989 of two senior RUC officers, chief superintendent Harry Breen and superintendent Robert Buchanan, in South Armagh on their way back from a meeting with senior gardaí in Dundalk has long been a source of suggestions that their killings at the hands of the IRA may have involved collusion from within the gardaí. The retired Canadian judge, Peter Cory, has recommended a tribunal of inquiry into this, just as he has recommended a tribunal of inquiry into allegations of British security force collusion in the murder of Belfast solicitor Pat Finucane.

Judge Smithwick: opportunity to use his organisational and management skills

The government has appointed the president of the District Court, Peter Smithwick, to chair this tribunal of inquiry. Judge Smithwick now has an opportunity to put to a new use the organisational and management skills he acquired in his years of practice as a solicitor in Kilkenny, in addition to his knowledge and skills as a senior member of the judiciary.

Locum arrangements booklet

A new information booklet, *Locum arrangements*, is the latest in the series of information booklets from the Law Society's Guidance and Ethics Committee. Copies of the booklet are available, free of charge, from the committee (tel: 01 868 1220, e-mail: a.collins@lawsociety.ie). It can also be accessed on *www.lawsociety.ie.*

Other titles in the series are:

- *Solicitors setting up in private practice*
- *Partnership?*
- *Solicitors ceasing practice: guidelines for solicitors retiring or ceasing to practise as sole practitioners or sole principals and for solicitors purchasing practices from them.*

Also, the society's Corporate and Public Services Committee has published *Solicitors commencing employment in the corporate and public services sectors.*

notifies her employer in writing that she does not want to commence leave and, in that event, her absence is treated as a normal absence and she forfeits her right to resume the leave which was postponed. Regulations provide that the maximum period of postponement is six months, and set out the evidence to be furnished by the employee (SI 655/04).

The act introduces a right to time off from work to attend one course of ante-natal classes without loss of pay, spread over one or more pregnancies, except for the last three classes that would normally be attended while the employee is on maternity leave. A father in employment may also, on a one-off basis, attend the last two of his partner's ante-natal classes without loss of pay. There are exceptions to this benefit in relation to members of the Defence Forces and the gardaí. Regulations set out the arrangements to be made so that this entitlement can be availed of (SI 653/04).

Another innovation is the entitlement to time off or reduced working hours for breastfeeding mothers, for up to six months after confinement. The employer has the option of giving a mother employee breaks for breastfeeding or expressing milk, where facilities are provided, or reducing her working hours in accordance with regulations. Regulations set out the details of how it can work (SI 654/04). The breastfeeding mother is entitled to one hour off per day, in periods as may be agreed.

If the mother of a newborn child dies within 24 weeks of delivery, section 10 makes provision for special leave for the father, if he is in employment. Other sections deal with the father's illness or postponement of leave because of the hospitalisation of the child.

The employee's employment rights are maintained intact regardless of absence on core and additional maternity leave, or ante-natal classes, except for remuneration or superannuation benefits or any obligation to make pension contributions.

The remaining sections of the act deal with the application of the principles of the legislation to particular situations, for example, notice of termination of employment, training periods, improved terms of employment introduced during protective leave, assignment to other work on terms no less favourable than previous work, unfair dismissals and redundancy. G

Alma Clissmann is the Law Society's parliamentary and law reform executive.

Morning Ireland's misleading statistic gives false impression to public

'It can be hard enough answering questions based on fact without having to deal with questions based on fiction', Law Society director general Ken Murphy has said in relation to a recent interview on RTÉ Radio's flagship current affairs programme *Morning Ireland*.

On the morning of the publication of the Competition Authority's consultation paper, but before that paper's contents had been made public, Murphy was interviewed by *Morning Ireland*'s Cathal Mac Coille. Early in the interview, Mac Coille sought to refute Murphy's assertion that there is a very competitive legal services market in Ireland by twice putting to Murphy the proposition that a report in 2003 by the Competition Authority's economic consultants, Indecon, showed 'according to a survey of solicitors, that 60% of solicitors said there was no competition between them'.

Subsequently, checking the relevant section of the Indecon report, Murphy was able to confirm his suspicion that the basis of the question was completely false. As a result, he believes that the question was unfair.

Indecon's survey recorded the views of solicitors under two headings, 'virtually no price competition' and 'very little competition', with between them a total

Mac Coille: false figure was the basis of question

Murphy: no objection to robust questioning

percentage recorded as 3.8% – a far cry from 60%. In contrast, the combination of Indecon's categories of solicitors' perceptions of 'significant price competition' and 'extensive price competition' came to 73.2%.

Murphy then wrote to Cathal Mac Coille with a copy of the relevant extract from the Indecon report and asked where Mac Coille's incorrect and damaging figure had come from. He also requested that a 'clarification' be broadcast on *Morning Ireland*, setting out the true facts.

In his letter, Murphy made it clear that he had no objection to being subjected to robust questioning, but a question based on a confidently asserted but utterly false statistic was not legitimate.

Morning Ireland editor Shane McElhatton replied in writing, saying: 'I am now trying to locate the source of Cathal's assertion about 60% of solicitors having told the Indecon report authors that they did not believe there was competition in the profession. He can't remember where he read it, and there is no reference to such a figure in the brief as prepared the night before. Certainly, the table reproduced by you from the Indecon report does not support such a view'.

Murphy believes there was no malign intent on Mac Coille's part in putting the question. 'I have been interviewed many times by Cathal and I have always admired his professionalism, expertise and courtesy. He conducts hard but fair interviews. This was not fair, however.

'I was quite happy with the rest of the interview', says Murphy. 'I got the opportunity to make a number of important points to the mass *Morning Ireland* audience, such as the fact that the Competition Authority officials openly acknowledged to us in meetings last year that they accepted that the society's professional training and admission systems are not used anti-competitively to suppress numbers entering the profession. They also acknowledged to us the excellence of the professional training courses. In addition, I was able to make the point that justice minister Michael McDowell, who has detailed knowledge of the society's system of regulation of the solicitors' profession, had publicly expressed his view that it is "the best regulation of any profession anywhere in these islands".

'Being questioned on the basis of the completely false 60% figure is not just misleading to the public and annoying to solicitors', added Murphy. 'If it is not corrected, I fear it will be used in other interviews and articles in the future.

'*Morning Ireland* is very good at holding everyone else to account for errors and failures. It is a little disappointing that there hasn't been a more open and accountable response from *Morning Ireland* with a correction of its own mistake'. G

HUMAN RIGHTS WATCH

Legal aid and equal representation

Alma Clissmann reports on developments in relation to the practical application of the *European convention on human rights*

Laffoy J gave judgment on 21 January in *Carmody v The Minister for Justice, Equality and Law Reform and the AG* in the High Court (judgment available on *www.bailii.org*). The plaintiff sought a declaration that section 2 of the *Criminal Justice (Legal Aid) Act, 1962* was inconsistent with the provisions of the constitution and also inconsistent with the state's obligations under the *European convention on human rights* (ECHR). The judgment deals with several important issues regarding the application of the *ECHR Act, 2003* and demonstrates an encouraging faith in the abilities of defence solicitors.

Solicitor Robert Pierse: testified that senior counsel should be retained in the case

Provision challenged

Section 2 provides that a District Court may grant legal aid to a person without sufficient means to supply his own if 'by reason of the gravity of the charge or of exceptional circumstances, it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence … and thereupon he shall be entitled to such aid and to have a solicitor and (where he is charged with murder and the court thinks fit) counsel assigned to him'.

The plaintiff was a Kerry farmer who was charged with 42 offences relating to animal diseases. Legal aid was granted by the District Court, but his application for representation by counsel was refused. He then instituted these proceedings and his trial was suspended pending a decision. The plaintiff's solicitors, Joe Mannix and Robert Pierse, gave evidence that, in their opinion, counsel should be retained in such a case for a proper defence. The legislation was very complex and the consequences of conviction were potentially serious in terms of imprisonment, fines and loss of reputation. It was accepted that prosecutions were conducted by counsel. While Laffoy J found that the prosecutions were more complex than normal, she considered that legal aid solicitors must expect to take on occasional difficult cases. She held that 'a finding that a qualified solicitor exercising ordinary professional skill and care could not effectively and adequately defend an accused person on such charges in the District Court is not open on the evidence'.

A declaration was sought that section 2 was incompatible with the ECHR and the constitution. The judge had to decide against which instrument the section should be tested first. Because of the principle of 'self-restraint' under constitutional law, which lays down that the constitutionality of legislation should only be considered where it is unavoidable, it appeared that the issue of compatibility with the ECHR should be considered first. However, section 5(1) of the *ECHR Act, 2003* provides for a declaration of incompatibility 'where no other legal remedy is adequate or available'. Laffoy J held that the question of compatibility with the ECHR must be decided first. First, because any other construction of section 5(1) of the 2003 act would be at variance with the approach adopted by the courts from the outset and would not have been intended by the Oireachtas, and, second, because the long title of the 2003 act expressly subordinates the effect given to the convention in domestic law to the provisions of the constitution.

Right to a fair trial

The plaintiff argued that his right to a fair trial under article 6(3)(c) of the convention was at risk because of inadequate representation in the prevailing circumstances and because, as the prosecution would be conducted by counsel, the principle of equality of arms would not be preserved. On the first point, Laffoy J held that it had not been established that a qualified solicitor on the legal aid panel exercising normal professional skill and care could not afford effective and practical representation for a person being tried summarily on a minor offence in the District Court, or that there was a risk of an unfair trial in such circumstances. On the second point, she held that an analysis of the jurisprudence of the European Court indicates that the concept of equality of arms, in the context of article 6, is concerned with basic fairness and justice. On the basis that a solicitor alone can provide effective representation for a person facing criminal charges in the District Court, the absence of parity of itself does not endanger the right to a fair trial as guaranteed by article 6.

Discrimination

The plaintiff also argued discrimination under article 14 on the basis that an indigent accused could not obtain the same legal services for his defence as someone paying, who could obtain the additional services of counsel. Laffoy J rejected this argument, holding that the right at issue was the right of the plaintiff to effective legal representation in his defence, in the overall context of his right to a fair trial without cost to him. What a rich farmer might decide to do did not amount to discrimination under article 14.

Constitution

The judge then turned to the argument that section 2 was inconsistent with the constitution by not providing for parity of representation with the prosecution. She held that 'a numerical imbalance or a divergence of legal qualification between the prosecution team and the defence team does not disadvantage the accused person to the extent that his guarantee to a fair trial is imperilled … it has not been shown that such is the case'. She concluded that there would appear to be little or no difference between the protection afforded to the plaintiff by article 6 of the convention and by the constitution. G

Alma Clissmann is the Law Society's parliamentary and law reform executive.

Society promises 'positive engagement' following Competition Authority report

Last month, the Competition Authority published its consultation paper on the legal professions. The following are the authority's main recommendations as taken from its press release and from the speech made at the report's launch by chairman John Fingleton.

The Competition Authority's report on competition in legal services finds that the sector is unjustifiably restricted by legislation, regulation and conventions that have built up over decades, if not centuries. Access to legal education is determined by monopoly establishments controlled by lawyers. The ability of business and individual consumers to make informed choices is limited. The ability of lawyers to organise their practices so as to deliver services to their customers most efficiently is restricted.

Lawyers do compete with each other, but they do so in a highly constrained setting. As a result, the system in which they operate fails to offer the value and range of services that their customers and the modern Irish economy needs.

A particular feature of the Irish system of legal regulation is that it relies heavily on self-regulation by lawyers themselves. This involves a serious conflict of interest as each of the regulatory bodies is controlled by lawyers. Two of them, the Law Society and the Bar Council, also represent their members' interests. External oversight of self-regulation, where it exists, is below best-practice levels.

To date, this intrinsic conflict of interest has been resolved largely on the side of the lawyers, not their customers. Irish self-regulatory bodies have consistently either restricted competition or failed to remove restrictions under their control.

For this reason, the authority proposes a single, independent, transparent and accountable regulator for legal services. Because it will replace a complex, opaque and sometimes duplicative system with a high degree of self-regulation, an independent regulator will involve no additional regulatory burden and is in line with Irish government policy on better regulation.

What we propose may seem revolutionary to those currently practising law in Ireland who are familiar and comfortable with the existing rules. Our proposals are far from revolutionary. They are in line with best practice internationally, in regulation and in legal services.

The combination of these various reforms elsewhere provides an additional motivation for voluntary reform. To the extent that reforms in the UK or other EU member states lead to greater competition there, and that internal market barriers continue to break down, lawyers in Ireland will increasingly face indirect and even direct competition from those lawyers qualified or simply operating in other member states.

In preparing the report, we have consulted with and listened to the views of various parties on several occasions, researched competition in legal services in other jurisdictions and in other professions in Ireland, commissioned external research, and thought carefully about all of the issues before coming to conclusions.

Nothing in this report should come as a shock to the representative bodies and their members, as we have consulted with them closely at all stages of this process.

Lawyers and their representatives could seize the opportunity to engage in voluntary reform. Self-reform by the Law Society, Bar Council and King's Inns offers the most effective and speedy way to deliver the full benefits of competition.

I call on these bodies to signal their willingness to implement these reform proposals, and to work with us in putting them in place without delay. This would enable our final recommendations to government on legislation to be more modest.

A clear statement by the government that it is committed to bringing forward legislation to ensure full and open competition in legal services in Ireland would further encourage this process of voluntary self-reform. G

LAW SOCIETY'S REACTION

The Law Society is studying very carefully the Competition Authority consultation paper.

There is much to consider and many details to assess in the paper's 143 pages and 41 recommendations. When we have fully evaluated the paper and considered all the implications of its recommendations, we will once again engage positively with the authority.

In this regard, I noted at the Competition Authority's press launch of the consultation paper, which was attended by the society's director general Ken Murphy and me, that the chairman, John Fingleton, in response to media questions about the society's level of co-operation with the authority, twice confirmed it had been 'excellent'.

The society has already held one special meeting of its Council to consider the paper. One of the things agreed at that meeting was that there should be a process of consultation between the society and its members on what the effects of the various recommendations of the authority would be if the government decided to implement them.

Neither the Law Society nor the solicitors' profession have been opposed to reform – something that we constantly initiate and embrace ourselves – or to change generally. All proposals for change, however, must be evaluated carefully to ensure that they really do represent both the consumer interest and the public interest.

Owen Binchy,
President

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Letter

A second set of keys

From: Kevin O'Higgins, solicitor, 15 Carysfort Avenue, Blackrock, Co Dublin

I read with interest Mark Finucane's timely and apposite letter 'Just give us the keys, please', reflecting a purchaser's very reasonable expectation that when it comes to the closing, keys would be available and handed over – having as much to do with symbolism as anything else.

Mark is absolutely right in chastising colleagues who don't bother alerting their purchaser-solicitor colleagues that keys won't actually be available from themselves and nonchalantly only divulge at the conclusion of the closing that the keys can be collected from the auctioneer.

My own experience, in fact, is that in many cases clients will more easily get to the auctioneer's office than they will to the vendor's solicitor's office from the point of view of the completion, particularly as the auctioneer and their new property are invariably proximate. But, of course, this should be pre-arranged with our colleague in advance so that everyone knows the score, and my experience is that purchasers are very relieved (on what is obviously a hectic day for them) to be absolved of the chore of having to turn up at a solicitor's office.

Mark's letter is also interesting in that it does touch on a practice, which is becoming more and more prevalent, particularly in Dublin and no doubt in other urban areas, for closings to take place either by DX courier or by post. While traffic gridlock and just general busyness has made this practice inevitable, the profession should be aware that it carries with it risk factors for both purchaser and vendor, which in a doomsday situation, where deeds are lost or bank drafts do not get to the proper destination, could leave solicitors hung out to dry. G

Mr Solicitor,

MAIN POINTS

- Appointment of senior counsel
- Example of England and Wales
- Solicitors as senior counsel?

The Competition Authority recently recommended that if the title of senior counsel were to be retained, it should be opened up to solicitors. Eamonn Hall argues that solicitors are, at present, entitled to be admitted to this rank

The process of appointing senior counsel is shrouded in mystery. If crown prerogative is the source of state authority in relation to the creation of senior counsel, there is considerable doubt whether it survived at the foundation of the state (see **panel**, page 14). This would be the case particularly in the absence of specific legislative authority. It may be argued that the trilogy of cases *Byrne v Ireland* ([1972] IR 241), *Webb v Ireland* ([1988] IR 353) and *Howard v Commissioners of Public Works in Ireland* (no 1 [1994] 1 IR 101) effectively established that the origins of the prerogative had not survived the enactment of the constitution.

The Competition Authority's report on legal services referred to the designation 'senior counsel' and quoted the following from the Bar Council website:

'Senior counsel (known as silks) are the equivalent of queen's counsel in England. They are appointed by the government from the ranks of junior counsel. It is a mark of eminence to be appointed senior counsel and senior counsel are expected to be extensively experienced in the practice of law over many years and to be in a position to bring a high level of legal knowledge, skill and judgement to bear in any task in which they are professionally engaged'.

The Competition Authority stated that appointment to the inner bar and entitlement to use the designation 'senior counsel' was made by the government. The selection process included the chief justice in consultation with the president of the High Court, other members of the judiciary and the chairman of the Bar Council, who considered all applications and notified the attorney general as to their view. It was stated that the attorney general may in turn consult with the judiciary and other senior members of the bar.

The Competition Authority concluded that the title of senior counsel as currently awarded may distort competition and that, if the title is to be retained, it should be opened up to solicitors. The authority noted that the title was perceived as a mark of quality for specialisations other than advocacy. To that extent, the title may distort the market against solicitors whose specialisation in a given discipline may be as great as that of a senior counsel. Given that solicitors, unlike barristers, deal directly with the public, a quality mark that included solicitors might be of greater value to 'buyers' of legal services. The authority believed that the title of senior counsel, as currently awarded, does not achieve the objectives identified by the Bar Council because the title could not serve as a reliable indication of a higher level of expertise and experience because of the lack of transparent, objective and public criteria. The authority stated that there appeared to be no justification for confining the title to barristers and excluding solicitors.

In view of this, it might be instructive to look at how they are doing things in England and Wales.

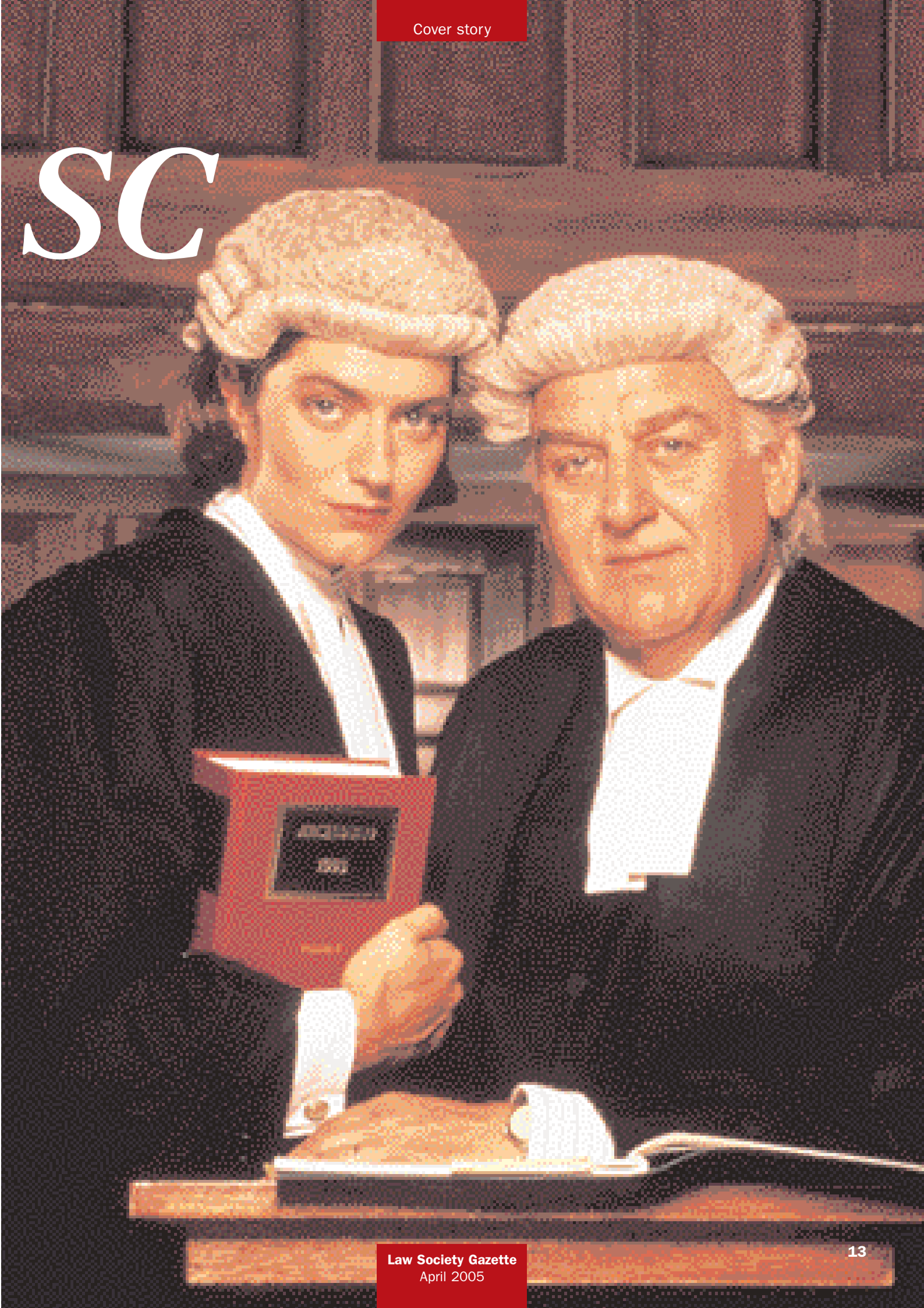
Kings and queens

The current scheme of appointing queen's counsel in England and Wales was developed by the Bar Council and the Law Society in 2004 with the support of the Department for Constitutional Affairs (the lord chancellor's office). The scheme was based upon an agreed set of competencies, setting out the behaviours required of leading lawyers. Apart from regulatory checks to be undertaken by the respective professional bodies, evidence would only be gathered and assessed against these competencies. The new process was to serve the public interest by offering a fair and transparent means of identifying excellence in advocacy in the higher courts by placing the conferral of the title of QC in the hands of an independent selection panel that includes appreciable lay (non-lawyer) membership. Solicitors in England and Wales are entitled to apply for the award of queen's counsel.

The lord chancellor's office issued a paper in July 2003 entitled *The future of queen's counsel*. The paper noted that appointment as a queen's counsel brought a number of formal privileges. First, queen's counsel

Opposite: John Thaw as Kavanagh QC. He could have been a solicitor if he hadn't joined the Sweeney first

SC



The *ancien régime*

The rank of queen's or king's counsel and senior counsel is comparatively modern. The office of the king's or queen's serjeant-at-law is more ancient. Judge Hart, in his history of the king's serjeant's-at-law in Ireland (2000), wrote that the origin of that office in Ireland can be traced directly to the appointment between 1261 and 1265 of Roger Owen to represent the king's interests in the courts of the lordship of Ireland. Serjeant AM Sullivan QC (1871-1959), who defended Roger Casement, was the last to hold the title of king's serjeant in Ireland.

The office of queen's or king's counsel was formerly created by patent. This conferred a right of pre-audience or precedence and was, at the foundation of the state, conferred by the English crown. The status of queen's or king's counsel was considered by the Privy Council in *Attorney General v Attorney General for Ontario* ([1898] AC 247). Lord Watson, delivering the judgment of the Privy Council, said:

'In England [the appointment of counsel for the crown] *has always been a matter of prerogative in the sense that it has been personally exercised by the sovereign with the advice of the lord chancellor, the appointment being made by letter patent under the sign-manual … The exact position occupied by a queen's counsel duly appointed is a subject which might admit of a good deal of discussion. It is in the nature of an office under the crown, although any duties which it entails are almost as unsubstantial as its emoluments; and it is also in the nature of an honour or dignity to this extent that it is a mark and recognition by the sovereign of the professional eminence of the counsel upon whom it is conferred'.*

A turning point in Irish constitutional history was the 1922 Free State constitution. The barristers associated with the senior judicial arm of the new government were all designated as king's counsel. Existing king's counsel retained their titles and some barristers continued to designate themselves as queen's counsel/king's counsel right up to the 1960s. For example, RGL Leonard, chairman of the Law Reporting Council of Ireland, was designated as a queen's counsel in the (official) *Irish reports* up to the 1960s.

wear a distinctive uniform. In court, queen's counsel wear a short wig, wing collar and bands and a silk gown over a special court coat. Junior barristers wear a short wig and a stuffed gown with bands. Solicitors and other advocates authorised under the UK *Courts and Legal Services Act 1990* wear a black stuffed gown, wing collars and bands but no wig. Second, the judiciary has traditionally given queen's counsel a formal right to address the court before any other advocates. Third, queen's counsel sit in a particular part of the court. They were entitled to sit in the front row (also known as sitting 'within the bar in the Supreme Court'). This tradition is a matter of professional etiquette rather than part of the practical process of discharging legal business.

The Law Society of England and Wales had argued that the distinctive dress and position in court of queen's counsel offered an unfair competitive advantage over junior counsel and others. Specifically, in the July 2003 paper it was stated that there was no statutory provision requiring or authorising the appointment of queen's counsel. Appointments were made under the royal prerogative, defined as the non-statutory powers of the sovereign acting on the advice of ministers. This is of relevance to Ireland in the context of the appointment of senior counsel by the government in the absence of authorising legislation.

The paper argued that while the award of queen's counsel recognises excellence in advocacy skills, there were areas of practice such as tax, trust and some aspects of chancery law where litigation was rare. This also applies to other areas of law. In those areas, there were many barristers and solicitors who were regarded as specialists of the very highest ability. Their work, however, was largely carried out through advice on paper and in conference, or through negotiation with the other side. In fact, previously, the title king's or queen's counsel was granted to a barrister eminent in any field of law – not necessarily involving advocacy.

It is appropriate to note that, pursuant to sections 36 to 38 of the UK's *Access to Justice Act 1999*, every barrister and every solicitor (including those who are employed) have the same rights of audience before every court in relation to all proceedings, as long as they comply with the rules of the appropriate professional body and have met the prescribed training requirements. Under the Irish *Courts Act, 1971*, solicitors have a right of audience in every court.

Positive attributes

A 2003 guide for applicants for appointment as queen's counsel stated that the lord chancellor would recommend for appointment only those practitioners who displayed certain attributes to a degree that marked them out as leaders of the profession. There appeared to be a distinction between advocacy (those with outstanding ability as an advocate) and those of legal ability and practice (sound intellectual ability and a thorough, comprehensive and up-to-date knowledge of law and procedures in the applicant's field of practice). In the context of professional qualities, one paramount quality was integrity – having a history of honesty, discretion and plain dealing with professional colleagues and lay and professional clients in the courts, independence of mind and moral courage, and having the trust and confidence of others. In the context of professional standing, the applicant had to have the respect of the bench and the profession in observing the applicant's duty to the court in the administration of justice while presenting their client's case and being formidable, fair and honourable as an opponent. A further quality was that of maturity of judgement and balance.

In the 2003 paper, the criteria were not confined to oral advocacy but also included, for example, other forms of written advocacy. It was stated that the lord chancellor would expect applicants to have sufficient professional experience to be credible candidates for appointment. Applications would be accepted from candidates with ten years or more of qualified service in the legal profession but, usually, successful candidates would have between 15 and 20 years' experience.

The lord chancellor stated that he would recommend for appointment those who appeared to

him most fully to satisfy the above criteria regardless of gender, ethnic origin, sexual orientation, marital status, political affiliation, religion, disability or professional background.

Yes, minister

In May 2004, the lord chancellor and secretary of state for constitutional affairs stated that it was clear to him that he should no longer play a part in assessing and selecting candidates to be appointed as queen's counsel. For this reason, the government invited the Bar Council and the Law Society and their counterparts in Northern Ireland to develop and implement new schemes for accrediting leading advocates that should replace the existing arrangements. The professional bodies agreed to work together to achieve a single scheme for both branches of the legal profession. The professions would be responsible for selection of queen's counsel and would send a list of suitable candidates to the Department for Constitutional Affairs. The lord chancellor would retain responsibility for recommending to the queen that she appoint those on the list to the rank of queen's counsel.

The Law Society of England and Wales and the Bar Council, with the support of the Department for Constitutional Affairs, announced in early January 2005 that they had agreed a new way to appoint queen's counsel. The new scheme was designed to serve the public interest by offering a fair and transparent means of identifying excellence of advocacy in the higher courts. Key features of the new system included:

- Objective assessment of an applicant against published competencies
- Self-assessment by the applicant against the competencies
- An independent selection panel
- References from members of the judiciary before whom the candidates had appeared
- References from professionals and clients with whom the candidates had worked, and
- An interview with the candidate to assess interpersonal skills.

The scheme represents a significant development in the field of legal services and is intended to ensure that applicants and users of legal services can both have confidence in those appointed.

Selection box

The selection panel would be chaired by an independent member, someone who is neither a barrister nor a solicitor. It includes two barristers, two solicitors and a retired senior judge, as well as three further independent members. The English Law Society and Bar Council set out a list of competencies. These included integrity – that the applicant must be honest and straightforward in professional dealings with all parties. An applicant must also:

Dressed to impress: solicitors' formal garb in England

'Those solicitors who have extensive experience in the practice of the law over many years may be entitled under existing law to become senior counsel'

- Behave in a consistently courteous and open way in all professional dealings
- Honour professional codes of conduct
- Not mislead, conceal or create a false impression and, where appropriate, refer to authorities adverse to the client's case
- Be prepared to advance an argument that might not be popular and to stand up to the judge
- Be candid with a client, and
- Demonstrate an understanding of diversity of cultural issues and address the needs of people from all backgrounds.

The person to be appointed a queen's counsel must possess expert legal knowledge and an ability to use it relevantly, have the ability to analyse case material, to develop arguments and focus on the issues – in other words, have the ability to gain a rapid and incisive overview of complex material and identify the course of action that would produce the best outcome for the client. In terms of presenting arguments, the candidate must have the ability to communicate the case in a persuasive manner to achieve the best outcome for the client.

In the context of working with the client and the legal team, the candidate must have the ability to establish a productive working relationship with the client by helping him focus on relevant points, explaining the law and court procedure, and ensuring the client understands. Meeting commitments and appointments, understanding the needs and circumstances of the client and appreciating the need to keep the client and solicitor informed of the progress of matters at issue were other necessary qualities.

In the context of working in the legal team, a candidate must have the ability to motivate, listen and work with other members of the team, be aware of his or her own limitations and seek to ensure they are compensated for by others in the team. The candidate must also have the ability to take key decisions with authority after listening to views and identifying priorities and allocating tasks and roles while leading the legal team.

Called to the bar

The justification for the appointment of senior counsel by the Irish government appears to be based on the crown prerogative in the absence of authorising legislation. Rights based on the prerogative (in general) appear not to have survived the foundation of the state. Article 40.1 of the constitution guarantees equality before the law. Accordingly, those solicitors who have extensive experience in the practice of the law over many years and who are in a position to bring a high level of legal knowledge, skill and judgement to bear in any task in which they are professionally engaged should be entitled, and in fact may be entitled under existing law, to become senior counsel. G

Dr Eamonn Hall is the chief legal officer of Eircom plc.

WIND OF

As the remaining provisions of the *Civil Liability and Courts Act, 2004* come into effect, Stuart Gilhooly looks at the changes relating to personal injury litigation

MAIN POINTS

- ***Civil Liability and Courts Act, 2004***
- ***Statute of limitations***
- **Rules of court**

Since 31 March 2005, personal injury litigation has undergone yet another facelift. Although most of the provisions that have come into effect require changes to the rules of court that have yet to be finalised, it is important to be aware of the general nature of the legislation at this time.

Statute of limitations (section 7)

As Aidan O'Reilly wrote in last month's issue (page 22), the *Statute of limitations* for personal injury actions reduces from three to two years. Therefore, from 31 March 2005, any cause of action that accrues after that date has a two-year limitation period. This includes medical negligence claims. In respect of any accidents in which proceedings are not issued and which occurred before 31 March 2005, proceedings must be issued within three years of the accident **or on or before 30 March 2007, whichever occurs first.**

It is very important to be aware that for any claim that must first be referred to PIAB (all claims except those involving medical negligence), the statute stops running upon confirmation from PIAB that the claim has been received and is complete for the purpose of section 50 of the *PIAB Act, 2003*, and starts again after the expiration of six months from the date of issue of an authorisation. During the period that the claim is in PIAB and for the following six months, the statute is merely 'frozen' and therefore any remaining time following the confirmation of a valid application is also to be taken into account.

For instance, suppose an accident occurs on 15 April 2005. PIAB confirms an application is valid and complete on 15 June 2005 (that is, two months after the cause of action accrued), the claim is processed by 15 March 2006 and an award is rejected by one of the parties. PIAB then issues an authorisation on 30 April 2006. The statute in this instance starts running again on 30 November 2006 and you will

CHANGE

then have the remaining 22 months of the statute to issue proceedings, which means that the *Statute of limitations* for this accident will expire on 29 September 2008. Could it be any clearer?

Rules of court (section 9)

From now on, the courts will be obliged to apply the time for compliance with any of the relevant rules in a personal injury action with more rigour. Essentially, where a period of time is specified for the service of a document or the doing of anything, this time cannot be extended by the courts unless the parties agree or the court considers the extension is necessary and expedient to enable the action to be properly prosecuted or defended and the interests of justice require the extension. This section also applies to the master of the High Court and to county registrars. By way of example, if a motion to deliver a defence is issued and the defendant does not agree to an extension, it will be necessary to prove to the court that an extension of time to deliver the defence is necessary, expedient and in the interests of justice.

Request for further information (section 11)

This section requires the formal provision of details of previous personal injury actions and loss of earnings upon request. In the event that this is not provided, the court may either stay the action until the plaintiff complies with the court's directions or may dismiss the action where the interests of justice require, and the court may take any failure to provide such information at the trial of the action into account when deciding on costs.

Expert evidence (section 20)

The court may now appoint an 'independent' expert to provide a report to the court should it consider it necessary. All parties must co-operate with the expert and must provide him with any report or other document prepared by that party or any report or other document prepared for the purposes of, or in contemplation of, the personal injuries action and any documentation used or referred to for the purpose of preparing the report. The costs of the expert will be paid by the party so directed by the

court. Both parties will have a right of cross-examination and the presidents of the courts will approve the experts in question in consultation with one another and presumably will provide a list. To date, this has not been done.

Income undeclared for tax purposes (section 28)

Undeclared income, profit or gain will no longer be taken into account in assessing damages in a personal injuries action unless, in all the circumstances, it would be unjust to disregard such income. This section applies unless a tax return has been made or the Revenue Commissioners have not been otherwise notified.

Actuarial tables and discount rate (sections 23 and 24)

The act gives the minister the power to prescribe standard actuarial tables and a standard discount rate for the purposes of calculating future financial loss. This has not yet been done.

Provisions that require rules of court

Many of the sections that became active on 31 March 2005 are still awaiting court rules. These rules will be enacted by way of statutory instrument sometime this month but, at the time of writing, their exact content and the date upon which they will become law is not known. The main changes relate to pleadings. A High Court plenary summons will not be applicable to personal injury actions anymore. A standard personal injury summons will apply to all three originating jurisdictions. Therefore, it is no longer possible to issue a 'writ to stop the statute running'. In addition, new rules apply to defences that will require the defence to make such admissions as they are willing to make and deny everything else rather than provide a full traverse where that is not justifiable.

The most notable and innovative part of the legislation is the verifying affidavit that will now be required to accompany all pleadings. This will state that the party in question has read the pleading and agrees that it is all correct and truthful. Mediation conferences and pre-trial hearings will be available to all those who wish to either settle their cases or narrow the issues. Mandatory formal offers will be required to be made by both parties within a certain time frame before trial. This time period has yet to be nominated by the minister. The next issue of the *Gazette* will provide full details of all of these new provisions, together with the precedent documents.

Provisions in place since 22 September 2004

As most will now be aware, there are certain elements of this act that have been in place since 22 September 2004. The most significant is the requirement to write a letter before action within two months of the date of accrual of the action or as soon as practicable thereafter. Failure to do this may result in a penalty in respect of costs. Second, the courts must take account of the book of *quantum*

'The most notable and innovative part of the legislation is the verifying affidavit that will now be required to accompany all pleadings'

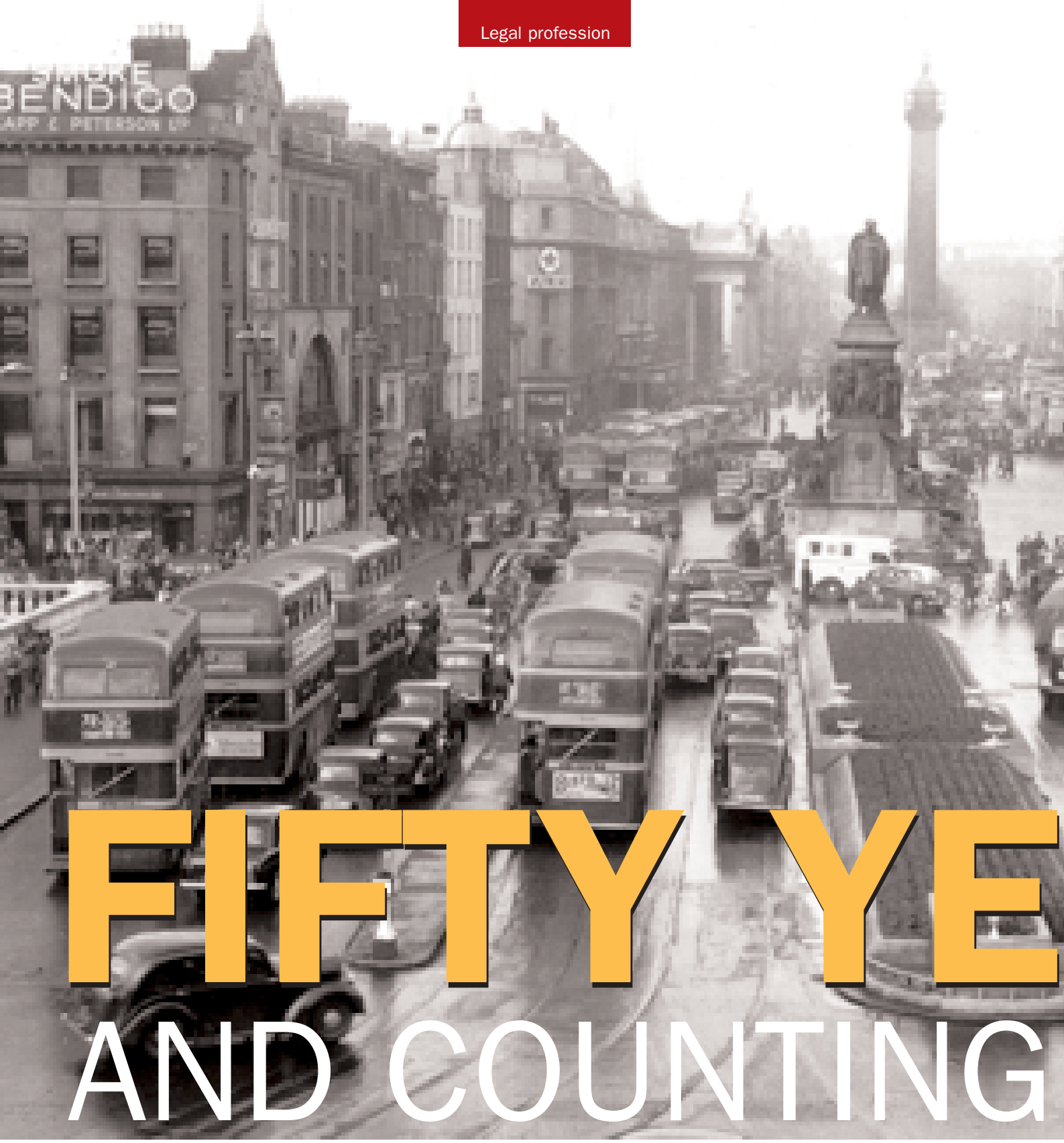
when assessing damages, although it may also consider other factors. Finally, where misleading evidence in a material respect is knowingly given by a party to a personal injuries action, then, in the case of a plaintiff, the action must be dismissed unless the interests of justice dictate otherwise, and in all cases may result in the commission of an offence punishable by up to ten years in prison or €100,000 fine.

Infant, unsound mind and fatal injuries cases

On a separate but related note, the Law Society has been in contact with both the Personal Injuries Assessment Board and the minister for enterprise, trade and employment in order to attempt to cure an anomaly that has arisen under the PIAB legislation that doesn't allow settlements in such cases. The result of our endeavours is that PIAB confirms that where a settlement is reached with a respondent in any of the above type of cases, a PIAB application is still required but an authorisation will issue immediately. It is necessary, therefore, to agree with the respondent that where such an offer is made and the offer is to be recommended to the court, they will simply inform PIAB of this fact, and PIAB has confirmed it will immediately issue an authorisation. It also confirms that it is not charging the €50 in such circumstances. Although it is not insisting on all the relevant documentation being sent with the application, clearly the case cannot be ruled without it, so it would be sensible to send as much documentation as possible with your application, to avoid delays. PIAB has confirmed that it will accept confirmation of non-consent to assessment in those circumstances in a phone call from the respondent.

Both PIAB and the Law Society have suggested to the minister that he may wish to put this practice on a more formal footing through section 17, and a response is awaited. G

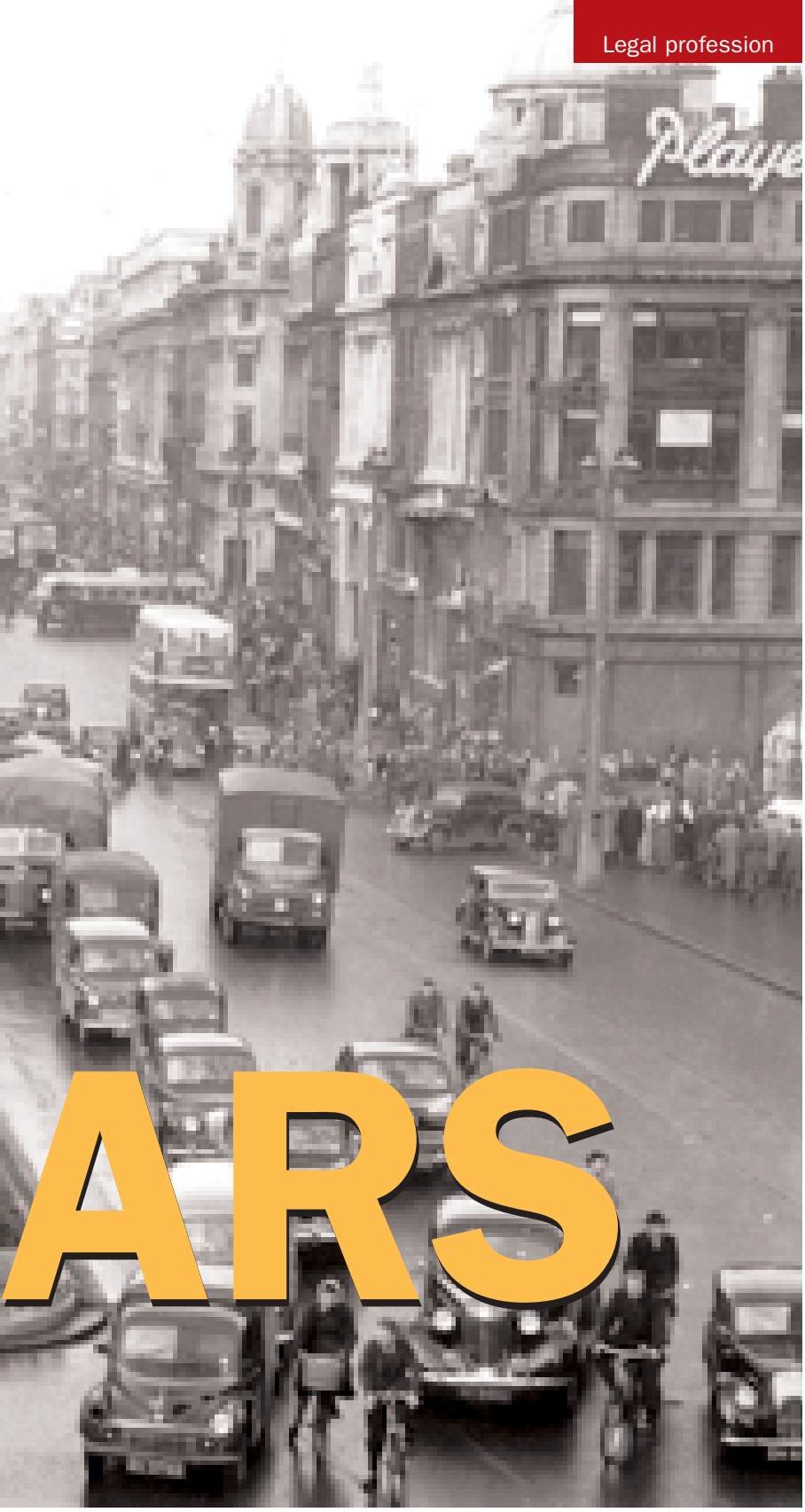
Stuart Gilhooly is a member of the Law Society's PIAB Task Force.



FIFTY YE AND COUNTING

The solicitors' profession has a high proportion of practitioners who continue in practice long after their counterparts in other fields have retired from the fray. Kathy Burke spoke to some of these hardy veterans, who reflect on the way life and practice have changed in the half-century since they began their careers

It is said that no-one grows old by living, only by losing interest – and among Ireland's 6,750 practising solicitors, there are those who prove the truth of this. They have been in practice for half a century or more. When they qualified, there was no such thing as 'family law', capital acquisitions tax, faxes or even photocopiers. Apprenticeships took five years. There was low employment, not much money about, and just a few hundred solicitors in the whole country. Were



PIC: TRANSPORT MUSEUM, COURTESY DUBLIN BUS

Dublin's O'Connell Street in the 1950s

ARS

those really the good old days?

The veteran solicitors we spoke to either don't have computer monitors in their office or they are tidied away out of sight. Busy with court and clients, they are as hard to catch up with as anyone else, but generous with their attention when you do, and quick with a joke.

As they laugh about such notions as 'sell-by dates' and say 'there aren't many of us left', you can't help remembering that these hardy perennials

MAIN POINTS

- 50 years or more in practice
- Still going strong
- Reflections on their careers

Moya Quinlan

'When I qualified, numbers were in the hundreds. When it hit the 1,000 mark, we thought there wouldn't be a living in it for anybody'

Moya Quinlan, Dixon Quinlan, Solicitors, Dublin

I started my apprenticeship in 1941. I was registered in 1946. At that time, you were doing your apprenticeship and university lectures simultaneously, so it was pretty hectic. There were 56 in the class, of whom four were girls. Two left to get married and two of us qualified. This was one of the things open to women then. Women were qualifying in the 1920s, but they generally didn't come into practice once they married.

Yet it is a profession in which you can manage to run a family and a home. I have done it. I know that some colleagues would say they found it difficult and that it is a man's profession, but there never was any barrier. I was a lawyer who happened to be a woman.

I succeeded my father who had been in practice since 1920. He didn't discuss practice, nor did I get a 'blinding flash of light'. I suppose I had always had an interest in people and I have always found it very fulfilling. What always appealed to me was the relationship you established with your client. I see a change in that relationship. When I qualified, it was a very personal thing. The solicitor was looked upon not only as a lawyer, but also as an advisor, perhaps as somebody who generations of the same family might consult.

But back then, a firm of six solicitors would have been considered a very large firm. In the large commercial practices today, it is a clinical operation and has to be that way because of the nature of the work they do.

Practice changed greatly in the last 20 years of my career. Numbers were already beginning to rise rapidly when I was Law Society president in 1981. When it hit the 1,000 mark, we thought there wouldn't be a living left in it for anybody.

A major change is specialisation at a very early stage of training. It is necessary because there are so many fields of practice that weren't there 20 years ago and because people want to earn straight away. But I'm not sure that it is a great idea. I think that any young person starting out should try to get an all-round idea of what the law is about, what it means to be a lawyer and what it means in your relationship with people. Until you do, you may be a very good technician but you're not necessarily a good lawyer.

And every lawyer should have a spell at court work. Get down there and realise that there is someone up there, looking down on you, who is not greatly impressed by your oratory. That is a great exercise in humility and makes you realise that you are not the cat's pyjamas that you may have thought you were!

may not have the specialist knowledge of their younger colleagues, but they have years of experience that have long since been turned into wisdom.

Together with competition and regulation, the burgeoning body of law since the 1950s requires the ambitious pursuit of knowledge. Wisdom and knowledge are often horses of a different colour.

Here, solicitors in practice for 50 years or more describe the changes they have seen in the practice of the law and the challenges that practitioners have faced down through the years. G

Patrick OR Markey

'Government forms were huge. There was no A4, no photocopiers, no equipment – and book-keeping was an immense thing'

Patrick OR Markey, Patrick C Markey & Son, Solicitors, Drogheda

I don't like to be confined in an office on a good day. I like the outdoors. I left Dublin in 1976 and decided that I would never again live in the city.

My father was a solicitor too. He qualified in 1908 and had other practices before he bought this one in Drogheda. Around 1920, he bought a practice in Ballycastle for £100 or £200. He lived in a tent for a summer there in Ballycastle, where he worked and fished and shot.

[The profession] today is a very urban community. It may be very appropriate for young apprentices to go down the country where they are needed, rather than heading for the big Dublin offices where they can end up dealing with mortgages most of the time. What experience do they get?

Eugene F Collins, Solicitors, were my father's town agents. I spent quite a bit of time there while apprenticed to my father from 1947. The building was an old tea loft in Temple Bar, with pigeons coming in and out of the windows.

I worked with them from 1952. Desmond Collins was the only other solicitor in the firm. About three weeks after I started, he said that he hadn't had a holiday in three years and was going away for six weeks. He said, 'You're looking after the joint' and away he went. The staff knew that I was raw and were very supportive, and we actually made a profit!

I left in 1976, but continued to work with them in Dublin for two or three days a week. The staff were good, but didn't have the depth of experience in certain areas. Now and then, they still come on the phone and ask 'do you remember …'. And I do remember. I ring them, too, if I have a problem. The relationship between solicitors can be better when firms are small because you know who you are dealing with.

Most of the students I qualified with went abroad, because there was very little work in 1952. Only three of the 14 in my university class were Irish anyway. One, a very nice fellow from Ghana or somewhere, became attorney general there and unfortunately had his head chopped off.

In 1952, all records were manual and book-keeping was an immense thing. A big change in solicitors' offices was doing accounting by computer, where ledgers used to be used. There was no A4 and no photocopying. Today, people think that they can send a probate or conveyancing query by e-mail and get an immediate response. But we are not selling goods. We are in a different field.

Leo Loftus

'Fifty years ago, the practice ran itself. Now it is big business, distinct from what you are qualified to do'

Leo Loftus, Bourke, Carrigg and Loftus, Solicitors, Ballina, Co Mayo

When I qualified in 1953, my father's office was the only one in the town with more than one solicitor. It was doubtful that there would be room for me.

In those days, many people never bothered to make wills or couldn't afford to put their titles right. To transfer a property, you only had to be concerned with having basic title, a vendor in a position to sell and being able to identify the property.

You didn't work 'hours'. You came to work and left when you felt like it. Clients came in whenever they took the notion, and you were very glad to see them. Nowadays, you are not too happy to see anybody except by appointment because your day has to be structured.

In rural practice, you don't know what the problems will be that day. There is variety to it. You also feel that there are people that depend on the value of your advice. You find yourself talking to people about problems that have nothing to do with the legality of what is on their mind. I suppose you are in a very privileged position. There is a confidence and a trust there.

A big difference is this: 50 years ago, the practice ran itself. Now, it is a big business and so much time is spent running the office as distinct from practising what you were qualified to do. If I were starting off again, I would like to divorce myself from the mechanics of running the office.

Charles Hennessy

'The relationship between master and apprentice may be suffering today because the master is simply too busy'

Charles Hennessy, JW O'Donovan, Solicitors, Cork City

When I qualified in the mid-1950s, the solicitor's work was certainly different to what it is now. I would describe most of us then as 'journeymen' solicitors. We were involved in all branches of the law. That system continued up to about 30 years ago, when people instead became specialists. Partnerships came into being and these grew bigger and bigger.

I think the day of the very large practice is here to stay. Like the curate's egg, this is good and bad. It is impossible for any one person in this century to have knowledge of the many complications in legal jurisprudence and practice. The body of law is enormous. I think it has grown with the emergence of a new type of thinking on the right of the individual, who, in my time, was merely part of the mass.

I am proud to have been the first free legal aid practitioner in Cork, before there was any payment for assisting clients who didn't have funds. I have always looked at the role of an advocate as being to provide fellow citizens with help to solve legal problems.

Family law and other fields came late in my career. Family law was a complete change. I lived in a time when a woman could be put onto the side of the road if her husband died and they had no children. In fairness, it was during the time that Charles Haughey was minister for justice that this changed. I honestly believe this was one of the most important happenings in the legal system since the foundation of the state.

I don't claim to have been a 'very good boy'. I can thank my master James W O'Donovan, for extraordinary attention and a superb training in integrity and respect for one's fellow practitioners. I think that the relationship between master and apprentice suffers today because the master is simply too busy.

Because of the increase in the speed of life, clients' demands are far greater, pressing for quick answers, which I regard as putting dangerous pressure on the practitioner. In conveyancing, I think we have created a monster in involvement with ever-increasing requisitions on title, which should be the responsibility of other persons.

At school-leaving age, I would have preferred to be a barrister. I could not afford to embark on that career, but do not regret it as I have devoted a large part of my legal life to advocacy. I enjoyed and still enjoy every moment of my career, from appearing in the District or High Court to helping those who have limited funds, such as those in mourning after the death of a spouse, or the many people who may own a house but don't have any funds.

Liam MacHale

'Law is very much linked with human nature. People don't change'

Liam MacHale, MacHales, Solicitors, Ballina, Co Mayo

My father was a solicitor. Our home and his office were opposite the courthouse. I wanted to be a solicitor right from the start. He wanted me to do the bar. He said, 'There is nothing left in this for solicitors now'. I persuaded him when my brother said, 'Whatever I do, I am not going to do law'.

When I was doing my apprenticeship, my father brought me to the town agent's office, then John R Peart's. We met Denis Peart. My father said: 'This is my son. I want him here in your office when he doesn't have his study'. Denis Peart smiled and said, 'Certainly'.

I bought this practice in 1968 without actually coming into the office – that's how easy things were. We did the deal in the car outside. In 1974, I decided that I had to expand the business. Legislation had grown out of all proportion. When I qualified, you could hardly get your hands on two textbooks. We must be buying about 50 books a year now.

Law is very much linked with human nature and that does not run on two rails. People create different situations. We have to know about these situations and, more particularly, how to cope with them. But people don't change. After 50 years in practice, the problems they have, you have met before. That is where coping comes easy with experience. It must be difficult for a young solicitor starting off now without any background.

I was state solicitor from 1972 to 2000. Crime was rising in the area when I resigned. I had ten indictable cases where once I wouldn't have had ten in a year. I saw recently that the figure had doubled in five years.

If I had the chance to start all over, I would do the same, though I wouldn't feel as strongly about which profession. I had very high regard for my father. Before I ever qualified, he once found himself in a conflict of interest situation. One party was a wealthy property owner, the kind of client you would like to have. The other was a poor unfortunate. I could not believe it when my father told me he was staying with the second. He said, 'Yes. The poor man needs help'.

What he said and did, and how he did it, formed my opinion.

Discrimina

There has been considerable concern about planning authorities imposing discriminatory planning conditions. Oran Doyle and Alan Keating outline the conclusions of their report on the issue for the Law Society's Law Reform Committee

MAIN POINTS

- **Discriminatory planning conditions**
- **The ECHR, EU law and domestic law**
- **Conveyancing practice**

From letters received from a large number of solicitors, it came to the attention of the Law Reform Committee that there were considerable concerns about the imposition by planning authorities of discriminatory planning conditions. By 'discriminatory planning conditions', we mean conditions that limit the occupancy of a dwelling to a certain class of person. The concerns related to the legitimacy of these conditions, the vague manner in which the conditions tended to be phrased and the role of solicitors in confirming whether persons were legitimate occupiers of dwellings.

Discriminatory planning conditions are increasingly attached to grants of planning permission for dwellings in rural areas, both in villages and in open countryside. These conditions obviously do not apply to houses that are already built, but they will be of increasing significance as more new planning permissions are granted subject to them.

The structure of the conditions, in practice, is to make a distinction between privileged people and non-privileged people and to allow the former to reside in the newly-permitted dwelling while prohibiting the latter from doing so. There are six commonly-used grounds of distinction between privileged and non-privileged persons:

- Local residency conditions discriminate between local residents and non-local residents
- Local employment conditions discriminate between local employees and non-local employees
- Agricultural worker conditions discriminate between agricultural workers and non-agricultural workers
- Language conditions discriminate between Irish speakers and non-Irish speakers
- Bloodline conditions discriminate between relatives of local residents and non-relatives of local residents
- Returning emigrant conditions discriminate between people who were once local residents but left and now wish to return and other people.

The validity of these conditions can be evaluated against the superior legal norms of administrative law, constitutional law, the *European convention on human rights*, EU law and statutory equality law.

The presumption of constitutionality and the double construction rule mean that it is particular discriminatory planning conditions, rather than the legislative power to impose such conditions, that are susceptible to legal challenge. Any conditions actually imposed that employ discriminations prohibited as a matter of constitutional law will be struck down by the courts as being in excess of the power conferred by section 39(2), when that section is read in the light of the constitution.

Out for a constitutional

An analysis of the cases (see **panel**, page 27) dealing with the standard of review under article 40.1 of the constitution disclosed two tests. The first requires that legislative classifications must be made for a legitimate purpose, they must be relevant to that purpose and each class must be treated fairly. The second applies a higher standard of review, requiring the state to establish that a higher standard of justification has been met. The case law seems to suggest that classifications on an objectionable ground must meet a higher standard of review. Applying this case law to discriminatory planning conditions, one reaches the following conclusions:

- Local residency conditions, local employment conditions and agricultural worker conditions do not attract a heightened standard of review. On an application of the legitimate purpose test, local residency conditions would probably be viewed as constitutional
- Language conditions could attract the heightened standard of review because it could be argued that Irish speakers are a discrete and insular minority. However, language conditions serve another constitutional value (article 8) and are reasonably tailored to achieving that objective. Thus, language conditions are constitutionally sound even if a higher standard of review is applied. It follows that language conditions also satisfy the lower standard of review
- Bloodline conditions could be described as a presumptively proscribed ground of classification attracting the heightened standard of review. An application of the test reveals that such conditions are unconstitutional, as no governmental objective is served by such conditions. On the other hand, if

ting TASTES

our initial analysis is wrong and the lower standard of review is applied, bloodline conditions are likely to be deemed constitutional as they are relevant to the legitimate government objective of preserving rural communities with strong identities

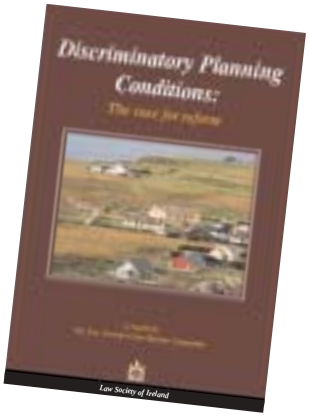
- Returning emigrant conditions meet the lower standard of review. It can reasonably be argued that such conditions are relevant to the legitimate legislative purpose of preserving strong rural communities with clear identities. Although one may disagree with this purpose and/or with the means adopted to implement it, there is little constitutional basis for the courts to overturn the legislative or administrative assessment of this issue.

The conventional wisdom

Article 8, article 14 and article 1 of the first protocol of the *European convention on human rights* bear on this issue. The crucial issue in relation to all three is whether or not the contracting state can provide a justification for such measures that is acceptable to the European Court of Human Rights. In planning cases that involved claims for indirect discrimination, the court has given national planning authorities a wide margin of appreciation.

It remains to be seen whether the court would apply a narrower margin of appreciation to planning cases involving issues of direct discrimination such as those raised by discriminatory planning conditions.

As regards the *European Convention on Human Rights Act, 2003*, it is possible that the court would interpret section 39(2) in a manner compatible with the convention. Such an interpretation would preclude planning authorities from imposing discriminatory planning conditions that are likely to be in breach of



THE LEGISLATIVE BASIS

The *Planning and Development Act, 2000* contains a number of provisions dealing with plans, conditions and compensation. However, it is sufficient to refer to section 39(2) of the act, which provides:

'Where permission is granted under this part for a structure, the grant of permission may specify the purposes for which the structure may or may not be used, and in case the grant specifies use as a dwelling as a purpose for which the structure may be used, the permission may also be granted subject to a condition specifying that the use as a dwelling shall be restricted to use by persons of a particular class or description and that provision to that effect shall be embodied in an agreement under section 47'.

Section 47 provides for an agreement between the planning authority (as opposed to An Bord Pleanála) and any person interested in land in their area for the purposes of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement. Such agreements may be enforced by the planning authority against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.

the relevant convention provisions. It remains to be seen whether or not the national courts will be influenced by the European court's application of the margin of appreciation doctrine.

On the basis of this analysis, we suggest that national courts ought to exercise their interpretive obligation pursuant to section 2 of the *Human Rights Act, 2003* by interpreting section 39(2) as:

a) Prohibiting bloodline conditions
b) Requiring returning emigrant conditions to be drafted narrowly so as to ensure that such conditions do nothing to undermine the stated legislative aim of securing strong rural communities
c) Requiring planning authorities, in imposing language conditions, not to go beyond what is necessary to achieve the purpose of preserving the national language in relevant communities in a particular functional area, and
d) Requiring planning authorities to take into account the individual circumstances of the applicant for planning permission when deciding whether or not to refuse planning permission or grant planning permission subject to residency conditions, language conditions, worker conditions and agricultural worker conditions.

Euro vision

As regards the fundamental freedoms of EU law, we assessed discriminatory planning conditions primarily with reference to the guarantee of free movement of capital contained in article 56(1) of the *EU treaty*. In case C-300-01, *Salzmann*, the European Court of Justice held that laws that did not explicitly establish any formal discrimination between nationals of the member state in question and the nationals of other member states could still fall within the scope of the prohibition laid down in article 56(1). This was the case where such laws, by their very purpose, interfered with the free movement of capital. The court then held that such a measure could be permitted if it (a) pursued an objective in the public interest, (b) was applied in a non-discriminatory way, and (c) observed the principle of proportionality. In applying this test to discriminatory planning conditions, one comes to the following conclusions:

- Bloodline conditions and local residency conditions are disproportionate to the public interest objective of maintaining a strong rural population and economic activity independent of the holiday sector
- A local employment condition on its own is also disproportionate in its exclusion of people who could contribute to the objective, that is, local residents
- The combination of a local residency condition and a local employment condition (that is, a condition that allows the dwelling to be occupied by either a local worker or a local resident) would proportionately serve the public interest objective of the maintenance of a strong rural population and economic activity independent of the holiday sector, although the wording of any local employment condition should make it clear that a jobseeker is included
- Returning emigrant conditions also appear to be disproportionate to the public interest objective of maintaining a strong rural population independent of the holiday sector
- The court is likely to hold language conditions justified, given its traditional tolerance of national measures aimed at preserving minority languages
- The court is also likely to hold agricultural worker conditions justified as a proportionate and non-discriminatory measure serving the public interest objective of allowing agricultural workers to live on or close to the land they farm.

As regards the *Race directive*, none of the discriminatory planning conditions identified explicitly discriminates on the grounds of racial or ethnic origin and therefore those discriminatory planning conditions do not constitute direct discrimination within the meaning of the directive. The *Race directive* also prohibits indirect discrimination, which is defined obtusely in article 2(b).

In providing our own conception of what amounts to indirect discrimination, we concluded that bloodline conditions, residency conditions and returning emigrant conditions (and a general practice of imposing residency conditions and returning emigrant conditions in a particular area) could be deemed indirectly discriminatory. If this is the case, they are unlikely to be justified. Local employment conditions, agricultural worker conditions and language conditions would not be characterised as indirect discrimination.

Domestic equality legislation

The *Equal Status Acts, 2000-2004* (ESA) also bear on this issue. Reading those acts, one comes to the following conclusions:

- 'Race' is defined broadly to include nationality and national origin
- Section 5(1) of the act prohibits discrimination in the provision of services. The definitions of 'service', 'person' and 'provision', as well as the different forms of discrimination covered by the ESA, would appear, in theory at least, to leave open the possibility of challenging discriminatory planning conditions as a service imposed by a public body
- However, the limited discriminatory grounds set out in the ESA would not appear to support a finding that distinctions based on residence (including a returning emigrant), employment, agricultural employment, language and bloodline are in breach of the prohibition on direct discrimination under the ESA
- There might be some possibility of establishing that the said conditions are in breach of the prohibition on indirect discrimination under the ESA. Again, the determinative factors are whether such discrimination could be justified objectively by a legitimate aim *and* whether the means of achieving that aim are appropriate and necessary
- The conclusions concerning the application of the definitions of indirect discrimination contained in the *Race directive* apply, the necessary changes being made
- As well as bloodline conditions, returning emigrant conditions and residency conditions, language conditions could amount to an apparently neutral provision, which puts a person of a particular nationality at a particular disadvantage compared with other persons. Whereas bloodline conditions, returning emigrant conditions and residency conditions do not appear to be justified, language conditions appear to be objectively justified by the legitimate aim of language preservation; moreover, the means of achieving that aim are appropriate and necessary
- As with EU law, if residence conditions, returning emigrant conditions and bloodline conditions are deemed to cause indirect discrimination, they will be difficult to justify. Language conditions are likely to be justified.

Buy and sell

Even if discriminatory planning conditions are validly imposed, there are several practical concerns:

- Solicitors should not accede to a request from a planning authority to certify that a client is a privileged person for the purposes of a particular discriminatory planning condition
- If planning authorities seek some form of reassurance that a proposed occupant of a house is a privileged person for the purposes of a particular discriminatory planning condition, they should accept a statutory declaration to this effect from the proposed occupant
- The Conveyancing Committee of the Law Society should discuss the merits of a proposal to require planning authorities to issue a person with a certification of compliance with discriminatory planning conditions.

'If planning authorities wish to impose discriminatory planning conditions that in some way favour local people, they should do so through the combination of a local residency and a local employment condition'

RELEVANT CASE LAW

Irish cases

- *Brennan v Attorney General* ([1983] ILRM 449)
- *In re Article 26 of the Constitution and the* Employment Equality Bill, 1996 ([1997] 2 IR 321)
- *Lowth v Minister for Social Welfare* ([1994] 1 ILRM 378 [High Court], [1999] 1 ILRM 5 [Supreme Court])
- *An Blascaod Mór Teoranta v The Commissioners of Public Works* ([2000] 1 IR 6, [2000] 1 ILRM 401)

Planning cases and the ECHR

- *Buckley v The United Kingdom* ([1996] 23 EHRR 101). See also *Chapman v The United Kingdom* ([2001]) 33 EHRR 399

Our report concludes that bloodline conditions are invalid with respect to the constitution, the *European convention on human rights* and EU law. We conclude that local residency conditions and local employment conditions, if either is attached as an exhaustive enumeration of privileged persons, are invalid with respect to EU law. We conclude that returning emigrant conditions are contrary to EU law and the *European convention*. We conclude that agricultural worker conditions and language conditions are legally valid, but that a rigid rule of imposing such conditions over a wide area might be problematic.

Based on our reading of the case law, we believe that the Irish courts, the European Court of Human Rights and the European Court of Justice would recognise the maintenance of a strong rural population, independent of the holiday sector, as a legitimate objective. For this reason, we recommend that, if planning authorities wish to impose discriminatory planning conditions that in some way favour 'local people', they should do so through the combination of a local residency and a local employment condition. That is, they should restrict occupancy of the dwelling to those who are either already local residents or local employees, although we suggest a specific definition of 'employee' to render such conditions consistent with EU laws on freedom of movement and establishment.

Finally, planning authorities, if seeking reassurance as to the status of a proposed occupier, ought to require applicants for planning permission to furnish a statutory declaration concerning the issue of whether or not an occupant is a privileged person for the purposes of a relevant condition, rather than requesting a solicitor to certify this state of affairs. G

Oran Doyle and Alan Keating are Dublin-based barristers. The report on which this article is based is available on the society's website, www.lawsociety.ie, *in the Law Reform Committee section.*

MASTER OF THE *roll*

John Elliot has a lot on his plate. With the Competition Authority making a meal of it, self-regulation has never been a hotter political potato. Here, the new registrar of solicitors chews the fat with Conal O'Boyle about the state of regulation and why he's happy to dine for his cause

MAIN POINTS

- **Competition Authority report**
- **Public interest issues**
- **Have a message, will travel**

John Elliot could be forgiven for giving a wry smile. Just one year after he took over as registrar of solicitors from the legendary PJ Connolly, he now finds that regulation of the profession may be taken out of his hands completely and given to a new Legal Services Commission, at the behest of the Competition Authority.

So does he have any regrets about giving up his position as general manager of ACC Bank and taking over as registrar and director of regulation at the Law Society? 'None whatsoever', he says. 'When I took the job, I knew that it was expected that the Competition Authority would be making a report that could contain things that might be quite radical. I went into this with my eyes wide open. It doesn't faze me in the slightest.

'Anyway, many of the Competition Authority recommendations could have been predicted. They are essentially a "cut and paste job" from recommendations made by the Clementi report in England and Wales. I'm ready for whatever happens'.

He points out that the Competition Authority report is just that – a report. Or, strictly speaking, a consultation paper. Given that the minister for justice, Michael McDowell, is on the record as saying that the Law Society's regulatory system is 'the best regulation of any profession anywhere on these islands', Elliot might well take a sanguine approach to the authority's bombshell, which landed on a bemused profession last month.

JOHN ELLIOT FACT FILE

Age: 46
Education: Law degree and MBA from Edinburgh University. Qualified as a solicitor in Scotland in 1983
Career: Practised in a commercial law firm in Edinburgh for two years before moving south to England in 1985. Appointed senior legal advisor with investment company 3i, where he met his future wife, Irish barrister Mary Quinn. In 1989, Elliot requalified as a solicitor in England and Wales. He subsequently moved to Ireland with Mary and transferred his solicitors' qualification. He has been a practising member of the Law Society of Ireland since 1991. Prior to his appointment as registrar of solicitors and director of regulation, Elliot joined ACC Bank as law agent, company secretary and ultimately general manager.
Family: Married to Mary Quinn. The couple have one child, Elizabeth, aged nine.

Scotch broth

The Scotsman also views the profession's traditionally ambiguous attitude towards regulation as inevitable. And he should know: after all, he's qualified as a solicitor in three jurisdictions.

'I think to an extent that it's inherent in the nature of the function that those who are regulated don't necessarily welcome everything that the regulator does', says Elliot. 'There's an inevitable conflict there, and I accept that not every solicitor will be completely enamoured with what the regulatory function has to do.

'But the Law Society's primary obligation on the regulatory side is to protect the public interest, and any regulator of the solicitors' profession is going to have that as its primary objective, so there's no point in us pretending that we're suddenly going to find a way of making every solicitor welcome the

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regulatory function.

'If it's not done by us, it will be done, possibly less well, by somebody else – and the same principles of protection of the public interest will apply'.

But if regulation of the profession is a thorny issue for solicitors, it also leaves external critics scratching their heads and wondering aloud just what you have to do to get struck off the roll. Elliot points out that it is not the Law Society that applies the more severe penalties for the misconduct of solicitors.

'The penalties that are available and the extent to which they're imposed are matters for the Disciplinary Tribunal or for the High Court', says Elliot. 'Our primary function in the Law Society is to ensure that cases of misconduct are dealt with consistently and that all the cases that should be referred to the tribunal are referred. I'd say that our job is primarily to ensure that we don't miss any cases that we should be referring.

'As to the strictness of the sanctions, most of them are provided for under the *Solicitors Acts*. The decisions as to what sanctions to impose in particular cases are taken by the Solicitors Disciplinary Tribunal and by the High Court, both of which are independent of the Law Society'.

All bran

For his part, Elliot says that the Law Society has adequate powers to carry out its regulatory role and he won't be looking for additional ones. He believes that protecting clients' interests and improving the reputation of the solicitors' profession are two sides of the same coin.

'I'm dealing with the job a little bit differently from my predecessor', he adds. 'I'm paying equal attention to the whole regulatory function, including complaints, the protection of clients' monies and the disciplinary process rather than concentrating on the compensation fund side of things. I'm interpreting the director of regulation role more widely. And that will mean some changes in the internal structure of the regulation department so that I can efficiently spread myself over the work of the whole department equally rather than specialising in a particular area'.

Meat and two veg

A new responsibility for the society is that of considering whether or not it must report solicitors to the garda and Revenue authorities on suspicion of breaching money-laundering legislation. Elliot is reluctant to talk about this or to disclose the nature of the kinds of transaction that might give rise to such reports.

'The Law Society is under statutory obligation to make reports to the Revenue Commissioners and the Garda Síochána in cases where it suspects that a solicitor has committed a money-laundering offence', he says. 'That's a statutory obligation that the Law Society has no choice about. The Council of the Law Society has set up a Money-Laundering Reporting Committee to deal with this obligation and that committee reports its use of the powers that it has on a no-names basis to the Council of the Law Society'.

Despite his tight-lipped approach to the issue, Elliot promises that a practice note will be published in the *Gazette* in the near future, reminding the profession of the society's obligations under the money-laundering legislation.

He may have disembarked at a hard station, but Elliot is clearly relishing his new role. 'I'm enjoying it very much', he declares. 'I'm really glad I'm here. It's a job I thought I would like and could do well. I thought it would suit me, and I have been proved right'.

John Elliot is keen that the solicitors' profession should be able to put a human face to Law Society regulation and he intends to take every opportunity to get his core message across: if the profession looks after the public interest, its reputation will improve as a result.

A true Scotsman, he says: 'Any bar association that invites me to come and speak to them, I will accept the invitation with pleasure. And if there's dinner at the end of it, so much the better!' G

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CYBER-HOUSE *rules*

The Computer Law Association is one of the largest international organisations of information technology lawyers. Don McAleese uploads the information

MAIN POINTS

- Computer Law Association
- European conference and cyberspace camp
- Benefits of membership

The Computer Law Association, a non-profit organisation formed over 30 years ago, encompasses lawyers in private practice, corporate counsel, legal academics, government lawyers and other legal professionals. Although its focus was initially very much on the United States, it has since become a truly global organisation: 70% of new members are from other countries. Each year the CLA holds a number of major conferences, including a European conference.

The last few years have seen a dramatic increase in the number of delegates attending the annual European conference. Last year's conference in Amsterdam was probably the most successful to date. There were over 320 delegates from 36 countries, including 31 delegates from the USA, 40 from the UK and five from Ireland (delegates from Mason Hayes & Curran, Matheson Ormsby Prentice and William Fry). Previous conferences have been held in Milan, Lisbon, Paris and Munich.

The European conferences are busy affairs, with a packed schedule. The conference itself is run over two days and is divided into two parallel streams that run concurrently. This dual-track format offers the opportunity to pick and mix the topics that are best suited to individual practice areas or knowledge requirements. Speakers include some of the most respected IT lawyers in the world and the conference materials are of a very high standard.

The conferences are generally organised around a number of topical themes in the legal IT arena. These themes are then allotted a specific session during which different aspects of the theme are explored in a number of presentations (typically four or five and frequently involving a comparison between the US and EU legal positions). The themes of the Amsterdam conference included distribution and protection of digital media and information (including digital rights management), evolving issues in IT law, internet liability, open source, evolving issues in outsourcing, advertising, resolving international IT/IP disputes, e-commerce, intellectual property related developments, voice-over IP and also IT law perspectives from the new EU member states.

Revenge of the Cybermen

Last year was the first time the European conference was run in conjunction with a European 'cyberspace camp'. The camp is run along the lines of an IT-law training seminar and is very much geared towards younger lawyers and law students with an interest in IT. The pricing of the camp is particularly attractive (roughly half the registration fee of the main conference) so as to encourage law firms to register younger lawyers who aspire to specialise in IT law.

The first day of the Amsterdam cyberspace camp included a presentation on putting IT law in context and explaining current issues facing IT lawyers. It was followed by a comparative review of the legal framework for IT law in the US and the EU. The second day comprised presentations on outsourcing, including an interactive case study, and concluded with presentations on m-commerce, IT and competition law, and intellectual property and privacy.

The 2005 CLA European conference will be held in Stockholm on 27 and 28 October.

To the growing number of Irish lawyers who are specialising in IT, e-commerce and telecommunications, organisations such as the CLA and events like the annual European conference and cyberspace camp are well worth considering. Attendees at the Amsterdam conference included in-house counsel, information technology, telecommunications and intellectual property lawyers, as well as senior figures from business and the IT industry. The conference provides a unique opportunity to interact with speakers and delegates from the US, Europe and Asia, many of whom are established experts in their field. It also provides an excellent networking opportunity to meet colleagues in an informal manner and to build on those relationships at subsequent conferences. G

Don McAleese is a partner in the Dublin law firm Matheson Ormsby Prentice and is local representative for the CLA.

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For further information, please contact Don McAleese at don.mcaleese@mop.ie or see *http://cla.org/joincla.htm.*

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Book reviews

Child law

Geoffrey Shannon. Thomson Round Hall (2004), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-352-0. Price: €120.

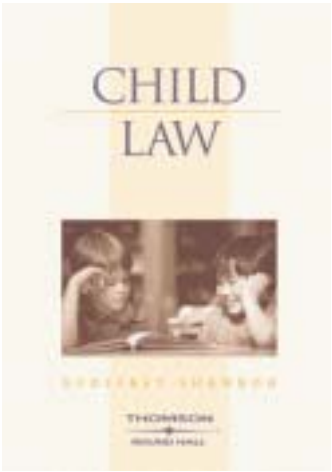
Child law is a comprehensive seminal work of considerable importance. The golden thread running throughout this lively tome is the interplay between the constitution, our domestic family law legislation and Ireland's duties and obligations towards children under the numerous international family law conventions. This is a thought-provoking and challenging book.

Child law begins by considering the impact of the constitution on children and on our domestic family law. The author points out that, crucially, the constitution lacks a child focus. He explains the importance and nature of children's rights and calls for clarification and reform of both the constitution and statute.

The book covers such wide-ranging topics as guardianship, custody and access and the duties of health boards towards children in general and towards children in their care. The author also discusses the law relating to children subject to private family law proceedings, in particular when parents judicially separate or divorce.

A further chapter traces the history of the involvement of children in the court process in this jurisdiction. Shannon evinces cogent evidence that children still remain relatively invisible here by virtue of their lack of separate legal representation. The impact on Ireland of our international obligations should not, however, be underestimated, although, as Shannon points out in his introduction, if Ireland continues to fall well short of our international obligations, what does that say about our attitude to children who are subject to legal proceedings?

There are also chapters on adoption, including international adoption, and on child abduction, which includes a helpful analysis of the Hague and Luxemburg conventions. The chapter on children and education traces the development and transformation of education over the past four decades and



considers how the various *Education Acts* give practical effect to the state's constitutional and international obligations. Interestingly, a child's right to education is the only right specifically set out in our constitution.

The chapter on international family law conventions, an acknowledged complex area, helpfully takes the reader through the multitude of international conventions and statutes, including the *United Nations convention on the rights of the child 1989*, the *European Convention on Human Rights Act, 2003* and the revised *Brussels II*, which came into force in this jurisdiction on 1 March. The revised *Brussels II* will significantly enhance the status of the child in family law proceedings.

Child law also helpfully cites relevant case law, both reported and unreported, domestic and international. The myriad of cases are discussed, among other things, in the context of the thinking of the judiciary in various jurisdictions, whether the family law system is adversarial or inquisitorial.

This wide-ranging book is an excellent resource that no family law judge or practitioner should be without. It should also be read and absorbed by anyone with an interest in child law, including academics, government ministers and their civil servants. It is simply an unmissable read. G

Geraldine Keehan is a partner specialising in family law in the Dublin law firm Hussey & Bates.

Sport and the law

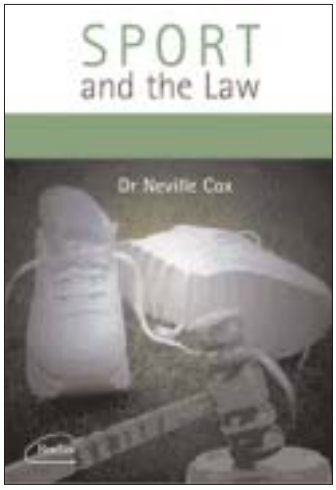
Dr Neville Cox and Alex Schuster. FirstLaw (2004), Merchant's Court, Merchant's Quay, Dublin 8. ISBN: 1-904480-11-X. Price: €135.

It is a cliché, but nonetheless a truism, to say that sport is big business. It should therefore come as no surprise that its relationship with the law in this country has spawned a major textbook. The only shock is that it took so long. Dr Neville Cox and Alex Schuster, both barristers and Trinity College lecturers, have produced a must-have handbook for any solicitor either advising on sporting issues or who just has an interest in the subject.

As with many other aspects of Irish law, we have been trotting behind larger jurisdictions when it comes to dealing with sporting matters. Although we have our own versions of sporting superstars with image rights claims and drug problems, they seem to pale into insignificance when compared with, say, our closest neighbours across the water. Where they have David Beckham, Adrian Mutu and Dwain Chambers, we have Brian O'Driscoll, Barry Ryan and Cathal Lombard. That's not to say that their sporting issues are less relevant or important to them. And let's not forget that the Michelle de Bruin case remains one the most high-profile cases of doping this side of BALCO.

Indeed, Michelle de Bruin

(who is now training to be a barrister), takes pride of place in the chapter focusing on doping. With the introduction of the World Anti-Doping Agency (WADA), the authors are keen to impress upon the reader the importance of this aspect of the law in the future. Despite the unfortunate experiences of a couple of Eircom League footballers with recreational drugs and the less sympathetic circumstances of de Bruin, Lombard and Geraldine Hendricken in athletics, we have been thankfully relatively clean of doping and drug-taking in Irish sport. It would be naïve, however, to expect that this will be the case forever. Experience abroad has told us that where there is money, prestige and temptation, athletes of any hue can be led astray. You may, therefore, take as a certainty that the next high-profile doping case involving an Irish



athlete is not far away and any one of us could be called upon to lend a hand. One need only look at the extraordinary case of Cian O'Connor and Waterford Crystal to see how easy it is for controversy to raise its ugly head.

The authors are also keen to stress the importance of European law in a sporting context. While domestic courts have been traditionally slow to involve themselves in sporting disputes, the Belgian Football Association, and ultimately UEFA, met its match in Jean Marc Bosman, a journeyman footballer who wished to change clubs for no fee while out of contract. When this was not possible, he sued his local federation and the European Court of Justice (ECJ) decided that the rule constituted an obstacle to the free movement of a worker. The effects are still being felt in small football clubs around the world, but the individual player is now being treated as an employee rather than a sporting commodity. The authors point out the little-known fact that the ECJ has since made several decisions that are more friendly to sporting organisations and more in tune with the previous inclination to separate sport from business where possible.

Which brings us back to where we started. This book recognises that sport in Ireland is no longer just an amateur pursuit. Even our one remaining amateur sport of consequence has become so big that its rules and procedures are consistently challenged in the courts and, indeed, as recently as February, a solicitor, Niall Dolan, was called in to assist in drafting a motion in the latest challenge to the GAA's notorious rule 42.

The authors of this book cover a lot more than I have in this review, including the role of criminal and civil liability in sport, which remain big issues worldwide. So if you want to make sure you know what you're talking about when Ronan O'Gara or Padraig Harrington come calling, I suggest that you invest in this tome. G

Stuart Gilhooly is a partner in the Dublin law firm HJ Ward & Co.

Practice notes

RETENTION OR DESTRUCTION OF FILES AND OTHER PAPERS AND ELECTRONIC STORAGE

This note provides general guidance for solicitors on the retention and destruction of client files and documents. The note reviews the position concerning adequate periods of retention following the completion of a transaction on behalf of a client and the effective closing of the file.

It is suggested that the conclusion of a transaction occurs when all relevant details are completed, including appropriate filing or registration requirements, payment by the client of all appropriate fees and costs and when all appropriate materials and documents have been returned to the client.

This note offers general guidance but may not be suitable for particular situations. It is always a matter for individual solicitors to make their own professional judgement with regard to on-going retention of files and documents following the expiry of the statutory periods for retention.

Solicitors should be aware that a file belongs to the client once the solicitor's costs and outlays have been paid, although there are certain limitations on what the client will be entitled to. At the start of a transaction, it may be appropriate to explain to a client the retention policy that you operate for closed files. A solicitor is not expected to retain a file indefinitely.

This note relates to the retention and storage of paper files (that is, documents, papers, correspondence and other materials that remain in the possession of a solicitor following the conclusion of a transaction) and the retention and storage of such files in electronic format. Clearly, there is a need to retain original executed agreements, deeds and other engrossments on an on-going basis and such agreements and deeds are not dealt with in this note.

The retention and storage of paper files pose a number of problems for solicitors. These include the cost and management of physical storage space, security and conservation issues, difficulties in identification and location of files and identification of files suitable for destruction. Accordingly, this note also provides guidance on the electronic storage of client files and documents.

General background

The Law Society last issued a practice note on recommended file destruction and retention policies in 1996. This note offers guidance in relation to the retention or destruction of files and other papers taking note of other changes in regulatory requirements in the interim period.

The *Guide to professional conduct of solicitors in Ireland* (Law Society, 2nd edition, 2002) states at 9.13: 'In order to protect the interests of clients who may be sued by third parties and also to protect the interests of the solicitors' firm which may be sued by former clients or by third parties, a solicitor should ensure that all files, documents and other records are retained for appropriate periods'. The reference to 'appropriate periods' is to appropriate periods of limitation for the issue of proceedings.

NOTE: Because a court may grant a renewal of a summons for one year and thereafter, in certain circumstances, for a further six months, solicitors may wish to add 18 months to the relevant retention periods.

***Statute of limitations* requirements (not less than appropriate limitation period)**

It is recommended that files should be retained for at least the duration of the appropriate limitation period as set out for specific actions under the *Statute of limitations, 1957* (as amended). A list of the appropriate limitation periods is set out in each annual edition of the *Law directory*.

General matters (not less than six years)

Subject to any other legislative or regulatory requirements, all other files need only be retained for six years. If a solicitor continues to act on behalf of a client for a period longer than six years, some solicitors like to retain all the files of that client.

Conveyancing files (not less than 12 years)

Most solicitors retain conveyancing files for 12 years, taking the view that adverse possession would sort out any difficulties that might necessitate reference to the sale or purchase file at a later date. However, it is also valid to argue that a vendor's file need not be retained for this period, because the purchaser's solicitor would have had the opportunity of full investigation of title and will be precluded from raising queries post-completion, except in cases of fraud or misrepresentation.

Infant cases (as appropriate)

As time does not begin to run against infants until their majority, infant files must be identified and retained for the appropriate period.

Mentally incapacitated persons (indefinite)

A solicitor cannot accept instructions from a mentally incapacitated person. However, occasionally, following the completion of cases, there may be a suggestion by third parties that instructions should not have been accepted. In any such case, the file should be retained indefinitely.

Probate files

Prior wills should be kept in the probate file and destroyed when the file itself is being destroyed.

Drafting of wills (indefinite)

When a solicitor drafts a will for a client, the solicitor should consider whether the file should be retained with the original will and then be retained indefinitely.

Investigation of complaints (not less than five years)

The *Solicitors (Amendment) Act, 1994* provides that the Law Society may not investigate complaints of inadequate services or excessive fees that relate to matters arising more than five years previously. Files must be retained for this period.

***Solicitors' accounts regulations* (not less than six years)**

Regulation 20 of the *Solicitors' accounts regulations 2001* (SI 421/2001) sets out the minimum accounting records that a solicitor must maintain and keep in connection with his or her practice. In addition, the regulation requires that a solicitor must retain these records for at least six years. The regulations also require that the original of each paid cheque drawn on each client account must be retained (as opposed to a copy cheque). The regulations would indicate that the original of each paid cheque together with the corresponding cheque stubs or requisition dockets are to be retained. This requirement would appear to **preclude** the storage of these items in electronic format at present.

Anti-money-laundering requirements (not less than five years)

The provisions of the Criminal Justice Act, 1994 *(section 32) regulations 2003* (SI 242/2003)

Mandatory periods for retention

Purpose	Category of files or other records	Period not less than	Statutory or regulatory reference
Protection of solicitor – period of limitation within which clients can bring proceedings relating to the solicitor/client contract. Availability of the file for the solicitor's professional indemnity insurers	All files except as below	Six years	*Statute of Limitations Act, 1957*, as amended, and other relevant legislation
Protection of the client – periods of limitation within which the client can be sued by third parties arising out of a transaction	All files except as below	Six years	*Statute of Limitations Act, 1957*, as amended, and other relevant legislation
Protection of solicitor and client	Conveyancing files	12 years	*Statute of Limitations Act, 1957* for title matters
Protection of solicitor and client. Various periods of limitation	Files of infant	Relevant period of limitation after child has reached majority	*Statute of Limitations Act, 1957*, as amended, and other relevant legislation
Protection of solicitor and client	Files of mentally incapacitated persons	Indefinite	Various
Protection of solicitor, executors and beneficiaries	Probate files	12 years – but where trust, see below 'trust files'	Various
Protection of solicitor, client, trustees and beneficiaries	Trust files	The lifetime of the trust plus 12 years	Various
Protection of solicitor and testator	Notes relating to drafting of will	Indefinite	Various
Law Society investigation of complaints of inadequate services or excessive fees	All files	Five years	S8 and s9 of the *Solicitors (Amendment) Act, 1994*
Compliance with accounts regulations	All files – the files form part of accounts records	Six years	Regulation 20(h) of the *Solicitors' accounts regulations 2001*, SI 421 of 2001
Compliance with accounts regulations	Accounts records	Six years	Regulation 20(2) of the *Solicitors' accounts regulations 2001*, SI 421 of 2001
Compliance with anti-money-laundering legislation	1) Documentation evidencing the identity of clients 2) Original documents or admissible copies of transactions	Five years	*Criminal Justice Act, 1994* and Criminal Justice Act *(section 32) regulations 2003*, SI 242 of 2003
Compliance with revenue and tax law	All files	Six years	Various
Compliance with VAT regulations	Files of persons with a taxable interest in land	Period of taxable interest plus six years	Section 16 of the *VAT Act, 1972* as amended by section 121 of the *Finance Act, 2003*

extend certain anti-money-laundering requirements to solicitors. Solicitors are now designated bodies for the purposes of section 32 of the *Criminal Justice Act, 1994* and are required to satisfy themselves as to the identity of any new client. Under the requirements of the legislation, records evidencing the identity of a client should be retained for a period of five years after the relationship with the client has ended. In addition, the original documents, or admissible copies, relating to the relevant transaction should be retained for a period of at least five years following completion of the transaction. Section 32(9) of the 1994 act states:

'Where a designated body identifies a person for the purposes of this section, it shall retain the following for use as evidence in any investigation into money laundering or any other offence:

a) In the case of the identification of a customer or proposed customer, a copy of all materials used to identify the person concerned for a period of at least five years after the relationship with the person has ended
b) In the case of transactions, the original documents or copies admissible in legal proceedings relating to the relevant transaction for a period of at least five years following the execution of the transaction'.

Revenue and tax requirements (not less than six years)

A general obligation to keep certain records for tax purposes is imposed by section 886 of the *Taxes Consolidation Act, 1997*. The section requires that sufficient records must be kept as will enable full tax returns to be made and does not qualify the period for which they must be kept. While the definition of records is specifically related to accounts and books of accounts, and so on, certain other supporting documents must be retained by the person obliged to keep the records for six years after the completion of the transaction to which they relate. It appears that linking documents and returns do not have to be retained where an inspector notifies the person concerned that retention is not required.

Section 886 of the *Taxes Consolidation Act* allows for the records to be kept in any electronic, photographic or other process approved of by the Revenue Commissioners.

VAT legislation

Section 16 of the *VAT Act, 1972*, as amended by section 121 of the *Finance Act, 2003*, requires records appropriate to VAT payments to be kept for a period of six years from the date of the latest transaction to which the records, or any of the other documents specified, relate. Accordingly, where solicitors act for a client in the acquisition of an interest in leasehold or freehold property that is subject to VAT, files relating to the acquisition or redevelopment of the property and the treatment of VAT should be retained as necessary.

Data protection

Section 2(1)(c) of the *Data Protection Act, 1988*, as amended by the *Data Protection (Amendment) Act, 2003,* provides that 'personal data' must only have been obtained for one or more specified, explicit and legitimate purposes. It also provides that personal data shall not be kept for longer than is necessary for that purpose or those purposes. A client file will probably contain 'personal data' within the meaning of the 1988 act (that is, personal data in processible form). Under the provisions of the legislation, it would appear that if the data is being retained for a 'legitimate purpose' (for example, to comply with a regulatory, statutory or some other valid requirement), then a solicitor may retain data beyond the closing of the client file.

***Companies Acts* requirements**

There are a number of requirements imposed under the *Companies Acts, 1963-2003* relating to the retention of company books and records. These requirements (for example, s203 of the *Companies Act, 1990*) are imposed on the company itself and are not considered directly relevant to this guidance note.

Destruction of files

When the relevant statutory or regulatory periods for retention or periods of limitation have elapsed and where the solicitor is satisfied that there is no further purpose in retaining a client file or documentation, he or she may wish to destroy the contents of a file. The decision as to whether or not to destroy the contents of a file is a matter of judgement for each individual solicitor. The decision should be taken with particular reference to the nature of the transactions conducted in the file and with due regard to the possibility of any further need to access or reproduce material from the file.

Confidentiality

In arranging for the destruction of a file (whether in paper or electronic format), solicitors are reminded of the need to preserve client confidentiality. Old paper files should be shredded in a manner that will completely obliterate their content. Any such destruction should take place under the supervision of the solicitor. A number of commercial firms provide destruction services. Care should also be taken to dispose of electronically stored material in a manner that preserves client confidentiality.

Electronic storage

In all situations where documentation is being retained or stored in electronic storage format, it should be retained at a minimum for the same period(s) as would apply to the paper version. Where documentation is properly stored in an electronic format (and subject to any specific statutory or regulatory limitations on storage or retention in electronic format), the paper version (if one existed) need not be retained.

The three key issues affecting electronic storage are:

- Permanency or durability of the format
- Accessibility of the format
- Security of the format.

The most likely electronic storage medium that will be considered for archival storage is on CD-ROM. The issues regarding durability, accessibility and security will also apply to other electronic storage media.

The advice of systems providers should be taken on the on-going durability of the particular CD-ROM writer and recording system being used. Solicitors should consult with their suppliers on both the guaranteed and proven maximum period of storage applicable to CD-ROM (or other electronic storage media). The electronic storage medium must be capable of storing the documentation in a durable, accessible manner for as long as the statutory or regulatory periods require.

Solicitors should confirm with their suppliers that it will be possible to export or reproduce onto paper the content of any electronically stored material.

Solicitors are also advised to consult with their insurers on the acceptability of electronic storage of client files and documents in the event of a claim against the solicitor.

Where material is being stored electronically, it should be in an open format so that its future availability and accessibility will not be compromised. For example, a standard open format would be Adobe *Acrobat* pdf. Similarly, where material generated is in a text-processing package (such as *Word* or *WordPerfect*), consideration should be given to a backup of the material in RTF or another standard open format. This will prevent any dif-

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ficulties in accessing the material with future versions of a proprietary text-processing package. In all situations, solicitors should consult with their suppliers to ensure that material is being stored in an open and accessible format or that it can be converted to such for future accessibility.

Material in electronic storage format should also be secured and safeguarded against destruction or theft in the same way as materials stored in paper format. This is particularly relevant to the storage of materials on CD-ROM. Material in an electronic storage format, including CD-ROM, should be stored in a secure physical environment to ensure protection against fire, theft, destruction, and so on. CD-ROMs should be secured to avoid any accidental erasure or destruction.

It is recommended that a back-up copy be taken of any material stored on CD-ROM.

Where material is stored electronically, it should be numbered and indexed in such a way as to be as easily accessible as any similar paper formatted material. For example, it may be prudent to allocate individual folders to specific files when recording onto a CD-ROM or similar device.

Evidentiary issues and electronic materials

Certain provisions of the *Electronic Commerce Act, 2000* remove evidentiary distinctions between paper and electronic records. For example, section 12 provides (subject to other statutory provisions) that a person who is required or permitted to give information in writing may give the information in electronic form, whether as an electronic communication or otherwise. Section 9 of the act specifically provides that information is not to be denied legal effect or enforceability solely on the grounds that it is wholly or partly in electronic form, whether as an electronic communication or otherwise. Sections 17 and 18 of the act provide that if a person is required or permitted to present or retain or record information in its original form then, subject to certain provisions, the information may also be presented, and so on, as the case may be, in electronic form. The conditions relate to the integrity and intelligibility of the material retained in electronic form.

Further note should be taken of section 5 of the *Criminal Evidence Act, 1992* regarding the admissibility of evidence in criminal proceedings. Section 5(1)(c) provides that computerised information can be reproduced in permanent legible form and admitted in evidence.

*** This practice note can also be downloaded from the members' area of the Law Society website at *www.lawsociety.ie*.** G

Technology Committee and Guidance and Ethics Committee

RESIDENTIAL INSTITUTIONS REDRESS BOARD: TIME LIMIT FOR APPLICATIONS

Practitioners should note that applications for redress must be made to the Board within three years of the establishment day of the board. The Residential Institutions Redress Act, 2002 *(Establishment Day) Order 2002* appointed 16 December 2002 as the board's establishment day. **Therefore, the closing date for receipt of applications is 15 December 2005.**

The board may, at its discretion and where it considers there are exceptional circumstances, extend this time limit.

Further details regarding the making of an application to the board are contained in the board's *Guide to application procedure*, which can be viewed on *www.rirb.ie* or obtained from the Residential Institutions Redress Board, Belfield Office Park, Beech Hill Road, Clonskeagh, Dublin 4, tel: 01 268 0600, fax: 01 268 0025. G

Litigation Committee

PAYMENT OF CAT VIA REVENUE ON-LINE SERVICE

In March 2004, practitioners were advised that while the Revenue On-line Service (ROS) could be used to file CAT returns electronically, the on-line payment of tax was not permitted, due to a potential conflict between the Revenue's arrangements for electronic payment and certain provisions of the *Solicitors' accounts regulations 2001*.

The committee is pleased to confirm that, following discussions with Revenue regarding technical aspects of the electronic process and on foot of certain assurances received from Revenue regarding the operation of the payment mechanism, the society's Compensation Fund Committee has advised that it is satisfied that the process does not conflict with the provisions of the *Solicitors' accounts regulations 2001*. Therefore, practitioners may now fully utilise the Revenue's on-line 'file and pay' service for CAT.

The Probate, Administration and Taxation Committee believes that ROS will greatly assist solicitors in advising in the area of CAT. G

Probate, Administration and Taxation Committee

LEGISLATION UPDATE: 15 JANUARY – 18 MARCH 2005

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.

ACTS PASSED

Criminal Justice (Terrorist Offences) Act, 2005

Number: 2/2005

Contents note: Gives effect to the following instruments: European Union framework decision on combating terrorism; international convention against the taking of hostages; convention on the prevention and punishment of crimes against internationally-protected persons, including diplomatic agents; international convention for the suppression of terrorist bombings; and international convention for the suppression of the financing of terrorism. Amends the *Offences Against the State Acts, 1939 to 1998* and provides for related matters

Date enacted: 8/3/2005

Commencement date: 8/3/2005 for all sections other than section 32; 8/7/2005 for section 32 (amendment of section 32 of

the *Criminal Justice Act, 1994*, as amended by section 14 of the *Criminal Justice (Miscellaneous Provisions) Act, 1997*) (per section 4 of the act)

Health (Amendment) Act, 2005
Number: 3/2005
Contents note: Amends the *Health Act, 1970* to provide a statutory framework for the future charging of patients for the maintenance element of in-patient services in publicly funded long-term care residential units, and to provide for the introduction of doctor-visit medical cards
Date enacted: 11/3/2005
Commencement date: 11/3/2005

Proceeds of Crime (Amendment) Act, 2005
Number: 1/2005
Contents note: Makes a number of amendments to the *Proceeds of Crime Act, 1996*, the *Criminal Assets Bureau Act, 1996*, the *Criminal Justice Act, 1994* and the *Prevention of Corruption (Amendment) Act, 2001*
Date enacted: 12/2/2005
Commencement date: 12/2/2005

Social Welfare and Pensions Act, 2005
Number: 4/2005
Contents note: Provides for a number of measures announced in the 2005 budget, including increases in child benefit, an increase in the amount of capital disregarded for the purposes of certain means-tested schemes, improvements in the carer's benefit, the respite care grant schemes and the disability payment schemes. Provides for a number of amendments to the *Pensions Act, 1990* to implement directive 2003/41/EC on the activities and supervision of the institutions for occupational retirement provision (IORPs), and to provide for the implementation of the Pension Board's recommendations on funding standards and a number of minor miscellaneous amendments. Also provides for a number of other amendments to the *Social Welfare (Consolidation) Act, 1993* and the *Pensions Act, 1990*
Date enacted: 14/3/2005
Commencement date: 14/3/2005 for all sections, except sections 7(1), 16 and 24 to 39, for which commencement orders are to be made (per section 1(4), 1(5) and 1(6) of the act)

SELECTED STATUTORY INSTRUMENTS

Circuit Court rules (*European Arrest Warrant Act, 2003*) 2005
Number: SI 57/2005
Contents note: Insert new order '*European Arrest Warrant Act, 2003*' into the *Circuit Court rules 2001* (SI 510/2001) to prescribe Circuit Court procedures for applications under the *European Arrest Warrant Act, 2003*
Commencement date: 3/3/2005

District Court (appeals to the Circuit Court) rules 2005
Number: SI 80/2005
Contents note: Amend the *District Court rules 1997* (SI 93/1997) by the substitution in order 101 of new rules 6 and 11 in relation to appeals from the District Court to the Circuit Court
Commencement date: 18/3/2005

District Court (European arrest warrant) rules 2005
Number: SI 119/2005
Contents note: Insert new rules in order 16 and order 34 of the *District Court rules 1997* (SI 93/1997) to prescribe procedures for applications for European arrest warrants
Commencement date: 2/4/2005

District Court (small claims) (amendment) rules 2005
Number: SI 121/2005
Contents note: Amend order 53A, rule 1 of the *District Court rules 1997* (SI 93/1997) to provide for the exclusion from the small claims procedure of claims that are now required to go before the Residential Tenancies Board
Commencement date: 18/3/2005

Electoral (Amendment) Act, 2004 *(commencement) order 2005*
Number: SI 76/2005
Contents note: Appoints 17/2/2005 as the commencement date for section 5(4) of the act, which provides for amendment or revocation of orders requiring electronic voting and counting at elections and referenda

European Communities (distance marketing of consumer financial services) (amendment) regulations 2005
Number: SI 63/2005
Contents note: Implement directive 2002/65 concerning the distance marketing of consumer financial services and amending directives 90/619, 97/7 and 98/27. Amend the *European Communities (distance marketing of consumer financial services) regulations 2004* (SI 853/2004) in order to clarify the application of these regulations in relation to services provided by intermediaries, the enforceability of contracts to which the regulations apply and the fraudulent use of payment cards in connection with distance contracts for financial services
Commencement date: 15/2/2005

European Communities (international financial reporting standards and miscellaneous amendments) regulations 2005
Number: SI 116/2005
Contents note: Give full effect to regulation 1606/2002, give further effect to directive 78/660, directive 83/349, directive 86/635 and directive 91/674, and give effect to directive 2003/51
Commencement date: 1/1/2005

European Communities (judgments in matrimonial matters and matters of parental responsibility) regulations 2005
Number: SI 112/2005
Contents note: Make provision in relation to the effect on domestic legislation of regulation 2201/2003 (*Brussels II bis regulation*) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility and repealing regulation 1347/2000 (*Brussels II regulation*). Revoke SI 472/2001, which related to regulation 1347/2000 and re-state the provisions in that SI that are still relevant. Amend the *Child Abduction and Enforcement of Custody Orders Act, 1991*, section 25 of the *Courts and Court Officers Act, 1995* and sections 1 and 2 of the *Protection of Children (*Hague convention*) Act, 2000*
Commencement date: 1/3/2005

European Communities (protection of consumers in respect of contracts made by means of distance communications) (amendment) regulations 2005
Number: SI 71/2005
Contents note: Amend SI 207/2001, which implemented directive 97/7 on the protection of consumers in respect of contracts made by means of distance communication. Directive 97/7 excluded financial services. Directive 2002/65, which was implemented by SI 853/2004, deals specifically with the protection of consumers in respect of contracts for financial services made by means of distance communication. These regulations implement article 18 of directive 2002/65, which amends directive 97/7 by redefining the exclusion of financial services. In addition, a minor drafting amendment is made to regulation 3(ii)(I) of SI 207/2001
Commencement date: 15/1/2005

Finance Act, 1999 *(commencement of section 98A) order 2005*
Number: SI 123/2005
Contents note: Appoints 9/3/2005 as the commencement date for section 98A of the *Finance Act 1999* (inserted by section 50 of the *Finance Act, 2004*) (relief from mineral oil tax on biofuel used in approved pilot projects)

Maternity Protection (Amendment) Act, 2004 *(commencement) order 2005*
Number: SI 131/2005
Contents note: Appoints 10/4/2005 as the commencement date for all sections of the act not already in operation

Redundancy Payments Act, 2003 *(commencement) order 2005*
Number: SI 77/2005
Contents note: Appoints 10/4/2005 as the commencement date for sections 7, 11 and 12 of the act. Also provides for the avoidance of doubt, that sections 7, 11 and 12 of the act apply only to those employees who are declared redundant on or after 10/4/2005

Rules of the Superior Courts (competition proceedings) 2005
Number: SI 130/2005
Contents note: amend the *Rules of the Superior Courts* (SI 15/1986) by the addition of order 63B 'competition proceedings' to prescribe procedures for the operation of the competition list in the High Court
Commencement date: 8/3/2005

Rules of the Superior Courts* (European Arrest Warrant Act, 2003 *and* Extradition Acts, 1965 to 2001) *2005
Number: SI 23/2005
Contents note: Amend the *Rules of the Superior Courts* (SI 15/1986) by the substitution of a new order 98 '*European Arrest Warrant Act, 2003* and *Extradition Acts, 1965 to 2001*' to prescribe procedures under these acts
Commencement date: 20/2/2005

Rules of the Superior Courts *(order 77 amendment) rules* 2005
Number: SI 51/2005
Contents note: Amend the *Rules of the Superior Courts* (SI 15/1986) by the substitution of a new order 77 'funds in court' to prescribe procedures in respect of funds in court
Commencement date: 28/1/2005

Solicitors Acts, 1954 to 2002 *(professional indemnity insurance) (amendment) regulations 2005*
Number: SI 122/2005
Contents note: Amend the Solicitors Acts, 1954 to 2002 *(professional indemnity insurance) regulations 1995 to 2004* as follows: a) extend the definition of 'solicitor' in regulation 2(a) of SI 312/1995 to a solicitor who has, for whatever reason, ceased or will in the immediate future cease to engage in practice as a solicitor, and make an equivalent amendment to the provisions relating to eligibility for admission to the assigned risks pool in order to make clear that a solicitor ceasing to engage in practice as a solicitor, whether or not still on the roll of solicitors, is eligible to apply to the assigned risks pool for run-off cover; b) provide for an increase in the minimum level of cover from €300,000 to €2,500,000; c) provide for a change in the method of calculating the extent to which each qualified insurer contributes to the cover provided to solicitors through the assigned risks pool and shares the premium therefor
Commencement date: 1/11/2005

Supreme Court and High Court (fees) order 2005
Number: SI 70/2005
Contents note: Provides for the fees to be charged, in the Office of the Registrar of the Supreme Court, the Central Office, the Examiner's Office, the Office of the Official Assignee in Bankruptcy, the Taxing Masters' Office, the Accountant's Office, the Office of Wards of Court, the Probate Office and District Probate Registries. Provides for the exemption from fees of certain proceedings, including family law proceedings
Commencement date: 15/1/2005

Prepared by the Law Society Library

Solicitors' Benevolent Association

141st report

Year 1 December 2003 to 30 November 2004

The Solicitors' Benevolent Association is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, family and immediate dependants who are in need. The association was established in 1863 and is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €380,419, which was collected from members' subscriptions, donations, legacies and investment income. Currently, there are 52 beneficiaries in receipt of regular grants and approximately one-third of these are themselves supporting spouses and children. The accounts will be available at the AGM of the association on 18 April.

There are 13 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices in Blackhall Place. They meet at Law Society House in Belfast every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving new applications. The directors also make themselves available to those who may need personal or professional advice. The directors have available the part-time services of a professional social worker, who, in appropriate cases, can advise on state entitlements, including sickness benefits.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Gerard F Griffin, immediate past-president of the Law Society of Ireland, John Pinkerton, past-president of the Law Society of Northern Ireland, Ken Murphy, director general, John Bailie, chief executive, the personnel of both societies and Oisín PR & Publicity Ltd, the publishers of the *Gazette yearbook and diary*, who contributed substantial funds to the association over a number of years. Unfortunately, due to a decline in sales and the use of computer diaries, the publication of the *Gazette yearbook and diary* has now ceased.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificates, to those who made individual contributions and to the following:

- The Law Society of Ireland
- Northern Ireland Law Society
- Dublin Solicitors' Bar Association
- Belfast Solicitors' Association
- Galway Co Solicitors' Bar Association Limited
- Limavady Solicitors' Association
- Mayo Solicitors' Bar Association
- Tipperary & Offaly Bar Association
- Wexford Bar Association
- Conveyancing Committee
- Contributors to *Irish conveyancing precedents*
- Contributors to *The Law Society of Ireland, 1852 – 2002*
- Younger Members' Committee.

To cover the ever-greater demands on the association, additional subscriptions are more than welcome, as, of course, are legacies and the proceeds of any fundraising events.

Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4, and I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest elsewhere on this page.

I would like to thank all the directors, the association's secretary Geraldine Pearse and Brendan Walsh, solicitor, for their valued hard work, dedication and assistance during the year. G

Thomas A Menton,
Chairman

SOLICITORS' BENEVOLENT ASSOCIATION

FORM OF BEQUEST

I give and bequeath the sum of €_____ to the trustees for the time being of the Solicitors' Benevolent Association, c/o the Law Society of Ireland, Blackhall Place, Dublin 7, for the charitable purposes of that association in Ireland, and I direct that the receipt of the secretary for the time being of the association will be sufficient discharge for my executors.

DIRECTORS AND OTHER INFORMATION

Directors
Thomas A Menton (chairman)
John Sexton (deputy chairman)
Sheena Beale, Dublin
Caroline Boston, Belfast
Felicity M Foley, Cork
John Gordon, Belfast
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Niall D Kennedy, Tipperary
John M O'Connor, Dublin
Brian K Overend, Dublin
Colm Price, Dublin
David Punch, Limerick
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John M O'Connor
Andrew F Smyth

Secretary
Geraldine Pearse

Auditors
Deloitte & Touche,
Chartered Accountants,
Deloitte & Touche House,
Earlsfort Terrace,
Dublin 2

Stockbrokers
Bloxham Stockbrokers,
2-3 Exchange Place,
IFSC,
Dublin 1

Bankers
AIB plc,
37/38 Upper O'Connell Street,
Dublin 1

First Trust
31/35 High Street,
Belfast BT1

Offices of the association
Law Society of Ireland,
Blackhall Place,
Dublin 7
and
Law Society of Northern Ireland,
Law Society House,
90/106 Victoria Street,
Belfast BT1 3JZ

SOLICITORS DISCIPLINARY TRIBUNAL

These reports of the outcome 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 Sean Allen, solicitor, carrying on practice under the style and title of Sean Allen & Company, Solicitors, at 67 Pembroke Road, Dublin 4, and in the matter of the *Solicitors Acts, 1954-2002* [4212/DT433/03]
Law Society of Ireland (applicant)
Sean Allen (respondent solicitor)

On 11 January 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Failed to file an accountant's report for the year ended 31 May 2002 in a timely manner, having only filed same with the society by letter dated 9 May 2003
b) Filed a seriously qualified accountant's report for the year ended 31 May 2002 on 9 May 2003.

The tribunal ordered that the respondent solicitor:

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

In the matter of Sean Allen, solicitor, carrying on practice under the style and title of Sean Allen & Company, Solicitors, at 67 Pembroke Road, Dublin 4, and in the matter of the *Solicitors Acts, 1954-2002* [4212/DT367]
Law Society of Ireland (applicant)
Sean Allen (respondent solicitor)

On 11 January 2005, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he had:

a) Allowed a deficit of £87,918 to arise in his client account as of 31 May 2001
b) In relation to the case of a named client, the solicitor, as recorded on the client ledger account, allowed a number of payments to be applied against a deposit of £46,000 received in respect of the sale of a property, which money was to be held by him as stakeholder resulting in a debit balance of £18,721.70 on this account
c) Allowed a debit balance of £9,472.43 in the estate ledger account of a named deceased client since 11 June 1998
d) Allowed a debit balance of £13,725.47 to be recorded in the estate of a named deceased client since February 2001
e) Allowed a debit balance of £22,012.67 to be recorded on a miscellaneous ledger account at the commencement of the investigation
f) Withdrew six client account cheques which were not allocated to any particular client, in breach of regulation 10 of the *Solicitors' accounts regulations no 2 of 1984*. Three of these cheques totalling £11,000 were made payable to the solicitor
g) Engaged in a practice of transferring fees in round sum amounts to the office account, resulting in many cases in over-transfers to the office account, thereby causing debit balances in client ledger accounts in breach of regulation 7 of the *Solicitors' accounts regulations no 2 of 1984*
h) Failed to file his accountant's report in respect of his financial year ended 31 May 2000 until 16 January 2001 instead of 30 November 2000
i) Failed to file his accountant's report in respect of his financial year ended 31 May 2001 until 26 April 2002 instead of 30 November 2001
j) Failed to keep proper books of account in breach of regulation 10(1)(a) of the *Solicitors' accounts regulations*
k) Frustrated the investigating accountant's attempt to investigate his practice on a number of occasions.

The tribunal ordered that the respondent solicitor:

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

In the matter of Raymond Jameson, solicitor, practising as Jameson & Company, Fitzwilliam Square, Wicklow, and in the matter of the *Solicitors Acts, 1954-2002* [6806/DT436]
Law Society of Ireland (applicant)
Raymond Jameson (respondent solicitor)

On 24 September 2004, the Solicitors Disciplinary Tribunal found that the respondent solicitor was guilty of misconduct in his practice as a solicitor in that had:

a) Failed to file an accountant's report with the Law Society of Ireland within six months of his accounting date of 30 April 2002, in breach of regulation 21(1) of the *Solicitors' accounts regulations no 2 of 1984*
b) Created multiple debit balances, in breach of regulation 7(2)(a) of the *Solicitors' accounts regulations 2001*
c) Maintained books of accounts that were six months in arrears, in breach of regulation 12(2)(a) of the *Solicitors' accounts regulations 2001*
d) Failed to comply with one of the conditions laid down by the Compensation Fund Committee on 10 July 2003, which was a prerequisite for the granting of an adjournment in that he failed to clear the deficit on his client account within seven days
e) Allowed a representation to be made in a letter to the society dated 2 September 2003 that the deficit identified by his reporting accountant had been cleared when it had not
f) Failed to discharge a further deficit of €238,739 by close of business on 2 September 2003, notwithstanding the representation made to the society to this effect in a letter to the society dated 2 September 2003
g) Failed to retain a deposit of £6,000 received in March 2000 until October 2001 when the sale closed
h) Used other client monies to pay expenses and the beneficiaries of an estate
i) Created a debit balance in relation to the client account of the estate in the amount of £60,000 or €76,184.24, in breach of regulation 7(2)(a) of the *Solicitors' accounts regulations no 2 of 1984*

j) Lodged sale proceeds of €76,184.28 relating to a named estate (being the euro equivalent of £60,000), being client monies, to the office account in February 2002, in breach of regulation 4(1) and regulation 6(4)(a) of the *Solicitors' accounts regulations 2001*
k) Failed to hold the deposit received in respect of the above sale until the transaction was closed
l) Used other client monies totalling €108,014.69 to make a distribution in a named estate on 6 December 2002
m) Advanced other client monies totalling €333,000 to a client builder on 14 April 2003
n) Failed to create and maintain a ledger account for his client builder, in breach of regulation 12(1) and (2) of the *Solicitors' accounts regulations 2001*
o) Advanced other client monies of €146,027 to the vendor of a property on behalf of his client purchaser
p) Was six months in arrears with the writing-up of the client account, in breach of regulation 12(2)(a) of the *Solicitors' accounts regulations 2001*
q) Retained a number of old balances on the client ledger account, which included fees, in breach of regulation 5(2) and 5(4) of the *Solicitors' accounts regulations 2001*
r) Failed to maintain separate ledger accounts for each client matter, in breach of regulation 12(3)(a) of the *Solicitors' accounts regulations 2001*
s) Failed to procure from his bank the return of paid cheques drawn on the client account, in breach of regulation 20(1)(f) of the *Solicitors' accounts regulations 2001*.

The tribunal reported to the High Court, and on 29 November 2004 the president of the High Court ordered that:
i) The name of the respondent solicitor be struck off the roll of solicitors
ii) The respondent solicitor do make delivery to any person appointed by the applicant of all or any of the documents in the possession, control or within the procurement of the solicitor arising from his practice as a solicitor
iii) The respondent solicitor do pay to the applicant the costs of the application and the costs of the proceedings before the Disciplinary Tribunal, such costs to be taxed in default of agreement. G

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Compiled by Flore Bouhey for FirstLaw

CRIMINAL

Bail, *habeas corpus*

Assault – bail – whether the district judge acted in excess of jurisdiction in refusing bail – Bunreacht na hÉireann, *article 40.4.2*

The applicants appealed against an order of the High Court, refusing their article 40 applications and deciding that the applicants were being detained in accordance with law. The applicants were refused bail in the District Court on the ground that there was an on-going feud between the applicants and the injured party and also there was a risk that the applicants 'would go out and assault someone again with a gun'.

The Supreme Court (McGuinness, Hardiman, Fennelly JJ) allowed the appeal, holding that there was no relevant evidence before the district judge that would have permitted him to refuse bail on the grounds articulated by him. The remarks made by the judge were improper and wrong in principle. The proceedings were unfair and in breach of the principles of natural and constitutional justice in that the applicants were not informed that an objection to bail of such a serious nature was to be made by the prosecution. Furthermore, the applicants were not afforded an opportunity to challenge such an objection.

The State (Royal) v Kelly ([1974] IR 259) followed.

***McDonagh v The Governor of Cloverhill Prison*, Supreme Court, 28/1/2005** [FL10247]

Extradition

Delay – Extradition Act, 1995, *sections 50 and 47 – whether the requesting prosecuting authority had or had not formed an intention to prosecute the accused at the time the warrant was sought and whether this was relevant to an application pursuant to the* Extradition Act, 1995, *section 50*

A warrant was obtained in the United Kingdom in 2001 for the arrest of the plaintiff. The plaintiff maintained that he was never questioned, arrested or charged in relation to the offence described in the warrant. The plaintiff applied for relief under the provisions of section 50 of the 1995 act following the making of an order by the High Court on 30 March 2004 under section 47 of that same act for the rendition of the plaintiff to the authorities in the UK. The plaintiff maintained that he should not be returned to the UK on the grounds of delay and also that there was a reasonable doubt that the prosecuting authority had formed a clear intention to prosecute the plaintiff for the alleged offences in the UK prior to its application for the warrant on foot of which the plaintiff's extradition was sought.

Peart J refused the relief sought, holding that:

1) There was nothing within the provisions of section 50 of the 1995 act that mandated or even entitled the court to consider the question of whether the prosecuting authority had, at the time the warrant was obtained, an intention to prosecute the plaintiff for the offence charged
2) The delay on the part of the prosecuting authorities was not culpable or inexcusable delay.

***Daly v Attorney General*, High Court, Mr Justice Peart 16/11/2004** [FL10198]

Identification evidence

Appeal against conviction – identification – judge's charge – Casey *warning – whether treatment of identification in charge defective – whether warning delivered as stereotyped formula – whether warning related to particular facts of case – whether statements of judge lessened significance of warning*

The applicant applied for leave to appeal against his convictions for robbery and related offences. The principal ground of appeal related to the judge's charge in relation to identification. The applicant contended that the judge had given the *Casey* warning in relation to identification to the jury as a stereotyped formula and that there was a failure to mention factors tending to make identification difficult. The applicant also contended that the warning was followed by remarks of the trial judge, without any basis in evidence, which diluted the effect of the warning.

The Court of Criminal Appeal treated the application for leave to appeal as the hearing of the appeal, allowed the appeal, quashed the conviction and ordered a re-trial, holding that the treatment of identification in the charge was defective.

***DPP v O'Donovan*, Court of Criminal Appeal, 10/12/2004** [FL10194]

Identification evidence, appeal

Conviction – assault – identification evidence – whether the trial judge's warning to the jury in relation to the dangers of identification evidence was adequate

The applicant was convicted on one count of assault causing harm and was sentenced to two years and six months' imprisonment. He sought leave to appeal against his conviction on the grounds that the trial judge erred in law in his instruction to the jury regarding identification and, further, that the verdict of the jury went against the weight of the evidence. He later sought leave to enlarge his grounds of appeal and was granted permission to put forward additional grounds of appeal regarding the identification evidence, the failure to hold an identification parade, the admission of his statement and the disposal of the CCTV footage.

The Court of Criminal Appeal (McGuinness, Butler, Abbott JJ) allowed the appeal on one ground only and quashed the conviction, holding that the warning of the trial judge in relation to the dangers of convicting on the basis only or mainly of identification evidence was satisfactory in every way except that it did not address the issue of the difficulties of inter-racial recognition that were raised during the course of the trial.

***People (DPP) v George Christo*, Court of Criminal Appeal, 31/1/2005** [FL10235]

Insanity plea, appeal

Appeal against conviction – plea of insanity – psychiatric evidence as to motive of applicant in killing – whether evidence admissible in principle – whether evidence sufficiently grounded in fact

This was the defendant's application for leave to appeal against his conviction for the murder of his infant son. The only issue at the trial concerned the plea of insanity. He alleged that he was legally insane at the time he admittedly killed the son. The grounds of appeal were that the trial judge erred in permitting a consultant psychiatrist to give evidence of his opinion as to the applicant's motive in killing his son and in repeating the consul-

tant's opinion in his charge.

The Court of Criminal Appeal dismissed the application for leave to appeal, holding that the consultant psychiatrist's evidence was admissible in principle and sufficiently grounded in fact to allow the jury to reach a conclusion on it.

***DPP v Abdi*, Court of Criminal Appeal, 6/12/2004** [FL10186]

LEGAL PROFESSION

Disciplinary procedures, solicitors

Freezing order – disciplinary tribunal – whether the president of the High Court erred in his consideration of the facts before him and/or in law in refusing the appellant's motions – Solicitors (Amendment) Acts, 1960 and 1994

The respondent brought a motion to strike the appellant off the roll of solicitors, following a finding by a disciplinary tribunal that he was guilty of misconduct. Subsequently, the appellant brought three motions before the president of the High Court in which he sought an order discharging freezing orders and other orders that had been made placing restrictions on the use of certain bank accounts by the appellant. The appellant also sought an order extending the time to appeal the finding of the Solicitors Disciplinary Tribunal and further an order striking out the motion of the respondent on the grounds of delay and double jeopardy. The president refused all three motions, and it was from such refusal that the appellant brought this appeal.

The Supreme Court (Murray CJ, Geoghegan, Kearns JJ) dismissed the appeal, holding that:

1) The *Solicitors (Amendment) Act, 1960* permitted the making of orders freezing personal funds as well as business accounts and, further, it related not only to accounts in existence at the time of the making of the freezing order but also any subsequently opened account in the name of the solicitor or his firm
2) The appellant had not formed the intention to pursue an appeal within the prescribed time
3) The delay that occurred was explicable and, further, no excessive delay of a culpable nature could be attributed to the respondent.

***The Law Society of Ireland v Elio Malocco*, Supreme Court, 15/2/2005** [FL10225]

PLANNING AND DEVELOPMENT

Certiorari, delay

Judicial review – certiorari – *discretionary considerations precedent to grant of relief – delay – appropriateness of remedy sought – permission granted subject to conditions by An Bord Pleanála – compliance order – scope of planning authority to certify compliance of conditions imposed by An Bord Pleanála – whether modifications further process of design evaluation requiring permission rather than certificate of compliance*

The notice party had obtained a compliance order on 4 January 2002 from the respondent confirming that its development was in compliance with planning permission previously granted by An Bord Pleanála subject to conditions. The applicant, on 17 July 2002, sought an order of *certiorari* quashing that decision on the basis that it constituted an unlawful material alteration to the development as permitted and conditioned by An Bord Pleanála. He also sought various declarations relating to the lawfulness of the compliance order. He maintained that the respondent was not permitted, under the guise of agreeing revised plans required by a condition imposed by An Bord Pleanála, to reconsider design matters that had already been considered by the board in the course of the appeal process. The respondent opposed the application on the grounds that the applicant had previously, unsuccessfully, applied for judicial review and plenary relief in relation to the same development and was guilty of delay in bringing the present application.

Murphy J refused the relief sought, holding that the application for *certiorari* was inappropriate both in relation to its timing and to the decision of the courts in the applicant's previous judicial review and plenary applications, which had covered many of the same matters as in the present application, as the grounds for impugning the compliance order were essentially the same as those used in the unsuccessful prior application. There was an onus on the applicant to commence proceedings with every possible expedition, which he had failed to do, and whatever prejudice the applicant might suffer was disproportionate to the disruption to the notice parties if the court were to accede to the relief sought. Moreover, the applicant failed to provide a cogent argument justifying the delay. The imposition of a non-expandable upper time limit within which an application for leave to apply for judicial review must be brought did not suspend or lessen the requirement that every application had to be brought promptly within that stipulated period. In relation to the substance of the complaint, the respondent had wide discretion to achieve compliance with the conditions imposed by An Bord Pleanála, as there were alternative ways in which the conditions could be complied with, given their degree of specificity.

***Kenny v Dublin City Council*, High Court, Mr Justice Murphy, 8/9/2004** [FL10266]

Injunction

Planning permission – intensification of use – Planning and Development Act, 2000 – *whether the respondents had obtained planning permission or were required to obtain planning permission for the works being carried out on their land*

The respondents obtained planning permission for the development of an extension to their existing sand and gravel pit, subject to a number of conditions. The applicants, who lived in close proximity of the respondents' lands, submitted that the planning permission granted to the respondents had a three-year limitation period and, as the time had now expired and no application had been made to extend it, there was no planning permission in existence authorising the works carried out on the said lands. Accordingly, the applicants sought orders pursuant to section 160 of the 2000 act prohibiting the respondents from carrying out works at the site and depositing waste material on the aforementioned lands.

Smyth J granted the relief sought by the applicants, holding that:

1) A different and more intense activity was being carried out by the respondents on the site in question and that activity, which was in the nature of landfill, was materially different from a planning perspective to the activity envisaged and authorised by the planning permission granted to the respondents
2) The proposed and existing use of the land as a landfill site was not the subject of the planning permission and was not reasonable incidental either to the primary purpose of such use, for which permission was obtained, or incidental to the conditions attached thereto.

***Mason and McCarthy v KTK Sand and Gravel Limited*, High Court, Mr Justice Smyth, 7/5/2004** [FL10267]

PRACTICE AND PROCEDURE

Brussels convention

Appropriate venue for determination of claim – exceptions to general rule that domicile of defendant determines appropriate venue – object of proceedings – whether decision of organ of Irish company object of proceedings – whether court has

jurisdiction to hear and determine proceedings against defendants domiciled outside state – council regulation EC 44/2001, article 22(2) – extra-territorial service – whether validly effected – Rules of the Superior Courts 1986, *orders 11 and 12, rule 26*

Council regulation EC 44/2001 replaced the *Brussels convention on the recognition and enforcement of judgments in civil and commercial matters* as the applicable rules governing proceedings having an extra-territorial dimension within the European Union. Under both instruments, the general rule is that persons are sued in the courts of their domicile. One of the exceptions to that rule is contained in article 22(2) of the regulation of 2001, which is analogous to article 5(1) of the *Brussels convention* and provides that: 'in proceedings which have as their object the constitution, the nullity or the dissolution of companies … or of the validity of the decisions of their organs, the courts of the member state in which the company … has its seat [shall have exclusive jurisdiction regardless of domicile]'. The first three defendants were directors of two companies that were registered in the island of Nevis and which had previously been registered in Ireland. The first two defendants had been served outside the state with proceedings pursuant to order 11, rules 1(c) and (h) of the *Rules of the Superior Courts* on the basis that other named defendants had been served within the state. Those other defendants were subsequently released from the proceedings so that at the time of the first and second defendants applying, pursuant to order 12, rule 26 of the *Rules of the Superior Courts*, for an order setting aside the service of the proceedings on the grounds that the court had no power to permit service thereof pursuant to order 11, the only other defendants joined had all been served outside the state. The third defendant applied for an order striking out the proceedings against him on the grounds that the court had no jurisdiction to determine the proceedings pursuant to the regulation of 2001, as the object of the proceedings was not such as to bring it within the exception outlined in article 22(2) thereof.

Finlay Geoghegan J set aside service of notice of the plaintiff's summons on the first and second defendants and ruled that the court did not have jurisdiction to hear and determine the plaintiff's claim against them under article 22(2) of the council regulation of 2001, holding that there were no longer any defendants within the jurisdiction and that the regulation of 2001 had not been relied upon by the plaintiff at the time of the service of the proceedings on the first and second defendants. She also held that, in determining what the object of proceedings for the purposes of article 22(2) of the regulation of 2001 were, the principal subject matter of the proceedings first had to be divined by examining the statement of claim and any other pleadings delivered and any facts set out in a grounding affidavit. Applying that principle, the plaintiff failed to discharge the onus of unequivocally establishing that the object of the proceedings was the validity of a decision of the board of an Irish company.

Obiter dictum: that the same principles applied to the interpretation of council regulation EC 44/2001 as applied to interpretation of the *Brussels convention*.

***Spielberg v Rowley*, High Court, Miss Justice Finlay Geoghegan, 26/11/2004** [FL10220]

TORT

Liability, negligence

Duty of care – duty to provide safe equipment and place of work – scaffolding – sub-contractor injured from fall from scaffolding – liability – contributory negligence – whether plaintiff contributed to accident through his own negligence

The plaintiff was a sub-contractor engaged by the defendant to do plastering on scaffolding erected by the defendant, from which he fell and injured himself in 1993. He suffered a fracture to his right wrist and soft tissue injuries to his neck and back and was out of work for eight months. At the date of the trial, there was some occasional, minor discomfort in his wrist when fishing but his other symptoms had dissipated to the point where they were no longer a major inconvenience.

Peart J awarded the plaintiff €62,989.49 against the defendant, after deducting 20% for contributory negligence, holding that that the defendant owed a duty of care in the manner in which the scaffolding was assembled or constructed to persons who would be likely to be upon it or to use it. The plaintiff, however, as an experienced plasterer, had some responsibility to take basic care and precautions in respect of his own safety, including making sure, by reasonable inspection, that the place in which he had to work was safe and suitable. The main contractor bore a larger responsibility to ensure that the scaffolding was safely constructed. General damages for pain and suffering up to the trial were assessed at €50,000, and at €10,000 into the future. Special damages were agreed at €18,736.86.

***Marsella v J&P Construction Ltd*, High Court, Mr Justice Peart, 30/11/2004** [FL10246]

Personal injuries, road traffic

Assessment of damages – contributory negligence – car accident – not wearing seat belt

The plaintiff sustained injuries as a result of a car accident in May 2000. It was agreed between the parties that there should be a deduction of 5% from the damages assessed in respect of the element of contributory negligence on the part of the plaintiff for failing to wear her seat belt. The plaintiff sustained multiple abrasions to her face, a fracture to the shaft of her right humerus with radial nerve palsy, a fracture of the left femur, contusion and bruising to the right leg, and bruising over the right breast.

Peart J awarded damages to the plaintiff of €175,250. For past pain and suffering, including the scarring which will be permanent, the plaintiff was awarded €130,000. For future pain and suffering, she was awarded €25,000. Special damages were agreed at €28,000. However, a 5% reduction from the total award was made for agreed contributory negligence.

***Higgins v Smith and Lee*, High Court, Mr Justice Peart, 15/11/2004** [FL10204] G

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Eurlegal

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

At the IP/competition interface: the compulsory licensing of intellectual property rights after Microsoft (part 1)

Tension reigns at the interface of intellectual property (IP) and competition law. The potential for conflict quickly becomes apparent. IP law strives to promote innovation and creativity through the grant of time-limited monopolies. Competition law attempts to tackle problems caused by monopoly situations and to promote free competition. As we will see in a number of cases discussed below, striking an appropriate balance between these two apparently conflicting regimes is no easy task. One thing is certain: owners of intellectual property rights (IPRs) do not enjoy complete immunity in the exclusive exploitation of their rights under EC and Irish competition law.

It should be remembered that the possession of a dominant position by virtue of the ownership of an IPR (even an IPR amounting to an industry standard) is not viewed as an abuse of a dominant position under EC or Irish competition law. However, such a position of market power raises the possibility of abuse and therefore a dominant firm is considered to have a 'special responsibility' to ensure that it does not stifle or erode competition.

Article 82 and secondary markets

In principle, the exclusive exploitation of an IPR is acceptable in the market for a specific product or process that incorporates it. However, if an attempt is made to extend the net of exclusivity into a secondary market, such an attempt may fall foul of article 82 of the *EC treaty* (which prohibits the abuse of a dominant position without objective justification). In short, exclusive exploitation of an IPR may amount to legitimate competition on the merits in the primary market but can become abusive in a secondary, dependent market in certain 'exceptional circumstances'. What amounts to 'exceptional circumstances' will be considered in more detail below.

In all the cases in which it has been acknowledged that the refusal to supply or licence certain (tangible or intangible) goods or services might constitute an abuse of a dominant position, the European Community courts have distinguished between a market for such goods or services (upstream) and a secondary market (downstream), in which they are utilised as inputs for the production of other goods or services. This is particularly evident in cases involving the refusal to licence essential IPRs. For article 82 to apply to conduct in a secondary market, there must be a sufficient nexus between the abusive conduct and the two markets at issue. For example, an undertaking may be controlling supply to a downstream market by virtue of its dominance in the upstream market, or an undertaking may be acting in the secondary market in order to reinforce its dominant position in the primary market (joined cases 6 and 7\73, *Commercial Solvents & Others v Commission* [1974] ECR 223; *BPB Industries and British Gypsum v Commission* [1993] ECR II-389).

Refusal to supply and refusal to license

Refusal to supply may amount to an abuse under either article 82(b), which concerns limiting production, markets or technical development to the prejudice of consumers, or article 82(c), which concerns the application of discriminatory conditions to equivalent transactions. If the secondary market is not being supplied by a good or service demanded by consumers, a refusal to supply may be caught by article 82(b). On the other hand, if the dominant firm has a subsidiary operating in the secondary market, the refusal to supply may amount to discrimination and thus fall foul of article 82(c).

The case law on the compulsory licensing of IPRs is closely allied to the development of the 'essential facilities' doctrine as it has developed under European and United States law. What the decisions discussed below indicate is that both the commission and the community courts are prepared to extend the essential facilities doctrine to cover IPRs (though it should be noted that it is only the former that has used the term 'essential facilities' in its reasoning). The extension of article 82 obligations not to refuse to supply without objective justification into obligations not to refuse to license without objective justification creates little conceptual difficulty.

Exceptional circumstances: from *Magill* to Microsoft

In *Magill* (cases T-69/89, *RTÉ v Commission* [1991] ECR I-485, [1991] 4 CMLR 586; cases 241/91 P, *RTÉ and ITP v Commission* [1995] ECR I-743, [1995] 4 CMLR 718), the three TV broadcasting companies in Ireland – RTÉ, BBC and ITP – refused to license information contained in their programme listings for publication in a new weekly comprehensive TV guide. Each company had a factual monopoly over this information because they were its only source. When *Magill* decided to publish a weekly comprehensive guide to all radio and TV programmes, the TV companies obtained an injunction from the Irish High Court to prevent publication, on the ground that it constituted an unlicensed reproduction of literary works in which they held the copyright (even though there was no particular artistic merit in the material).

Magill complained to the commission, claiming that the publishers, in refusing to license, were in breach of article 82. The commission concluded that the TV companies had abused their individually dominant positions by refusing to make the TV listings available to *Magill* and ordered that advance information be supplied so as to enable comprehensive weekly TV guides to be published. The commission's decision was appealed to the European Court of Justice (ECJ), which upheld the decision.

There were three exceptional circumstances identified in *Magill*. First, the ECJ indicated that the dominant undertaking's refusal prevented the emergence of a new product that the dominant undertaking did not offer

and for which there was potential unsatisfied consumer demand. As such, the refusal was inconsistent with article 82(b). Secondly, the ECJ indicated that the conduct in question enabled the dominant undertaking to reserve to itself the secondary market of weekly television guides by excluding all competition in that market, since access to the basic information, the raw material indispensable for the compilation of a comprehensive weekly television guide, was denied. Third, the refusal could not be objectively justified.

IMS Health

The facts of the *IMS Health* litigation are somewhat complex and have seen both IMS Health and NDC Health make various appearances before the community courts over the past five years. In summary, IMS Health is the world's leading supplier of information on sales and prescriptions of pharmaceutical products. Its 1860 and 2847 brick structures became an industry standard and essentially are a fragmentation of Germany into geographical areas known as bricks. These bricks are used as a basis for the formulation of regional sales reports and are used by the pharmaceutical industry to create sales territories and to ascertain market share data of various pharmaceutical products.

Former management in IMS created a rival business (NDC) using 1860 or 3000 brick structures very similar to those used by IMS. IMS subsequently obtained an injunction from the German courts on the basis that the brick structures were protected by database copyright (a type of copyright protection that was harmonised for all EU member states by the 1996 *Database directive*), which prohibited NDC from using a brick structure derived from the IMS model.

NDC claimed that customers (the pharmaceutical companies) would only accept data in the IMS format and subsequently requested a licence from IMS. When IMS refused, NDC complained to the commission on the grounds that the refusal amounted to an abuse of IMS's dominant position. The commission agreed and ordered IMS to license the use of its brick structures to its competitors and, in doing so, stated that the factors that the ECJ had found to constitute exceptional circumstances in *Magill* were not cumulative. The presidents of both the CFI and the ECJ suspended the commission's decision pending final judgment on the grounds that there was a serious dispute as to whether the circumstances in IMS were exceptional. The commission had also faced strong argument from IMS that the commission was unable to identify two distinct markets. The ECJ finally delivered its judgment on 29 April 2004.

Microsoft's corporate campus in Redmond, Washington

Much debate centred on whether the conditions that amounted to 'exceptional circumstances' identified in *Magill* are cumulative and necessary or merely sufficient to justify the grant of a compulsory licence of an IP-protected right. In that respect, the ECJ stated: 'It is clear from case law that, in order for the refusal by an undertaking which owns a copyright to give access to a product or service indispensable for carrying on a particular business to be treated as abusive, it is **sufficient** that [the] three cumulative conditions are satisfied…' (emphasis added).

The ECJ's statement suggests that other types of abusive conduct, other than the specific circumstances identified in *Magill*, can fall firmly within the category of exceptional circumstances. As regards the need to identify two distinct markets, the ECJ concluded that, in *Magill*, a market for television listings was identifiable even where they were not marketed independently by the television broadcasters but merely offered free of charge to certain newspapers. The ECJ considered that it was sufficient that it is possible to identify a market in upstream inputs (even where the market is a potential or hypothetical one only) even though the dominant undertaking decides not to market the inputs in question independently, notwithstanding that there is an actual consumer demand.

Given that the brick structure for which the licence was sought was essential for the marketing of studies on regional sales of medicine, the ECJ concluded that it was not hard to identity an upstream market for access to the brick structure (which was monopolised by the copyright owner) and a secondary downstream market for the sale of studies on regional sales of medicines. The ECJ also referred to the decision in *Oscar Bronner* (case C–7/97, [1998] ECR I-7791), where the court acknowledged the existence of a market for the nationwide home delivery of daily newspapers even where the undertaking holding a monopoly in such a hypothetical market did not independently sell the home delivery scheme.

As regards the need to show that the refusal to license prevents the emergence of a 'new' product or service for which there is demonstrable consumer demand, the ECJ stated that the refusal to grant a licence may be deemed abusive only if the requesting undertaking does not wish to limit itself essentially to duplicating the goods or services already offered on the secondary market by the owner of the IPR but intends to produce goods or services of a different nature which, although in competition with those of the owner of the right, answer specific consumer requirements not satisfied by existing goods or services.

Microsoft

Microsoft has become a name synonymous with the manufacture and licensing of computer software; indeed, today, 90% of personal computers worldwide are said to run its software. Microsoft's position of market strength has ensured that it has been no stranger to legal tussles, many evolving from the constant stream of allegations that Microsoft is abusing its market power. In 1998, the commission began its investigation into Microsoft following receipt of a complaint from Sun Microsystems. Sun alleged that Microsoft had refused to provide it with interface information necessary to enable Sun to develop a server product that would 'talk' properly with the ubiquitous *Windows* operating system. The commission expanded the scope of the formal proceedings in August 2001 to include concerns about the effects of the 'tying' of Microsoft's *Windows media player* (WMP) with the *Windows 2000* operating system.

Negotiations between the commission and Microsoft continued apace until the commission announced on 18 March 2004 that, despite making substantial progress with Microsoft, it had not been possible to reach

settlement. On 24 March 2004, the commission found that Microsoft was in breach of article 82 (the 'infringement decision') and, by way of remedy, it ordered Microsoft to:

- Supply specified interface information to competitors
- Offer a version of *Windows* without WMP (as well as the version with it), and
- Pay a fine of some €497 million.

On 8 June 2004, Microsoft lodged an appeal of the infringement decision with the European Court of First Instance and subsequently sought interim relief to suspend the operative parts of the commission's infringement decision. On 22 December 2004, the CFI dismissed Microsoft's interim relief application in its entirety (the 'interim measures decision'). Microsoft's appeal of the commission's infringement decision may take up to five years to run its course.

Following an extensive market analysis, the commission identified three separate markets: the market for personal computer operating systems (in which Microsoft, with a market share exceeding 90%, occupied a market position approaching monopoly), the market for work-group server operating systems (in which Microsoft was found to have a market share of at least 50%, perhaps even 60-70%), and a separate market for media players. In finding against Microsoft, the commission held that Microsoft had infringed article 82 by leveraging its overwhelmingly dominant position in the market for PC operating systems into adjacent markets – the market for work-group server operating systems and the market for media players.

This paper will only consider the refusal to supply interface information aspect of the infringement decision.

Microsoft's refusal

The commission found that Microsoft abused its dominant position by refusing to supply Sun and other undertakings with interface information that would enable competitors in the market for work-group server operating systems to develop products that could interoperate with Microsoft's *Windows* operating system. Since *Windows* is the operating system on more than 90% of PCs, Sun contended that a work-group server could not be commercially viable unless it could work with *Windows*. Sun had also argued that, while Microsoft frequently disclosed information that would enable software developers to write programs that would run on *Windows*, it was highly reluctant to disclose information that would enable a work-group server running another operating system (such as the open-source offering, *Linux*) to interoperate fully with other computers that have *Windows* as their operating system.

The commission concluded that Microsoft enjoyed a position of 'extraordinary market strength' on the client PC operating system market and that interoperability with a client PC operating system is of significant competitive importance in the market for work-group server operating systems. In reaching its decision, the commission stressed what it considered was the need to follow an approach that examines 'the totality of the circumstances' and, in doing so, refuted 'an approach that would advocate the existence of an exhaustive check list of exceptional circumstances'. In support of its contention, the commission referred to the judgment of the CFI in *Micro Leader Business* (case T-198/98, [2000] 4 CMLR 886) and argued that the factual situations in which the exercise of an exclusive right by an IPR holder may constitute an abuse of a dominant position cannot be restricted to 'one particular set of circumstances'.

The commission concluded that the following factors constituted circumstances that justified a finding of abuse:

- Microsoft's refusal to supply interface information amounted to a disruption of previous levels of supply. In effect, the commission appeared to be influenced by the fact that Microsoft had made previous disclosures of interface information to companies operating in the downstream market (the market for server operating systems) but, having vertically integrated its operations and having begun competing on that downstream market, it had discontinued supplying such companies that were now its competitors
- Microsoft's refusal to supply risked eliminating competition in the downstream market
- The disclosure of interface information that would enable interoperability with the *Windows* operating system was indispensable for rivals to be able to compete and, further, that the results of reverse engineering of Microsoft's products did not offer a viable substitute, and
- Microsoft's conduct could not be objectively justified by the need to protect its IPRs. Any disincentives for future innovation by Microsoft as a result of the compulsory licensing of its IPRs were far outweighed by the potential for innovation in the market as a whole.

In order to restore the conditions of fair competition, the commission ordered Microsoft, within 120 days, to disclose complete and accurate interface information that would allow non-Microsoft work-group servers to achieve full interoperability with *Windows* PCs and, further, that the disclosed information should be updated each time Microsoft brings new versions of its relevant products to the market. To the extent that the interface information is protected by IP in the European Economic Area, Microsoft was entitled to 'reasonable remuneration'. The forced disclosure was limited to interface information only and not the *Windows* source code, as this would not be necessary in order to develop interoperable products.

The second part of this article will appear in next month's Eurlegal.

Niall Collins works in the EU and competition law practice group at the Dublin law firm Arthur Cox.

Recent developments in European law

COMPETITION

Case T-193/02, *Laurent Piau v Commission of the European Communities*, 26 January 2005. FIFA is an association governed by Swiss law. Its members are national football associations. In 1994, FIFA adopted regulations governing the occupation of player's agent. Mr Piau lodged a complaint with the European Commission, as he regarded these rules as being contrary to provisions of the *EC treaty*. Following the opening of a competition procedure by the commission, FIFA agreed to change its regulations. Owing to these changes, the commission decided to take no further action. Under these new regulations, a player's agent was required to hold a licence issued by the national association and pass an examination in the form of a multiple-choice test. Relations between players and agents are to be the subject of a written contract, for a period of two years, though renewable. The contract is to specify the remuneration of the agent, to be calculated on the basis of the player's gross salary. A system of sanctions for non-compliance was also established. The agent was also required to take out a professional liability insurance policy. Mr Piau maintained his complaint before the commission. The commission rejected it on the grounds that there was no community interest in continuing the proceedings. Mr Piau brought this action challenging that rejection. The CFI noted that football clubs and the national associations to which they belong are undertakings and associations of undertakings for the purposes of community competition law. Consequently, FIFA, which is a grouping of national associations, is itself an association of undertakings. The regulations governing the occupation of player's agent are a decision by an association of undertakings. The role of the player's agent is to introduce a player to a club with a view to the conclusion of a contract of employment. It is therefore an economic activity for the provision of services that does not fall within the special nature of sport, as defined by the case law. The CFI indicated that regulation of an economic activity by a private organisation without any regulatory powers delegated by the authorities cannot be regarded as compatible with community law. However, this action concerns the lawfulness of a decision taken by the commission following a complaint made in respect of competition. Judicial review is limited to the competition rules. The CFI ruled that the commission did not make an error of assessment by considering that the changes made by FIFA to its original regulations eliminated their principal anti-competitive features. The requirement that agents take out a licence is a barrier to access to that economic activity and affects competition. It can only be accepted to the extent that the amended regulations contribute to promoting economic progress, allow consumers a fair share of the resulting benefit, do not impose restrictions that are not indispensable to the attainment of those objectives and do not eliminate competition. The CFI considered that the commission was entitled to take the view that the restrictions that follow from the compulsory nature of the licence could enjoy such an exemption. Circumstances that justify FIFA's rule-making action include: the need to introduce professionalism and morality to the occupation of player's agent to protect players whose careers are short, the fact that competition is not eliminated by the licence system, the almost general absence of national rules and the lack of a collective organisation of player's agents. The CFI held that FIFA, which is an emanation of football clubs, holds a dominant position of the market of services of player's agents. However, the regulations do not impose quantitative restrictions on access to this occupation that harm competition, but qualitative restrictions that may be justified and do not therefore constitute an abuse of FIFA's dominant position in that market.

FREE MOVEMENT OF PERSONS

Case C-302/02, *Nils Laurin Effing*, 20 January 2005. Mr Effing is a German national who resided in Austria, where he was employed. He was convicted of a criminal offence and began serving a sentence at a prison in Austria. Nils Effing, his son, is a minor and an Austrian national. He received advances on maintenance payments for the period from 1 June 2000 to 31 May 2003 under the Austrian federal law on the grant of advances for the maintenance of children. Mr Effing was subsequently transferred to Germany to serve the remainder of his sentence. In the German prison, he performed paid work in accordance with the obligation to work imposed on prisoners by German legislation. Following his transfer to Germany, the Austrian authorities terminated the payments to his son, as Austrian legislation requires that, to be eligible for these payments, the parent must be serving the sentence in Austria. The son brought proceedings in Austria to obtain continuance of the allowance. The Austrian Supreme Court made a reference to the ECJ. The ECJ held that regulation 1408/71 on social security schemes within the EU is intended to avoid complications that may result from the overlap of different sets of national legislation. Advances on maintenance payments are family benefits and Mr Effing must be deemed to be an 'employed person' as he was covered by unemployment insurance during his period of imprisonment in Germany. The regulation is to be interpreted as meaning that in a situation where a person, following a transfer, has ceased carrying on all occupational activity in a state and no longer resides there, the grant of family benefits comes within the scope of the legislation of the member state where the person resides (or in this case serves the remainder of his prison sentence). Thus, the legislation applicable to the person cannot be that of the member state from which he was transferred. The ECJ therefore ruled that community law allows a member state to make the grant of family benefits to members of the family of an imprisoned community national, subject to the condition that he remain a prisoner in that state.

Case C-256/03, *Igor Simuntenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol*, opinion of advocate general Stix-Hackl, 11 January 2005. Mr Simuntenkov is a Russian professional soccer player who played for the Spanish club Deportivo Tenerife. He had an employment contract, a Spanish residence card and work permit and a licence from the Spanish association for players from outside the EC. His licence enabled him to play soccer as a member of that association and to be fielded as a player of his club in matches and official championships. However, under the rules of the association, teams can only field a limited number of players from states outside the EC. Mr Simuntenkov applied to convert his licence to a community player's licence. He relied on the EC/Russian *Partnership agreement*, which prohibits discrimina-

tion on grounds of nationality as regards working conditions. The association refused his application. The Spanish court referred the matter to the ECJ. The advocate general reached the conclusion that the applicant can rely on the prohibition of discrimination laid down in the agreement. The sporting rule in question relates to working conditions. It discriminates between Russian nationals legally employed in a member state and the state's own nationals. Participation in matches organised by the association constitutes the essence of professional player's activity.

PROTECTION OF GEOGRAPHICAL INDICATIONS

Case C-347/03, *Regione Autonoma Friula-Venezia Giulia & Agenezia Regionale per lo Sviluupo Rurale (ERSA) v Ministero per le Politiche Agricole e Forestali & Regione Veneto*, opinion of advocate general Jacobs, 16 December 2004. Tocai is a vine variety traditionally grown in the Italian region of Friuli-Venezia Giulia. In 1993, an agreement on the reciprocal protection and control of the names of wine was agreed between the European Community and Hungary. To protect the Hungarian geographical indication 'Tokaj', the agreement imposed a prohibition on the use of the name 'Tocai' from March 2007. The applicants seek to annul the Italian law that gave effect to the agreement. Advocate general Jacobs considered that Tokaj is a geographical indication whereas Tocai is not. The name Tocai is recognised as a vine variety and is not a geographical indication since it has no special quality, reputation or characteristic. Therefore, the prohibition on the use of the Italian grape variety name Tocai arising from the agreement between the European Community and Hungary is legal. G

Fifteen to one

Many of Gerard Griffin's predecessors as president of the Law Society attended the dinner in Blackhall Place that is traditionally held each year to honour the immediate past-president following the conclusion of their term of office. The 15 former presidents pictured, together with current president Owen Binchy, are *(standing, from left)* Anthony Collins (1984/85), Michael V O'Mahony (1993/94), Anthony Ensor (1999/00), Adrian Bourke (1991/92), Laurence K Shields (1997/98), Tom Shaw (1987/88), Andrew F Smyth (1995/96) and Frank Daly (1996/97); *(seated, from left)* Geraldine Clarke (2002/03), Judge Frank O'Donnell (1983/84), Gerard Griffin (2003/04), Owen Binchy (2004/05), Moya Quinlan (1980/81), Bruce Blake (1976/77) and Elma Lynch (2001/02)

'You'll find it under *J*, minister'

Barrister and author Henry Murdoch discusses the fourth edition of *Murdoch's dictionary of Irish law* with justice minister Michael McDowell. Mr Murdoch has been writing the dictionary for nearly 20 years and says that this is the last edition under his pen. The book is published by Tottel Publishing and retails at €110

Won't somebody please think of the children?

Pictured at the launch of *Child law* are *(from left)* minister of state in the Department of Health and Children, Brian Lenihan, Mrs Justice Catherine McGuinness, Law Society deputy director of education and the book's author Geoffrey Shannon, Law Society director general Ken Murphy and Catherine Dolan of publishers Thomson Round Hall

The Law Society's Law Reform Committee published *Discriminatory planning conditions: the case for reform* on 10 March. Pictured *(left)* is Law Society president Owen Binchy speaking at the launch and *(above, from left)* are Roddy Bourke, the committee's chairman, Keenan Johnson, who chaired the working group on discriminatory planning conditions, Law Society president Owen Binchy, parliamentary and law reform executive Alma Clissmann, and the report's authors Alan Keating and Oran Doyle. The report is available on the society's website (*www.lawsociety.ie*) and printed copies can be obtained from Alma Clissmann on 01 672 4831 or e-mail: a.clissmann@lawsociety.ie

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 1 April 2005)

Regd owner: Daniel J O'Donovan; folio: 24601; lands: plots of ground being part of the townland of Minanes in the barony of Carberry West (east division) and county of Cork; **Co Cork**

Regd owner: Ravenstone Investments Limited; folio: 8844F and 8846F; lands: plots of ground being part of the townland of Freagh and Vicar's Acre in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Brian and Margaret Quinlan; folio: 18424F; lands: plots of ground being part of the townland of Carrigrohane in the barony of Cork and county of Cork; **Co Cork**

Regd owner: Sarah Doran and Catherine Doran; folio: DN57908F; lands: property situate in the townland of Kill of the Grange and barony of Rathdown; **Co Dublin**

Regd owner: John Duffy; folio: DN10765; lands: property situate in the townland of Kimmage and barony of Rathdown; **Co Dublin**

Regd owner: Ciara Fallon and Gary O'Reilly; folio: DN105311F; lands: (1) property known as site no 1, Temple View Avenue, Clare Hall, situate in parish of Balgriffin and district of Kilbarrack, (2) property situate in the parish of Balgriffin and district of Kilbarrack; **Co Dublin**

Regd owner: DMG Properties Limited; folio: 68679F; lands: townland of Castlecreevy and barony of Clare; area: 0.3760 hectares; **Co Galway**

Regd owner: Alfred Sherlock; folio: 60147F; lands: barony of Athenry; area: 3.4580 hectares; **Co Galway**

Regd owner: Eamon Fitzgerald; folio: 4916; lands: townland of Lacka West and barony of Clanmaurice; **Co Kerry**

Regd owner: Michael and Anne Kennedy; folio: 1208F; lands: townland of Mullacash South and barony of Naas South; **Co Kildare**

Regd owner: Mildred Kirby (deceased); folio: 1383K; lands: Kilkieran and barony of Gowran; **Co Kilkenny**

Regd owner: Ann Phelan; folio: 633; lands: Physicianstown and barony of Kells; **Co Kilkenny**

Regd owner: Andrew Townsend; folio: 12327; lands: Ballyclovan and Ballyline and barony of Callan and Shillelogher; **Co Kilkenny**

Regd owner: Woodland Investments Limited, 1/3 New Dock Street, Galway; folio: 6568; lands: Drumrewy; area: 6.4819 hectares; **Co Leitrim**

Regd owner: Patrick Cooney; folio: 5164L; lands: townland of Gouldahover and barony of Pubblebrien; **Co Limerick**

Regd owner: Drogheda Borough Council (formerly known as the Mayor, Aldermen and Burgesses of the Borough of Drogheda); folio: 19673F and 19674F; lands: Rathmullen, Donore Road, Drogheda; **Co Louth**

Regd owner: Peter McArdle, Main Street, Blackrock, Dundalk, Co Louth; folio: 11496; lands: Tinure;

area: 0.1644 hectares; **Co Louth**

Regd owner: Michael and Agnes Waldron as tenants in common of one undivided half share; folio: 32680; lands: townland of (1) and (2) Scregg (ED Aghamore), (3) Ballynacloy and barony of (1), (2) and (3) Costello; area: (1) 14 acres, 2 roods, 24 perches; (2) 11 acres, 1 rood, 11 perches; (3) 2 acres, 3 roods, 1 perch; **Co Mayo**

Regd owner: John Anthony Fitzgerald; folio: 5445; lands: townland of Skidderagh and barony of Carra; area: 5.8881 hectares; **Co Mayo**

Regd owner: Thomas Canning; folio: 6347F; lands: townland of Ballylahan and barony of Gallen; area: 23.36 hectares; **Co Mayo**

Regd owner: Joseph Gath; folio: 1933; lands: Ballybrackan Little and barony of Ballyboy; **Co Offaly**

Regd owner: John and Majella Ryan; folio: 31924; lands: townland of Knockboy and barony of Slievardagh; **Co Tipperary**

Regd owner: Brian and Mary Doyle; folio: 17490F; lands: townland of Trooperstown and barony of Ballinacor North; **Co Wicklow**

Regd owner: Cora and Maurice Moore; folio: 1017F; lands: townland of Hempstown and barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Joseph Dillon; folio: 7444; lands: townland of Newcastle Middle and barony of Newcastle; **Co Wicklow**

WILLS

Anslow, Thomas (deceased), late of 13 Claughaun Villas, Garryowen, Limerick, who died on 5 February 2005. Would any person having knowledge of the whereabouts of a will made by the above named deceased please contact Caitriona Carmody, solicitor, Carmody & Co, Solicitors, Peach House, Shannon, County Clare; tel: 061 365 320, fax: 061 365 322, e-mail: carmodyandco@eircom.net

Dillon, Kathleen (otherwise Kitty) (deceased), late of St Helen's, Strand Road, Portmarnock, Co Dublin. Would any person having knowledge of a will made by the above named deceased, who died on 21 December 2004, please contact Messrs Hennessy & Co, Solicitors, Wolfe Tone Square, Bantry, Co Cork; tel: 027 50317, fax: 027 50816, e-mail: info@hennessy-co.ie

Doherty, Michael (deceased), late of flat 5A, 51 Palmerstown Road, Rathmines, Dublin 6, formerly 7 St Mark's Drive, Clondalkin, Dublin 22. Would any person having any knowledge of a will made by the above named deceased, who died on 3 December 2004, please contact Elaine Conlan, solicitor, John Sherlock & Co, Solicitors, 9-10 Main Street, Clondalkin, Dublin 22; tel: 01 457 0846, fax: 01 457 1156, e-mail: elaine.conlan@sherlocksolicitors.com

Ehlers, Hans (deceased), late of 35 Auburn Heights, Athlone, Co Westmeath. Would any person having knowledge of a will made by the above named deceased, who died on 29 October 2004, please contact Byrne Carolan Cunningham, Solicitors, Main Street, Moate, Co Westmeath; tel: 090 648 2090, fax: 090 648 2091, e-mail: bccsolrs@eircom.net

Fennessy, Patrick (deceased), late of 12 Beaufield Park, Stillorgan, Co Dublin. Would any person having knowledge of a will made by the above named deceased, who died on 18 December 2004, please contact Gleeson McGrath Baldwin, Solicitors, 12 Lower Kilmacud Road, Stillorgan, Co Dublin; tel: 01 283 2106, fax: 01 288 1111, e-mail: behanstillorgan@eircom.net

Finn, Thomas Joseph (deceased), late of 141 Collins Avenue, Dublin 9 and 127 Mount Tallant Avenue, Terenure, Dublin 6, and late of 'The Boreen', Cashel, Achill, Co Mayo. Would any person having knowledge of a will made by the above deceased, who died on 30 March 1999, please contact Colette M McMahon, solicitor, 39 Celtic Park Avenue, Dublin 9; tel: 01 831 0574 or 086 364 9595

McCarthy, James (otherwise Jimmy) (deceased), a retired baker, late of St Joseph's, Farranlea Road, Victoria Cross, Cork. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 26 August 2004, please contact GJ Moloney, Solicitors, Courthouse Chambers, 27/29 Washington Street, Cork; tel: 021 427 5261, fax: 021 427 1586, e-mail: mwalsh@gjmoloney.ie

Murphy, Mary (deceased), late of 319D Oliver Bond House, Dublin 8. Would any person having knowledge of a will (apart from a will dated 29 August 1989) of the above named deceased, who died on 27 December 2003, please contact Carvill & Co, Solicitors, Hilltop Court, Raheny Road, Dublin 5; tel: 01 831 4752, fax: 831 4769, e-mail: ccarvill@eircom.net

Murphy, Joseph Anthony (deceased), late of Ballintaggart, Ballingarry, Thurles, Co Tipperary. Would any person having knowledge of a will made by the above named deceased, who died on 12 January 2004, please contact Messrs Grace & Co, Solicitors, Green Street, Callan, Co Kilkenny; tel: 056 775 5035, fax: 056 775 5135, e-mail: Igrace@indigo.ie

O'Reilly, Kathleen (deceased), late of 8 Saint Joseph's Terrace, Limerick. Would any person having any knowledge of a will made by the above named deceased, who died on 18 March 1994, please contact McMahon O'Brien Downes, Solicitors, Mount Kennett House, Henry Street, Limerick; tel: 061 315 100, fax: 061 313 547

Welby, Thomas (deceased), late of Cregg, Oughterard, Co Galway. Would any person having knowledge of the whereabouts of a will made by the above named deceased, who died on 11 June 2003, please contact Higgins Chambers & Flanagan, Solicitors, Headford, Co Galway (ref: BF/JM/4578x); tel: 093 35656, fax: 093 35741, e-mail: info@hcfsolicitors.com

RECRUITMENT

Traineeship required – motivated, enthusiastic, hardworking master's (LLM) graduate, with extensive experience within the legal and financial sectors, seeks traineeship. Has excellent computer and interpersonal skills, will be available in April 2005 on completion of PPC1. Please phone 086 820 4100 or e-mail traineesolr@ eircom.net

Locum solicitor required for Mullingar town; general practice (conveyancing/probate would suffice), four/six months to cover partner's maternity leave; start immediately or as soon as possible; minimum three years' experience required; excellent opportunity to work at senior level with support from other partner and an experienced and friendly staff. Contact Sally-Ann O'Donnell at 087

232 7854 or Paddy Crowley at 044 408 87/8 or send CV to JJ Macken, Bishopsgate Street, Mullingar, Co Westmeath; e-mail: info@jjmacken.ie

Solicitor required, full-time or part-time, for Limerick city practice. Please reply to **box no 30/05**

Solicitor with two years' PQE in the areas of conveyancing, litigation, probate, family law and District Court work seeks position in Galway. Available for full-time, part-time or locum position. Self-motivated with high professional standards. Please reply to **box no 31/05**

Traineeship required: bright, enthusiastic individual with strong work ethic seeks apprenticeship in Dublin/Limerick, or other. Graduate of Bachelor of Business and Legal Studies (BBLS), LLM (commercial law) UCD, AITI (tax). All FE1s completed. Contact: 086 052 4536, e-mail: bryanmcd@gmail.com

Solicitor required for busy progressive practice in Co Mayo. Minimum five years' PQE. Please reply with CV to **box no 34/05**

MISCELLANEOUS

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, Co Down; tel: 080 1693 68144, fax: 080 1693 60966

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 048 3026 1616, fax: 048 3026 7712, e-mail: norville@ dande-fisher.com

England and Wales solicitors will provide comprehensive advice and undertake contentious matters. Offices in London, Birmingham, Cambridge and Cardiff. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London 8H; tel: 0044 2088 17777, fax: 0044 2088 896395

London solicitors will be pleased to advise on UK matters and undertake agency work. We handle probate, litigation, property and company/commercial. Parfitt Cresswell, 567/569 Fulham Road, London SW6 1EU; DX 83800 Fulham Broadway; tel: 0044 2073 818311, fax: 0044 2073 816723, e-mail: arobbins@parfitts.co.uk

Seven-day publican's on licence for sale. Contact O'Dowd, Solicitors, Bridge Street, Boyle, Co Roscommon; tel: 071 966 2861, fax: 071 966 2583

Offices to let (27 Bridge Street Lower, City Gate, Dublin 8); 1,200 sq ft net. Own door, mid-terrace office property arranged over ground first and second floor with two car parking spaces to the rear, available for immediate letting. Enquiries to F Doyle, 086 257 9628

Long-established solicitor's practice for sale in Limerick city area. Good fee income. Reply in confidence to **box no 33/05**

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994*: an application by Azure Gold Limited

Take notice that any person having any interest in the freehold estate of the property known as 13 and 14 Lower Exchange Street in the parish of St John and city of Dublin, being the premises comprised in a lease dated 17 January 1859 made between Sarah Anne Davidson, Richard St Ledger, Grace St Ledger and Reverend John Wynn, Georgina Wynn and the Reverend Llewellyn Jones, Ellan Jones, William Townsend Gunne, Anne Gunne, Frederick John Eager, Anne Eager and Francis Gentleman of the one part and Hugh Blayney of the other part for the term of 500 years from 1 November 1858, to the yearly rate of £52 sterling, should give notice of their interest to the undersigned.

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

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

Date: 1 April 2005
Signed: Sheehan & Co (solicitors for the applicant), 1 Clare Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts, 1967-1994*: an application by Joseph Cosgrave, Peter Cosgrave and Michael Cosgrave – notice of intention to acquire fee simple (section 17)

Take notice that any person having any interest in the freehold estate of the following property: all that and those the plot of ground with the premises thereon known as 8, 8a and 9 Moss Street, situate in the parish of St Mark and city of Dublin, which said plot of ground with the dwellinghouse thereon known as 8 and 9 Moss Street, Dublin, erected thereon and which are now demolished, were formerly held by Mr Charles McCormack for the term of 150 years from 1 August 1909 at the yearly rate of £15. The said Joseph Cosgrave, Peter Cosgrave and Michael Cosgrave acquired the said leasehold interest by transfer dated 5 December 1997 and are entitled to be registered as owners thereof.

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

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

Date: 1 April 2005
Signed: Sheehan & Co (solicitors for the applicant), 1 Clare Street, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Desmond O'Shea and Barbara O'Shea re: premises situated at Abbey Street, Wicklow, in the parish of Rathnew, barony of Newcastle and county of Wicklow

Notice to any person having an interest in the freehold estate of the above property, which said property is held under a lease dated 9 July 1962 and made between Margaret Scanlon of the one part and Maureen Sarah O'Shea of the other part, subject to a yearly rent of €75 per annum.

Take notice that Desmond O'Shea and Barbara O'Shea of Abbey Street, Wicklow in the county of Wicklow, intend to submit an application to the county registrar at the courthouse, Wicklow, being an application for the acquisition of the freehold interest in the aforesaid property. Any party asserting that he/she holds a superior interest in the aforesaid premises are called upon to furnish evidence of title to the solicitors below named within 21 days from the date of this notice.

In default of any party furnishing a written claim re: a superior interest to the solicitors named below within 21 days, the said Desmond O'Shea and Barbara O'Shea intend to apply to the county registrar for the county of Wicklow seeking vesting of the fee simple and seeking directions as may be appropriate.

Date: 1 April 2005

Signed: Denis Hipwell, solicitor, Patrick O'Toole, Solicitors (solicitors for the applicant), 5 Church Street, Wicklow

In the matter of the *Landlord and Tenant Acts, 1967-1994* and the *Landlord and Tenant (Ground Rents) (No 2), Act 1978*: an application by Whelan Inns Limited

Take notice that any person having any interest in the freehold estate of or superior interest in the following property: all that and those part of the lands at Distillery Road, situate in the parish of St Mary's, in the town of Wexford, barony of Forth and county of Wexford, together with the licensed premises situate thereon, now known as 'The Gaelic Bar', together with the publican's ordinary seven-day licence attaching thereto, held with other property under an indenture of lease dated 18 November 1953 and made between Philip Pierce & Company Limited of the one part and William Goodison

of the other part for the term of 99 years from 29 September 1953, subject to the yearly rent of £1 but indemnified against the payment of the said rent and subject to the covenants on the part of the lessee and the conditions contained in the said lease, insofar as same relate to or affect the said premises.

Take notice that the applicant, Whelan Inns Limited, intends to submit an application to the county registrar for the county of Wexford for the acquisition of the freehold interest and any intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar for the county of Wexford for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 1 April 2005

Signed: Ensor O'Connor (solicitors for the applicant), Melrose House, Westgate, Co Wexford

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act, 1967* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of the premises situated at Castle Street, Mullingar, Co Westmeath, being part of the premises known as the Ritz Cinema: an application by Darragh Caffrey

Take notice that any person having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at Castle Street in the town of Mullingar, barony of Moyashel and Magheradernon, Co Westmeath, being part of the property now known as the Ritz Cinema, Castle Street, Mullingar and part of the property held under an indenture of lease made 16 March 1870 between James O'Brien and others of the one part and Patrick McCormack of the other part for the term of 200 years from 29 September 1869, should give notice to the under signed solicitors.

Take notice that the applicant, Darragh Caffrey, intends to apply to the county registrar for the county of Westmeath for the acquisition of the freehold interest and all intermediate interests in the above mentioned property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named solicitors within 21 days from the date hereof.

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 Westmeath for such direction as may be appropriate on the basis that the person or persons beneficially entitled to such superior interest including the freehold reversion in the aforementioned property are unknown or unascertained.

Date: 1 April 2005

Signed: Liam F Coghlan & Co (solicitors for the applicant), Woodhaven, Ballycasheen Upper (off Hazelwood Drive), Killarney, Co Kerry

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises situate at Lower Kimmage Road, Dublin 6W: an application by Fortune Limited

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that piece or parcel of ground with the factory buildings and offices standing thereon, situate at Lower Kimmage Road in the city of Dublin, held under an indenture of lease dated 7 September 1972 made between Percival J Hanna of the first part, Burnside Society Limited of the second part and Eastern Imports Limited of the third part for the term of 250 years from 29 September 1971, subject to the yearly rent of £1 (old currency), which is a sub-lease derived out of the demise effected by an indenture of lease dated 16 January 1937 made between Sir Robert de Vere Shaw of the first part, Fanny Armstrong Gordon and Violet Montgomery Gordon of the second part, Dame Eleanor Hester Shaw of the third part, Mary Margaret Shaw and Eile de Vere Shaw of the fourth part and John Perry of the fifth part, which is for a term of 300 years from 29 September 1936.

Take notice that the applicant, Fortune Limited, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 1 April 2005

Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of premises at 5 and 6 Aideen Place, Lower Kimmage Road, Dublin 6W: an application by Fortune Limited

Take notice any person having any interest in the freehold estate of or superior interest in the following premises: all that and those that piece or parcel of ground with the factory buildings and offices standing thereon known or intended to be known as numbers 5 and 6 Aideen Place, Lower Kimmage Road, in the city of Dublin, held under an indenture of lease dated 22 August 1951 made between Louis Kinlen of the one part and Eileen Mary Kinlen of the other part for the term of 500 years from 29 September 1950, subject to the yearly rent of £60 (old currency), which is a sub-lease derived out of the demise effected by an indenture of lease dated 20 May 1947 made between Francis Perry of the one part and the said Louis Kinlen of other part.

Take notice that the applicant, Fortune Limited, being the person entitled under sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises or any of them are called upon to furnish evidence of title to the aforementioned premises to the below within 21 days from the date of this notice.

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

Date: 1 April 2005

Signed: Reddy Charlton McKnight (solicitors for the applicant), 12 Fitzwilliam Place, Dublin 2

Legal Opportunities

In-House Opportunities

Head of Legal

Dublin **€130,000 - €140,000**

International Finance House is recruiting for a Senior Lawyer as their Head of Legal. You will develop and implement strategies, procedures and policies and applicable laws. Review group compliance and control the legal advisory function. The successful candidate will be a qualified Solicitor or Barrister with 10 years PQE in financial services law. Funds experience preferred. Ref: 17417

Derivatives Lawyer

Dublin **€100,000 - €120,000**

Global banking institution now has a vacancy for a full time Derivatives Lawyer. The successful candidate will have a thorough understanding of the different derivative products, have excellent drafting abilities and strong advisory skills. This role will suit a Solicitor with 4 years + PQE in derivatives law. Unique opportunity to join a specialist legal team in an expanding organisation. Ref: 13977

Employment Lawyer

Dublin **€Negotiable**

Established Institution is now seeking an Employment Lawyer with at least 4 years pqe in employment law. You will be currently working in a practice environment and seeking a move to an in-house environment. Exciting and unique opportunity to join a highly respected team in a dynamic organisation. Strong knowledge of Irish employment law essential. Ref: 18126

Company Lawyer

Dublin **€65,000 - €80,000**

Large European fund company wishes to recruit a Lawyer to assist in advising on all legal and regulatory issues for the funds divisions in the different legal jurisdictions. The successful candidate will be a qualified Solicitor with 2- 5 years PQE in corporate /commercial law. Funds experience is essential. Opportunity to join a friendly, hardworking and dynamic team. Ref: 13389

Regulatory Lawyer

Dublin **€60,000 - €65,000**

This well established and respected organisation is now seeking a Lawyer with at least 2 years pqe in regulatory and compliance law. You will provide advice to the business in relation to all it's legal and regulatory obligations and liaise with the relevant regulatory authorities. If you are a regulatory Lawyer seeking a move to a more challenging, autonomous environment this is the ideal role. Ref: 17639

Practice Opportunities

Senior Commercial Property Lawyer

Dublin **€120,000 - €130,000**

Prestigious Dublin firm wishes to recruit a strong Commercial Property Solicitor with 6-10 years pqe in large scale commercial property transactions. An in-depth understanding of tax based commercial property acquisitions essential. Work will include working on low volume, high demand deals. Exceptional promotional opportunities. Ref 17762

Senior Banking Lawyer

Dublin **€100,000 - €120,000**

Senior Associate required for the Banking Division of this prestigious firm. Partnership path for suitable candidate. 4-7 year PQE in broad-based banking practice. Work will include acquisition finance, working capital facilities and finance for real estate projects. The ideal candidate will be a self-starter who can work with little supervision, and who is keen to develop work and bring on junior fee-earners. Ref: 17246

Commercial Litigation — London

London **€80,000 - €95,000**

This is an excellent opportunity for an Irish Qualified solicitor coming from a Top Irish Firm to join a distinguished London City Practice. Three years PQE in Commercial Litigation is required and candidates with experience in high value commercial litigation or professional negligence would be ideal. Genuine career path for the successful candidate. Ref: 18006

Commercial Property Lawyer

Dublin **€60,000 - €70,000**

Prestigious Medium-Large Sized firm are urgently seeking a Property Solicitor with 2-3 years experience to join their growing property department. This opportunity will appeal to a solicitor looking for a clearly defined career path, and someone looking to work on major projects, from selling investor leases to developing large sites. Ref: 17486

Corporate Lawyer

Dublin **€80,000 - €90,000**

Medium sized Dublin City Centre firm are seeking Corporate Lawyers with corporate experience of 2-5 years. The quality of clients and work is excellent. Even at a junior level, their lawyers get involved in all aspects of transactions and see all dealings from instruction through to completion. You will receive a wide range of work, excellent training and guidance, plus the responsibility of your own caseload and clients. Ref: 17436

Interested candidates should contact Yvonne Keane or John Macklin on 01 662 1000 for a confidential discussion. Alternatively, email your CV in the strictest confidence to y.keane@brightwater.ie

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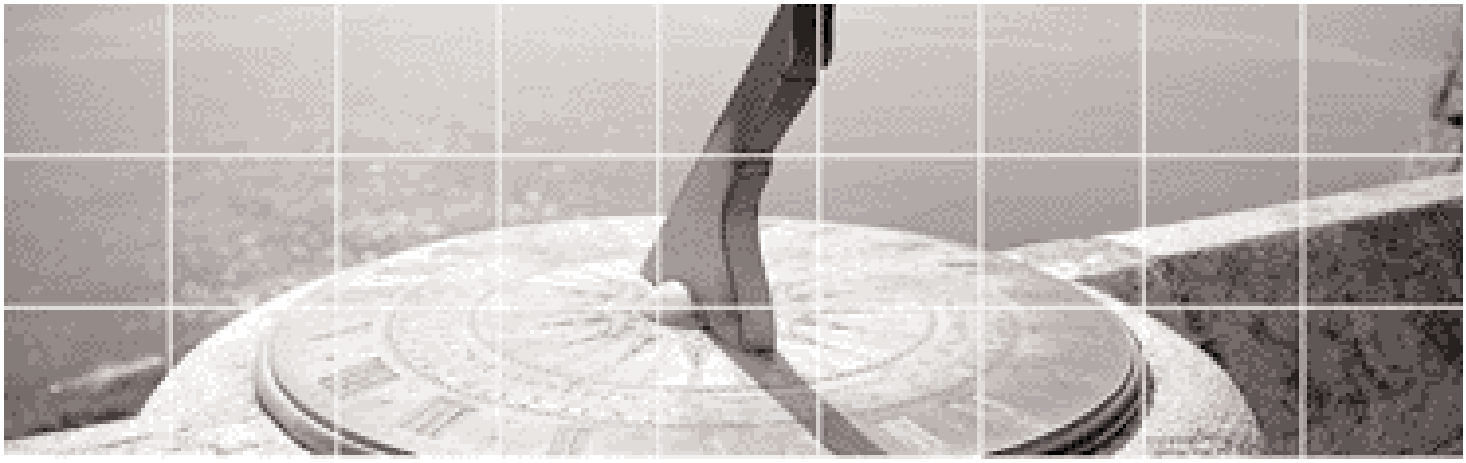

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Private Practice Opportunities

Senior Company Secretary 8-10 years' PQE — To €120K

A major City law firm seeks an experienced Company Secretary to head up their company secretarial division. Ideally you will have 8-10 years' experience as a member of the Institute of Chartered Secretaries and Administrators, and have experience in all aspects of corporate secretarial and company law practice.
Ref: JO118734

Senior Corporate Lawyer 2-6 years' PQE — To €100K

This specialist Dublin law firm is looking for an ambitious corporate lawyer with 2-6 years' PQE to join their high profile corporate department. Applicants must have in-depth experience in mergers & acquisitions, venture capital or flotations. An exceptional salary package and strong career progression will be on offer to the successful candidate.
Ref: JO117081

Tax Consultant/Lawyer 1-2 years' PQE — €65K

A qualified accountant (ACA or equivalent) with 2 years' experience or a qualified tax lawyer, is required to join a prominent Dublin law firm. You will provide innovative tax advice to the firm's corporate and individual clients, on tax aspects of corporate structuring and transactions and commercial matters including contracts and employment issues. This is an fantastic opportunity to progress in a new unit.
Ref: JO119727

Investment Funds Lawyers 2-5 years' PQE — To €90K

A leading City law firm seeks investment Funds Lawyers with 2-5 years' experience. Ideally you will have some experience in setting up, listing and operating funds in Ireland and/or internationally. This is an exceptional opportunity to advance your career, as a Funds Lawyer in one of Dublin's top firms.
Ref: JO117082

IT/IP Lawyer 2-4 years' PQE — To €80K

A highly successful Dublin law firm would like to appoint a senior lawyer with 2-4 years' PQE IP/IT experience to join their high profile technology and intellectual property unit. The successful candidate will advise on all aspects of information technology, intellectual property and e-Business law.
Ref: JO118642

Senior Commercial Property Lawyer 3-5 years' PQE — To €90K

A top Dublin firm would like to recruit a Commercial Property Lawyer. Experience in big ticket deals advising developers and large financial service organisations is essential. Ideally you will have circa 3-5 years' PQE and be looking to develop your career in a leading Dublin firm.
Ref: JO117091

In-House Opportunities

Head of Legal Affairs 7-10 years' PQE — To €150K

This leading financial services organisation seeks a senior lawyer to lead their legal department, advise on domestic and off-shore fund products and provide legal and regulatory advice on all issues across the investment division. Ideally you will have 7-10 years' PQE with significant experience of investment schemes and the Financial Services industry.
Ref: JO116668

Junior In-house Funds Lawyer 0-2 years' PQE — To €55K

A boutique financial services company would like to appoint a qualified solicitor with 0-2 years' PQE to join their in-house team. Your role will be varied and will include assisting the head of legal with funds launches, documentation and various client legal matters. This is an exceptional opportunity for an NQ with strong funds, banking or corporate experience to move in-house.
Ref: JO119116

Funds Lawyer 2-5 years' PQE — To €90K

A strong Funds Lawyer with circa 2-5 years' PQE is required to join the dynamic team of a leading financial services institution. Ideally you will have some experience in fund administration and establishment as well as general financial services or banking experience. The successful candidate will need exceptional communication and organisational skills.
Ref: JO116663

In-House Legal Counsel — To €80K

An IFSC Fund Treasury Division has an exciting opening for an In-House Legal Counsel. The successful candidate will have 3-4 years' PQE in a top legal practice or investment bank. Strong academics, excellent organisational, interpersonal and drafting skills are also essential and you must be capable of working on your own initiative.
Ref: JO106096

If you are interested in any of these opportunities or would like to discuss your career prospects with one of our specialist consultants, please send your Curriculum Vitae to **Louise Kelly** at louise.kelly@robertwalters.com or **John Cleary** at john.cleary@robertwalters.com, or telephone: **(01) 6334111. Robert Walters, 2nd Floor, Riverview House, 21-23 City Quay, Dublin 2.** Web: www.robertwalters.com

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