Law Society Gazette

FREE WITH THIS ISSUE! Your Gazette legal planner 2004

Regulars

COVER PHOTO: THE NEW MERCEDES SLR MCLAREN

Cover Story

Editor: Conal O'Boyle MA. **Assistant editors:** Kathy Burke, Garrett O'Boyle. **Designer:** Nuala Redmond. **Editorial secretaries:** Catherine Kearney, Valerie Farrell. **Advertising:** Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 837 5018, fax: 884 4626, mobile: 086 8117116, e-mail: seanos@iol.ie. **Printing:** Turners Printing Company Ltd, Longford. **Editorial Board:** Pat Igoe (Chairman), Conal O'Boyle (Secretary), Tom Courtney, Eamonn Hall, Mary Keane, Ken Murphy, Michael V O'Mahony, Alma Sheehan, Keith Walsh

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4877.
E-mail: c.oboyle@lawsociety.ie Law Society website: www.lawsociety.ie

Volume 97, number 10
Subscriptions: €57.15

EUGENE F COLLINS: A CORRECTION

An item in the October issue of the *Gazette* incorrectly stated that Eugene F Collins, following its merger with GD Fottrell & Sons in May, has 'a complement of 30 solicitors and three consultants'. In fact, the firm has doubled in size since the merger and now has 53 lawyers and 15 partners, a total of 68 fee-earners.

PRIZE BOND WINNERS 2003

The winners of the Law Society's prize bond draw were: Conal J Clancy, Dublin; Donal O'Hagan, Dundalk; Denis McDowell, Dublin; Denis J Barror, Dublin; Brian A Gartlan, Dublin; John Rochford, Dublin; Patrick J Moran, Castlebar; Richard Whelehan, Mullingar.

EU PRESIDENCY TRANSLATION PROJECT

Clare-based e-working company E-Training International has won the contract to provide publication and translation services during the forthcoming Irish presidency of the EU. It will translate up to 80 documents a day and publish them on the Irish presidency website. As many as 60 people will be employed on the project over a ten-month period.

RETIREMENT TRUST SCHEME

New officer team in place

The Law Society has a new Council and a new officer team, with Gerard F Griffin taking over as president for the next year. Griffin was deemed elected to the post after serving as senior vice-president last year, while Owen Binchy was elected senior vice-president for 2003/04, with John D Shaw as junior vice-president.

The following members were elected to the Law Society Council in the recent ballot, with the number of votes received appearing after their names:

1. Brian J Sheridan	1,533
2. Geraldine Clarke	1,527
3. Owen Binchy	1,486
4. John O'Connor	1,473
5. John D Shaw	1,459
6. Kevin O'Higgins	1,363
7. Michele O'Boyle	1,334
8. Stuart Gilhooly	1,297
9. James Cahill	1,289
10. Moya Quinlan	1,233
11. Patrick Dorgan	1,226
12. John Dillon-Leetch	1,210
13. John Costello	1,203
14. Thomas Murran	1,163
15. Jarlath McInerney	1,139

The following candidates were not elected and the number of votes received by them appears after their names:

Law Society president Gerard F Griffin with senior vice-president Owen Binchy and junior vice-president John D Shaw

16. Gerard Doherty	1,073
17. Thomas Martyn	1,068
18. Richard O'Hanrahan	725
19. TC Gerard O'Mahony	386

As there was only one candidate nominated for Connaught, there was no election and Rosemarie Loftus was returned unopposed. In Munster, Eamon O'Brien was elected with 389 votes, beating Richard O'Hanrahan, who polled 150 votes.

Council members are elected for a two-year term. The sitting Council members who were elected last year are: Gerard Griffin, Anne Colley, Patrick O'Connor, Michael Quinlan, Donald Binchy, John P Shaw, Michael Irvine, Philip Joyce, Simon Murphy, James MacGuill, John Fish, James McCourt, Peter Allen, Helen Sheehy, Orla Coyne, and Marie Quirke.

Gazette Christmas publication

As usual, the *Gazette* will be taking a break over the Christmas period, so there will be no issue in January. Normal publication will resume with a joint January/February issue, due out in early February.

ONE TO WATCH: NEW LEGISLATION

Civil registration: section 16 of the *Social Welfare (Miscellaneous Provisions) Act, 2002* and the *Civil Registration Bill, 2003*

Section 16 of the *Social Welfare (Miscellaneous Provisions) Act, 2002* is more far-reaching than it would seem from its modest seven lines. It lists ten pieces of legislation which are to be amended in accordance with the act's schedule. Six of these are statutes grounding the civil registration system, which comprises the public registration of births, deaths and marriages.

An inter-departmental committee has been working to reorganise the civil registration system and computerise the records. It published a public consultation document in May 2001, and considerable investment has taken place to design a computer database and user interface, and also to enter existing (historical) records since 1844 and 1864. The amendments in section 16 were required to enable interim work to proceed pending the enactment of the *Civil Registration Bill, 2003*, which was presented to the Dáil on 17 July.

Many of the amendments effected by section 16 are technical, but some of them caused disquiet in the community of genealogical researchers because they did not go far enough in collecting information which is necessary to link records to the same person. In so far as solicitors use their services for the tracing of relatives for purposes of inheritance and ownership of property, or have clients who undertake that task themselves, they are of concern to members of this society also.

As of 1 July, an Ard-Chláraitheoir is authorised to keep and maintain registers of births and deaths in any form (including on computer) subject to their being capable of being converted into a legible form and being used to make a legible copy or reproduction of any entry in the registers. A pilot run has been running in Cork since 8 September, and the new, additional details for registration of births and deaths are being recorded in the Cork District since that date. The main additional information is: (a) in relation to births, the recording of both parents' personal public service numbers (PPSNs), their dates of birth, the father's surname at birth, and (b) in relation to deaths, the deceased's PPSN, occupation of the deceased's spouse and occupations of the deceased's parents or guardians. With one reservation set out below, the additional information in

President promises review of member support services

New president Gerard Griffin has pledged to set up a task force 'to examine how the society can co-ordinate and develop existing and new support services for members whose personal problems are affecting their professional lives and those of their clients'.

Speaking to the Law Society Council after his election on 7 November, Griffin said: 'Stress, depression, substance abuse and the like are problems which, regrettably, the society comes across from time to time in its members. We need to be better at helping such unfortunate colleagues to find the expert assistance they need. I am pleased to be able to tell you that Olive Braiden has agreed to chair this task force which is to report in 2004'.

Olive Braiden: heading up new task force

The draft terms of reference for the Support Services Task Force are:

- To review the support services currently provided by the Law Society and others for solicitors and trainee solicitors
- To assess best practice in other relevant organisations and to identify further support services that might be provided to solicitors and trainee solicitors
- To make recommendations regarding the most effective means of delivering support services to solicitors and trainee solicitors.

Brits praise Business Law Committee member

The work of Irish solicitor Michael Twomey was used extensively by the English Law Commission in preparing its recent report on partnership law reform. Twomey, a member of the Law Society's Business Law Committee, acted as a consultant to the commission, which describes him as a 'distinguished and influential commentator' in the area, and his book *Partnership law* as a leading text. If implemented in Ireland, the report's recommendations would make a solicitor's firm a separate legal entity – the firm, rather than the partners, would own property and enter into contracts.

GOLDEN PAGES ADVERTISING

The *Golden Pages* will be contacting solicitors over the next few months about listings in the 2004 phone books. Solicitors are reminded to take account of the *Solicitors advertising regulations* before deciding on the format of their advertisements.

Unit prices: 1 November 2003
Managed fund: 415.279c
All-equity fund: 96.762c
Cash fund: 252.676c

A ROSE BY ANY OTHER NAME
Laois solicitors have changed the name of their association from the Laois Bar Association to the Laois Solicitors' Association because it is more consumer-friendly, according to the association's PRO Charles Flanagan.

CAN'T KEEP A GOOD MAN DOWN
At its recent annual ball, the Clare Bar Association made a presentation to solicitor Sean Casey, who, after 62 years, continues to work full-time in his firm John O'Casey & Co. Eight of Casey's nine children trained to be solicitors, and four of his sons work in his firm.

CLARE PROBATION SERVICE
The absence of a full probation service is causing problems in County Clare. The local bar association says 'it is a cause of grave concern' as judges don't have the benefit of full probation reports. Also, since the death of the highly-regarded county registrar Enda Brogin in 2002, no-one has been appointed to fill the position.

relation to births and deaths is welcome and, as time goes on, it will assist family tracing, even without public access to the PPSNs, which will be withheld.

In relation to deaths, certain useful information is not being collected, including any previous surname of the deceased (important for tracing married women) and the deceased's place of birth, if known. The omission of any previous surname is remedied by part 5 of the first schedule to the *Civil Registration Bill, 2003*, but the deceased's place of birth, if known, continues to be omitted in the bill. With the difficulties in tracing people with common names, where a place of birth can be a vital clue to identity, it is difficult to know why this information is not being collected.

The collection of additional information on the parents of children may have an unexpected side effect: the reluctance of non-marital fathers to be registered. It is anticipated by social workers and others that some fathers may feel they must refuse to be registered because of the future implications this may have for social security benefits and earnings. Apparently, the Child Support Agency in England and Wales used information on birth certificates to oblige registered fathers to contribute to their children's upkeep. While on the face of it, this is unexceptional, there is an expectation that this development will result in a new kind of illegitimacy, being children with no registered fathers. As currently drafted, the *Civil Registration Bill, 2003* does not put non-marital fathers under an obligation to register (section 22), and any such obligation would be largely unenforceable.

Other issues arise with the bill, which will be raised by the society's Law Reform Committee as the bill is debated in the Oireachtas: restrictions planned in the manner of searching which are dictated by the design of the user interface to the new database software, other shortcomings in the user interface, and the proposed marriage procedure that requires a marriage to be registered by the parties and not the celebrant, as is presently the case.

The secondary legislation bringing the amendments referred to in section 16 of the *Social Welfare (Miscellaneous Provisions) Act, 2002* into effect are statutory instruments 132/02, 412/02, 481/02, 269/03 and 395/03. G

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

Unique Investment Opportunities

from the

National Treasury Management Agency

Savings Certificates
Savings Bonds
Prize Bonds

State Guaranteed and Tax Free Returns.
Investments may be made through An Post, Banks and Stockbrokers.
There are no fees, charges or transaction costs of any kind.

Issued by the National Treasury Management Agency

PIAB 'designed to disadvantage victims'

'Silly and almost petty' was how Labour senator Derek McDowell described tánaiste Mary Harney's statement that solicitors would be copied with correspondence by PIAB but that under no circumstances would PIAB communicate directly with a solicitor seeking to represent a victim.

He was speaking at the committee stage debate in the Seanad on the *PIAB Bill*. The bill has now been passed by the Seanad, but at the time of going to press it had not yet begun its passage through the Dáil.

The *PIAB Bill* commands all-party support, so its enactment is not in doubt. But politicians in both the Dáil and Seanad have publicly acknowledged that an intensive and very effective lobbying campaign by both the Law Society and solicitors representing local bar associations has made the imbalance and unfairness of PIAB proposed procedures the primary issue for debate in both houses of the Oireachtas.

The Fine Gael contribution in the Seanad was led by senator Paul Coghlan. On the issue of legal representation, he said: 'Having access to legal advice is meaningless where someone is effectively denied legal representation at their own request and their own expenses. The tánaiste's refusal to give on this point will, I fear, be a petard for PIAB. It will give people the opportunity to claim that the forum and the process are imbalanced and that the procedures are designed to minimise the rights of ordinary claimants'.

The independent senator and former Northern Ireland ombudsman Maurice Hayes said he was concerned at the absence of lawyers and lack of balance in PIAB, remarking: 'Neither IBEC nor the IIF has ever struck me as a shining apostle for human rights and the rights of the individual'. But not all independent senators favoured a right of legal representation for victims. Senator Joe O'Toole was vehemently opposed to this.

A number of Fianna Fáil senators also expressed support for opposition amendments on a right of representation for victims. These included senator Terry Leydon and senator Eamon Scanlon, who said: 'Insurance companies will have the best and most expensive legal advice available to them and claimants, if they so wish, should be able to use a solicitor to deal with PIAB. That would be a fair way of doing business'.

Murphy: 'PIAB has been designed so that victims invariably play away from home'

But despite pressure from all sides, the tánaiste refused to accept opposition amendments on this issue.

Expressing the views of the Law Society in an *Irish Times* article on the subject, director general Ken Murphy said that people seeking compensation for personal injuries will be forced into a system 'which seems designed to disadvantage them. Indeed, the new system will benefit the very people whose negligence caused the injury'.

He expressed regret that the tánaiste had rejected the society's views on the inherent bias of PIAB when society representatives had met her in Government Buildings on 12 November.

'Instead of the level playing field of the courts of justice – guaranteed by the impartiality of the judiciary – PIAB has been designed so that victims invariably play away from home, without a manager to organise and advise them, under rules devised by the opposition and with a referee whose match fee is being paid by the other team', he said.

Cork loses its old stamping ground

Munster solicitors are up in arms over a change in policy at the Stamps Office in Cork. Until late October this year, solicitors could call to the office and have documents such as deeds of transfer stamped while they waited.

According to Southern Law Association PRO Patrick Dorgan, this service has been curtailed without any consultation with solicitors, although they are the primary, if not the only, customers. 'We are at a loss as to why this action is necessary', he says.

The previous facility meant that there was direct interface between the Revenue official and the solicitor. Queries could be dealt with immediately, and stamp duty discharged and deeds stamped without any delay. The effect of the policy change is that correspondence between solicitors and the Revenue will increase, at an added cost to both. 'Instead of expanding the service, they are going backwards', Dorgan reckons.

And he adds: 'There is a very great problem with security of deeds. As there is no way of tracking them, the possibility of them being lost or overlooked is greatly increased'.

The Stamps Office says that the change in policy is a 'matter of security', that the service is the same, and that in exceptional circumstances it will process documents immediately. 'Other people post their documents', a representative told the *Gazette*, pointing out that those who called to the office in person and had documents stamped immediately were 'in a sense, skipping the queue'.

The Southern Law Association has called for an urgent meeting with the Revenue Commissioners on the matter.

Shouldering the burden of self

No-one likes to be told what to do, but for solicitors this is one of the burdens that come with membership of a self-regulating profession. Patrick Dorgan explains the Law Society's new regulatory powers under the *Solicitors (Amendment) Act, 2002* and why it needs them

Everybody hates solicitors. The only comfort we can take is that everyone probably hates barristers more, and the odd survey has shown that clients' trust in, and regard for, their own solicitor is exceptionally high. The problem is the perception of lawyers as a whole. Despite the Herculean efforts of the Law Society on the public relations front, it is unlikely that things are going to change.

One result of our negative image is that successive governments have felt that whenever investigation into any occupation or undertaking is necessary, lawyers generally – and solicitors in particular – are always first on the list. No account is taken of the fact that we generally come out of such scrutiny very well, and when outside overseers of the Law Society, such as the independent adjudicator, issue a report that is favourable to the society, it is completely ignored by the media.

This is an introduction to the following comments on a topic that is subject to much debate both inside and outside the profession – whether the profession should regulate itself. A significant number of solicitors feel that the Law Society's remit should be representative only, and that

regulation and discipline should be dealt with by an entirely separate body. Having been involved for a few years with the Registrar's Committee (which is, in effect, the District Court of the regulatory and complaints function of the Law Society), I am firmly convinced of the need for the society to retain control of its regulatory and disciplinary functions. Not only for the benefit of the profession, but also for the benefit of the public.

A policeman's lot

The society expends significant resources in the discharge of its disciplinary role. Considerable satisfaction with its performance has been, and continues to be, expressed not only by the lay observers on the Registrar's Committee but also by the independent adjudicator. It is significant that in the latest investigation of the profession – the Indecon report commissioned by the Competition Authority – there was no recommendation for the removal of such a function from the society. In summary, we are much better off if we police ourselves, police ourselves effectively, and are seen to do so.

The *Solicitors (Amendment) Act, 2002* was brought in primarily to curb solicitor advertising – a reversal of previous government policy, which had been to encourage such advertising. The Law Society took the opportunity to seek amendments to existing legislation to strengthen and extend its powers of regulation. The vast majority of solicitors have never advertised, and with the possible exception of reviewing their websites, need never have reference to the extensive restrictions in relation to advertising contained in the act.

This article proposes to deal solely with the extension of the society's regulatory powers. Solicitors who anticipate issues with their advertising would be well advised to consult the act directly, while noting that the Law Society is under intense scrutiny to ensure that the advertising rules are enforced.

On the beat

The extra powers obtained by the society are as follows. It is immediately clear that these powers will allow the society to act in situations where it was helpless in the past.

Section 2 amends earlier legislation by extending the grounds on which the society may impose conditions on a

f-regulation

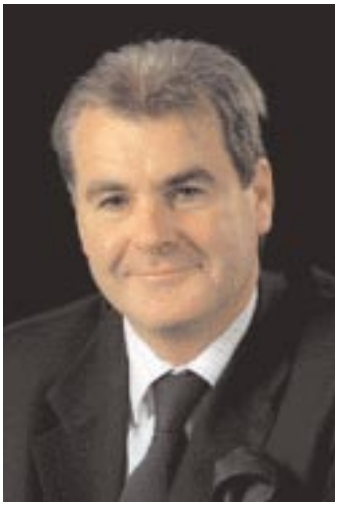
solicitor's practising certificate. Conditions can now be imposed on a practising certificate where the society has concerns about the number and nature of complaints against a solicitor, where there is a concern about the financial state of the practice, or where there is a need to protect or secure the interests of the solicitor's clients. This provision will enable the society to deal with the happily rare situations where a solicitor is clearly incapable of managing his practice, or is unwell, or under some disability – situations which usually manifest themselves in multiple complaints to the society. It also means that in appropriate cases, such as ill health or bereavement, the society can protect clients' interests without having to resort to disciplinary measures.

Under section 3, the society is obliged to inform a solicitor of the purpose of their attendance at the solicitor's place of business – except where the society considers that to do so could prejudice the exercise of any of its functions. This should strengthen the society's hand in dealing with cases of, for instance, suspected fraud, where the disclosure of that purpose could allow a solicitor to cover his tracks.

The definition of misconduct is extended by section 7 to include having any association with an unqualified person acting or pretending to be a solicitor, or with an unqualified person who carries out functions that are reserved to solicitors, such as conveyancing or accepting instructions to provide legal services to a third party.

Lugs Brannigan

Sections 8 to 11 relate to the Solicitors Disciplinary Tribunal, which, practitioners



Dorgan: 'Clients' trust in and respect for their own solicitor is exceptionally high'

will be aware, operates entirely independently of the Law Society. Hopefully, these sections will be of no interest to the majority of the profession. Section 12 permits the registrar of solicitors, of his own volition, to make complaints alleging a breach of any provision of the *Solicitors Acts* or subsequent regulations.

Section 13 is a new and useful provision which enables the society to combat the definite problem caused by solicitors who do not respond to the society's enquiries following receipt of complaints, or who fail to attend meetings of regulatory committees. This had become a major problem for the regulatory committees, and was commented on unfavourably by all of the lay members and the independent adjudicator and got significant unfavourable coverage in the media.

The society can now apply immediately to the High Court for an order compelling the solicitor to attend meetings or to respond to correspondence. The court also has the power to censure a solicitor or impose a financial sanction. The society's powers in this regard are further strengthened by section 14, which allows the society to require a payment of a contribution towards its costs *only* because the solicitor has not responded to a complaint, whether or not any finding of fault is made. The contribution is capped at €3,000, which is payable to the society rather than the compensation fund. The society can also issue a written reprimand in respect of complaints that are not serious enough to refer to the Disciplinary Tribunal, or where the solicitor has failed to respond to a complaint.

Long arm of the law

Other sections allow the society to publish findings of the Disciplinary Tribunal or notice of the making of its orders, and their effect, and a summary of the tribunal's report. The act also strengthens the society's powers where a solicitor or any other person contravenes or is likely to contravene any provision of the *Solicitor's Acts*. The society can now investigate alleged misconduct by an apprentice. The amounts of various contributions payable have been increased and converted to euro.

I hope that this gives some background to the provisions of the 2002 act and the reasons why the society sought its extra powers. It is sincerely to be hoped that any practitioner who has been diligent enough to read to this point will be of a character to ensure that none of the provisions will ever apply to him. G

Patrick Dorgan is a member of the Law Society's Compensation Fund Committee.

VOX POP

Do you think it would be appropriate to include a reference to God in the European constitution, and why?

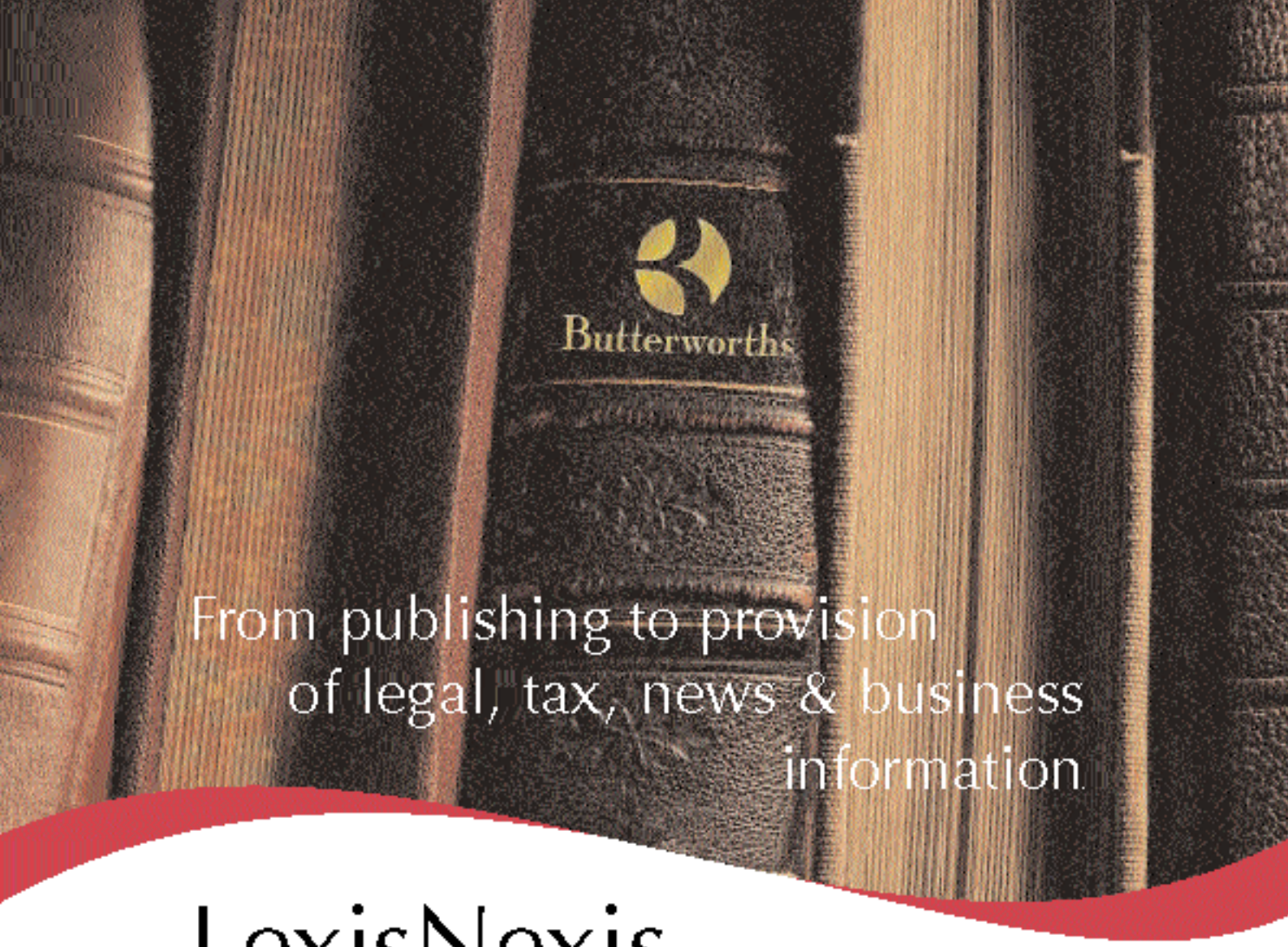
I believe that the reference to a god should be used. A person can affirm if he doesn't believe in God.
Owen Beechinor, CIE solicitor

No. The European Union should accommodate all beliefs and I think it's wrong to include a reference to God. It should be based on secular ideals.
Gerard Clarke SC

I think the vast majority of the populus would come from the Christian, Judaic or Muslim traditions, all of which, as far as I understand it, worship the same god. I think it would be appropriate that God be mentioned in that context.
Michael Hanna SC

For those who believe in God, God is in all things. Therefore, it is not necessary that he/she be mentioned. For those who don't, God is a non-entity, so why would the reference to a non-entity be in any way prejudicial? Ultimately, it probably doesn't matter, and if there were to be a reference to God, it would be more for cultural and historical reasons than religious or legal'.
Fergal Doyle BL

No. I don't. I feel that it's not a legal issue and not something that should be in the constitution as such.
Donough Cleary, Cleary & Co



From publishing to provision of legal, tax, news & business information

LexisNexis

is adapting to meet your needs

Butterworths Ireland is changing its name to LexisNexis. From now on, we won't just be a publisher of the finest legal and taxation materials and commentary, but will be your partner in creating information resources to ensure you and your organisation can take the initiative in the new knowledge economy.

Becoming LexisNexis will enable us to provide business and news information, as well as the most authoritative legal and tax materials, in a format that merges with the way you work, from a single Company.

Now that surely is a change worth celebrating.

To find out more, visit www.lexisnexis.ie the new home for your business information needs.

LexisNexis™

Letters

Discrimination or choice?

From: Michael O'Malley, Dublin

The media recently reported an academic survey about women's lack of progress in the legal profession (*see last issue, page 4*). From the news reports, they see sex discrimination as the main reason for their failure to advance.

I read about the survey just after I voted in the election for the Council of the Law Society. Last year, only 22% of the Council were women, although they comprise about 45% of our profession. An academic might think solicitors discriminate against women, and that a glass ceiling blocks them from the higher levels of the Law Society.

The figures hide a simpler truth: women solicitors won't participate in elections. This year, 19 candidates stood for 15 seats on the Council – but only three were women. With only three women candidates, at most 20% of the 15 seats could possibly be filled by women. The gender imbalance on the Council will continue in 2003, not because we discriminate against women but because women chose to opt out.

The 2003 Council elections give us hard data about how a gender imbalance is being perpetuated. Discrimination does not stop women standing in the elections; they only have to post in a form. Yet 2003 was not exceptional; every year they opt out.

Talking of discrimination alone obscures the real issues which limit women's full participation. We have to dig far deeper, and ask how many women are making choices which will limit their own advancement – and why they choose to do this.

Dumb and dumberer

From: James Coady & Sons, Carlow

I know that the *Dumb and dumber* column had run its course and was discontinued, but the enclosed letter from the Revenue Commissioners might come in useful if you introduce the column again.

The situation arises out of the red tape usually encountered when having a substitute deed of conveyance stamped, as a substitute deed was lost bearing the original stamps. Clearly the necessity to stamp a substitute deed would not arise at all if we could possibly comply with the Revenue Commissioners requirements in the first place. Anyone who has to use the procedure might find this letter mildly amusing or, alternatively, very infuriating.

Copy letter from the Revenue Commissioners:

Dear sir/madam,
Please forward the original stamped deed, as this must be cancelled before the substitute deed can be stamped.
Yours faithfully,
Stamp Duty Unit

A note from the Editor: The *Dumb and dumber* column wasn't cancelled; the profession just ran out of stories, apparently! There is still a bottle of cheap champagne waiting for the person who submits the best entry – in this case, Mr Coady. Send them in and we will publish. Contributions should be sent to the *Gazette*, Blackhall Place, Dublin 7, e-mail: c.oboyle@lawsociety.ie.

COURTS AND COURT OFFICERS ACTS 1995 - 2002
JUDICIAL APPOINTMENTS ADVISORY BOARD

APPOINTMENT OF ORDINARY JUDGES OF THE:

SUPREME COURT
HIGH COURT
CIRCUIT COURT
DISTRICT COURT

Notice is hereby given that applications are invited from practising barristers and solicitors who are eligible for appointment to the Office of Ordinary Judge of the Supreme Court, the High Court, the Circuit Court and the District Court.

Those eligible for appointment and who wish to be considered for appointment should apply in writing to the Secretary, Judicial Appointments Advisory Board, Phoenix House, 15/24 Phoenix Street North, Smithfield, Dublin 7, for a copy of the relevant application form.

It should be noted that this advertisement for appointment to Judicial Office applies to vacancies that may arise in the Office of Ordinary Judge of the Supreme Court, the High Court, the Circuit Court and the District Court during the period from the 1st January to the 31st December 2004. Applications received will be considered by the Board during this period unless and until the applicant signifies in writing to the Board that the application should be withdrawn.

Applicants may, at the discretion of the Board, be required to attend for interview.
Canvassing is prohibited.

Dated the 4th December 2003

BRENDAN RYAN B.L.
SECRETARY
JUDICIAL APPOINTMENTS ADVISORY BOARD

DRIVING

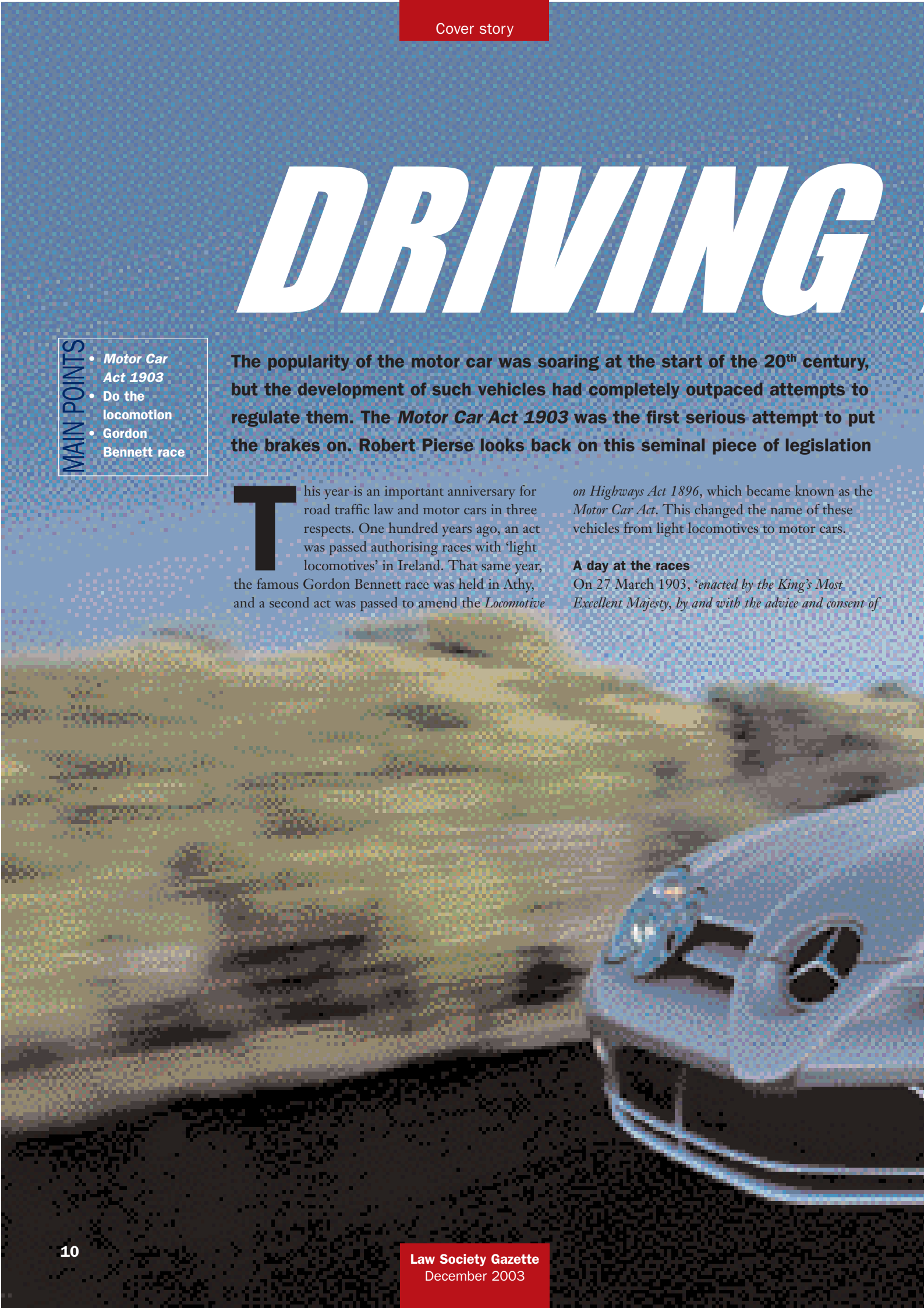
MAIN POINTS
- *Motor Car Act 1903*
- Do the locomotion
- Gordon Bennett race

The popularity of the motor car was soaring at the start of the 20th century, but the development of such vehicles had completely outpaced attempts to regulate them. The *Motor Car Act 1903* was the first serious attempt to put the brakes on. Robert Pierse looks back on this seminal piece of legislation

This year is an important anniversary for road traffic law and motor cars in three respects. One hundred years ago, an act was passed authorising races with 'light locomotives' in Ireland. That same year, the famous Gordon Bennett race was held in Athy, and a second act was passed to amend the *Locomotive on Highways Act 1896*, which became known as the *Motor Car Act*. This changed the name of these vehicles from light locomotives to motor cars.

A day at the races

On 27 March 1903, '*enacted by the King's Most Excellent Majesty, by and with the advice and consent of*



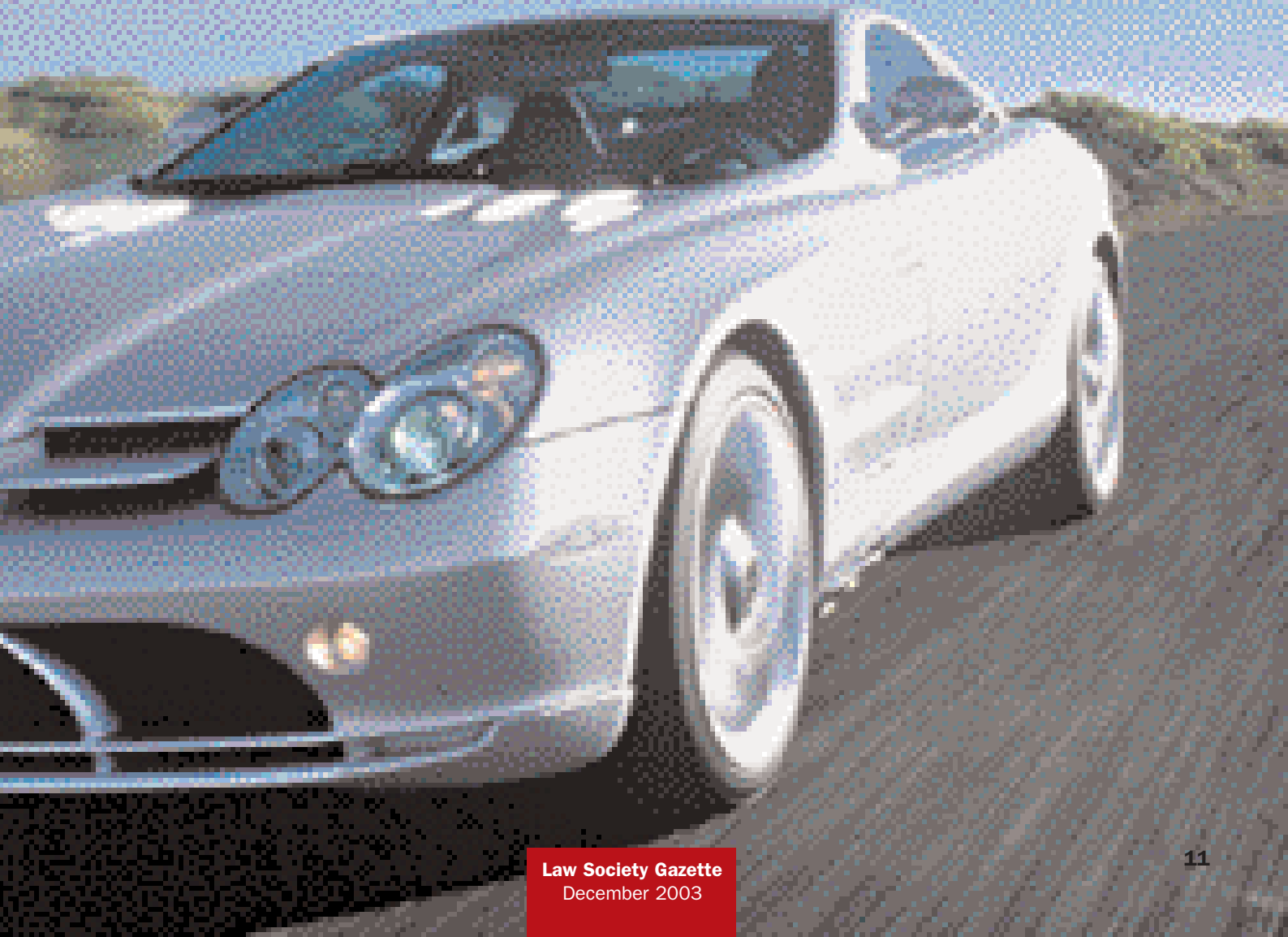
AMBITIONS

the Lords Spiritual and Temporal, and commons, in Parliament assembled and by the authority of same', the *Light Locomotives (Ireland) Act* (better known as the *Races Act*) was passed, authorising races with light locomotives in Ireland.

It was a short act of four sections. Section 1 provided that a county council could '*on application by any person or club, by order declare any public roads within the county may be used for races with light locomotives during the whole part of any days specified in the order not exceeding three days in the year*'. The order had to contain such provisions as were required by the Local Government Board for Ireland for the '*temporary suspension and regulation of other traffic, for the safety of the public, for the restriction of speed in populous areas and for other purposes incident to the proper conduct of such races*'. Public notice had to be given of the making of the order. When in force, the order meant that no provisions of any act, bye-law or regulation 'restricting the speed of locomotives or imposing any penalty for furious driving' would apply to any light locomotive or its driver engaged in a race.

Section 2 dealt with the expenses of the county council, which had to be defrayed by the applicants.

According to section 3, the term *light locomotives* would 'have the same meaning as in the *Locomotives on Highways Act 1896*' – in other words,




De Dion Bouton 1903


Fiat 1903


Georges Richard 1903

THE GORDON BENNETT RACE

While Irish newspapers gave a great deal of coverage to the Gordon Bennett Race, that race was in fact only the first event over a two-week period which was officially known as 'Automobile fortnight in Ireland'.

The Gordon Bennett race was held on a course based around Athy on 2 July 1903. The next day, the famous Phoenix Park Speed Trials were held. These ran from Mountjoy Corner to the Gough monument, a distance of over a mile. A world land-speed record of the time was reached at these – 85.9mph, achieved by one Baron De Forest.

PIC: ROYAL IRISH AUTOMOBILE CLUB ARCHIVE

Breton driver Fernand Gabriel in his Mors racing car

The fortnight ended with a tour from Cork to Killarney on 13 July, and the hill climb outside Killorglin on the old Killarney/Tralee Road. This hill climb is still commemorated by a monument at the site. Charles Stewart Rolls, of Rolls-Royce fame, took part. The events were basically organised by Claude Johnson, secretary of the Automobile Club of Great Britain and Ireland, who was to introduce Rolls to Fredrick Henry Royce the following year.

The races were brought to Ireland because was there was such official antagonism towards motors and motoring in England. They were held, of course, under orders made by the various county councils under the *Light Locomotives (Ireland) Act 1903*. One member of the House of Lords, Earl Spencer, commented that the debate on this piece of legislation was the first occasion on which all members of both houses had been in harmony on anything to do with Ireland.

For the Gordon Bennett race, the British entries were painted green, to mark the fact that the race was being held in Ireland, and the shade chosen became known as British racing green.

These events were a matter of huge importance for the development of the motor car and were a great boost to the fledging tourist industry in Ireland at the time.


PIC: ROYAL IRISH AUTOMOBILE CLUB ARCHIVE

Camille Jenatzy starting his Mercedes at Ballyshannon. Jenatzy went on to win the race

mechanically-propelled vehicles weighing under three tons. They also had to be designed so that '*no smoke or visible vapour is admitted therefrom except for any temporary or accidental cause*'. The *Races Act* applied only to this country and remained in force only until 31 December 1903.

Keep the red flag flying

The *Motor Car Act 1903* amended the *Locomotives on Highways Act 1896*, which itself was amending legislation to the *Locomotives Acts 1861* and following. For example, the 1865 act introduced the infamous 'man with a red flag' provision. Walking 60 yards ahead of each vehicle, a man with a red flag or lantern forced vehicles to travel at a walking pace, and warned horse riders and horse-drawn traffic of the approach of a self-propelled machine. The *Locomotive (Amendment) Act 1878* made the red flag optional under local regulations, and reduced the distance of the warning to a more manageable 20 yards.

The 1896 act raised the speed limit from 4mph to 14mph in the countryside and made lights on vehicles compulsory, as well as 'an instrument capable of giving audible and sufficient warning', usually a bell or a horn. Conviction for speeding carried a fine of up to £10 and a nominal excise duty of up to three guineas was charged on motor cars.

The 1903 act forms the basis for the dangerous driving section currently in use in Ireland, so it might be useful to reproduce the whole section in full. It reads as follows:

'1) If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, that person shall be guilty of an offence under this act

2) Any police constable may apprehend without warrant the driver of any car who commits an offence under this section within his view, if he refuses to give his name and address or produce his licence on demand, or if the motor car does not bear the mark or marks of registration

3) If the driver of any car who commits an offence under this section refuses to give his name and address, or gives a false name or address, he shall be guilty of an offence under this act, and it shall be the duty of the owner of the car, if required, to give any information which it is within his power


Hispano Suiza 1912


Panhard Levassor 1903


Renault 1906

MOTORING: THE EARLY YEARS

1861: *Locomotive Act 1861* restricts weight of steam engines to 12 tons and imposes a speed limit of 12mph

1865: *Locomotive Act* ('red flag act') imposes a speed limit of 2mph in cities, towns and villages, and 4mph elsewhere. A pedestrian has to walk 60 yards in front of the vehicle carrying a red flag. The vehicle is required to have three drivers aboard

1878: *Locomotive Amendment Act 1878* makes the red flag optional and reduces the warning distance to 20 yards

1888: Pneumatic tyres introduced

1899: The first motor car accident involving the death of the driver occurs in London on 25 February

1896: First speeding ticket is issued on 28 January. Walter Arnold is fined one shilling for travelling at 8mph in a 2mph area. Lights are now required, along with some form of 'audible warning'

1897: Automobile Club formed

1901: A Lloyd's underwriter issues the first motor insurance policy

1903: *Motor Car Act 1903* requires that all vehicles have to be registered and display number plates in a prominent position. The first number plates consist of one letter and one number, and the first (A1) is issued by London County Council. Driving licences are introduced. First use of windscreens. These were made of ordinary glass and inflicted terrible injuries in accidents. Speed limit raised to 20mph, with heavy fines for speeding and reckless driving. Henry Ford forms his company to manufacture automobiles.


This year's model: the 2003 Mercedes Benz SLR McLaren

to give, and which may lead to the identification and apprehension of the driver, and if the owner fails to do so he also shall be guilty of an offence under this act'.

Now she's sucking diesel

By 1903, the number of motor cars in Britain and Ireland had risen to over 17,000 and it was becoming increasingly difficult to identify offenders who had breached the few regulations that actually existed. The registration of motor vehicles and the compulsory display of number plates were introduced by section 2 of the 1903 act, and all drivers had to be licensed annually by their local council. The driving license cost five shillings, while the vehicle registration fee was 20 shillings.

Other sections in the act dealt with suspending a licence and disqualification from driving (section 4) and the duty to stop if you have had an accident (section 6). The act also raised the speed limit to 20mph, a change that undoubtedly pleased Dr John Colohan (the owner of the first car in Ireland), who had been pressing for this for quite some time. However, the Local Government Board retained the right to limit speeds to 10mph in certain places for reasons of public safety (section 9).

This same section introduced a notice of intention to prosecute for speeding offences. It can be noted with some regret that this 'notice of intention to prosecute' position was developed through the 1933 and 1961 acts but has now been totally repealed in the 2002 *Road Traffic Act*. The 1903 act provided for a penalty of £10 on a first conviction, £20 for a second offence and £50 for any subsequent offence. But it also said that a person would not be convicted of speeding if there was only one witness to the offence.

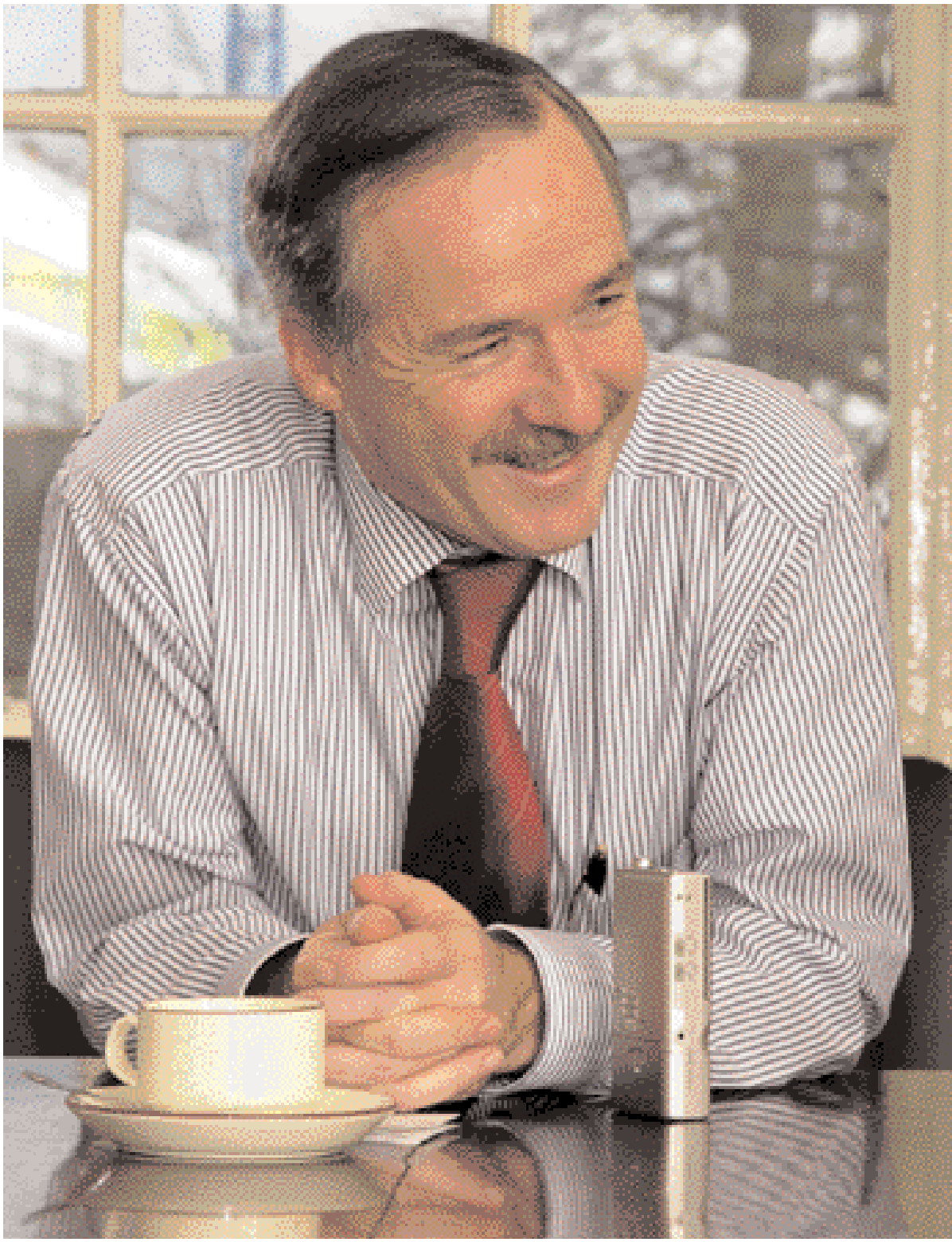
Road signs, including speed limit signs, were also introduced under this act and local authorities were charged with erecting such sign posts 'denoting dangerous corners, cross roads and precipitous places, where such sign posts appear to them to be necessary'.

The last section provided that the act would continue in force until 31 December 1906 and no longer, 'unless Parliament shall otherwise determine'. In fact, it remained in force until the 1933 *Road Traffic Act* was introduced by our own Free State government. G

Robert Pierse is a solicitor in Listowel, Co Kerry, and author of Road traffic law in Ireland *(third edition, 2003).*

AN **OFFER** YOU

The solicitors' profession is under attack like never before. The Law Society's new president, Gerard F Griffin, talks to Conal O'Boyle about his career to date and why he plans to come out fighting



CAN'T REFUSE

Don't ask, because he won't tell. But those who knew him in the early years say that the young Gerry Griffin was a bit of a tearaway. Now, as president of the country's 8,500 solicitors' profession, the *capo di tutti capi* is holding his annual conference in Sicily next year.

Coming as he does from an impeccable legal pedigree – his father was a senior counsel and Supreme Court judge and his mother was a solicitor, both of whom are still alive – it's not surprising that Griffin eventually followed in their footsteps. But it wasn't his first choice; originally, he wanted to be a vet. However, like a young Michael Corleone, he found himself sucked into the family business. You might say that he fought the law and the law won.

In 1972, Griffin joined L Branigan O'Donnell & O'Brien, where he was apprenticed to Larry Branigan. Branigan was the conveyancing partner, which turned out to be bad luck for Griffin.

'I never had a huge interest in conveyancing – and still don't to this day', he admits. 'My principal practices would be in litigation, particularly defence litigation, and also intellectual property law. Frank O'Donnell, who is now a Circuit Court judge, was the litigation partner there and I tended to have a greater interest in what he did than in conveyancing matters'.

Some like it hot

In 1977, when one of the young assistants in the firm, Patrick Ferry, set up on his own, Griffin left to join him. Then, in 1981, 'having had the corners knocked off me', as he says himself, he opened his own practice.

'I basically did everything that came in the door whether I had expertise in it or not, but I soon picked it up', he recalls. 'I had a huge fascination with criminal law and indeed for about ten years I spent virtually every day in the Bridewell or running trials in the Circuit Court. I feel the experience has stood to me in dealing with clients over the years, because all human life was there. There was also the joy of seeing true professionals such as Pat McCartan and Garrett Sheehan operate'.

Now, as managing partner in the Dublin law firm Kelly and Griffin, which employs three solicitors and five support staff, he specialises in civil litigation, having already proven that crime does indeed pay. But he is quick to discount the notion that money should be the driving force in a solicitor's life.

'There are ups and downs in every profession', he says, 'but I've found that the most satisfying thing is when you do something for the small man, usually when you are not getting paid for it, and you make a difference in their lives. Money isn't everything, money isn't the goal. As Geraldine Clarke often said at parchment ceremonies over the last year, "billable hours should not be your ambition in life", and I thoroughly endorse that'.

By way of example, he cites a case from the early 1980s of a female client who was separated from her husband and who had a child out of wedlock, as it was quaintly known in those days, with her new partner. When she went to register the child's birth, she was told she could either leave the father's name blank on the birth certificate or name her husband as the father.

'We took this case on and brought it all the way to the High Court and we made a change in the law', says Griffin. 'That was one where I felt that we actually changed somebody's life. We didn't get terribly well paid for it, but that didn't really matter. Whatever money you might have made then is long since spent, but the memory of the satisfaction of getting the result will last a lifetime. You can't bank it, but you can tell your grandchildren about it'.

Goodfellas

Griffin feels strongly that *pro bono* work is one of the hallmarks of the legal profession, even though it rarely merits a mention in the media feeding frenzy

FACT FILE

GERARD F GRIFFIN

Occupation: Solicitor (admitted to roll of solicitors in 1978). Managing partner in the Dublin law firm Kelly and Griffin, which employs three solicitors and five support staff. Specialises in civil litigation.
Education: Belvedere College, Dublin; third level: University College Dublin.
Law Society career: First nominated to Law Society Council in 1982 as representative of the Dublin Solicitors' Bar Association. Elected to Council in his own right in 1987. Junior vice-president 1998, senior vice-president 2002, president of the Law Society for year 2003/2004. Has chaired many of the society's committees during his 21-year tenure on Council, including finance, registrar's, compensation fund, litigation, and conference committees.

rochford brady group

...information as you need it

- Company Registration Office
- Closing Searches
- Copy Folio/File Plans
- Folio Inspections
- Registry of Deeds
- Licensing
- Planning
- Probate
- Title Registration
- Birth, Marriage & Death Certificates
- Mapping Searches

rochford brady legal services
64 francis street
dublin 8
tel 1850 529 732
fax 1850 752 436
www.lawsearch.ie
email: rochford@lawsearch.ie

- Irish Company Information
- UK Company Information
- Land Registry
- CID Search
- Watch List
- Closing Searches
- Judgment Searches
- Global Company Information
- Legal Diary
- Legal search archive
- Bonded searches

LawLink Ltd.
7/8 mount street crescent
dublin 2
tel +353 1 480 1800
fax +353 1 480 1801
www.lawlink.ie
email: support@lawlink.ie

that occurs whenever lawyers are discussed. But he is concerned that the profession's ability to support such non-paying work could be sacrificed on the altar of the great god Competition.

'Back in the early 90s', he recalls, 'we ran a survey and found that of the nine most common areas of work, only three were profitable and those were effectively subsidising the other types of work such as landlord and tenant and social welfare. Conveyancing, litigation and probate were the main earners.

'If the Competition Authority were to say that it was opening up conveyancing or probate to anyone who wanted to do it, that would have a huge effect on the income of the profession, which, as a follow-on, would then have a huge effect on our ability to do this *pro bono* work. I have absolutely no doubt that from the top firms down to the smallest firm in the country, there is an element of *pro bono* work within every practice.

'It is effectively the Irish solution to the Irish problem, because there is no functioning legal aid system in this country.

'Our whole ethos is access to justice, and if we don't do it then nobody else will. That's an area that has never been acknowledged by government, any government, because it raises the whole spectre of our totally inadequate legal aid system'.

The Godfather

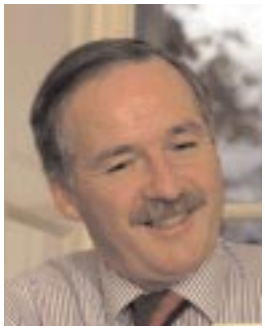
Not surprisingly, this is one of the areas that Griffin will be training his guns on during his presidency. His involvement with the Law Society began, like his two immediate predecessors and close friends Elma Lynch and Geraldine Clarke, through the Dublin Solicitors' Bar Association. He was recruited as a foot-soldier by DSBA kingmaker Colm Price in 1982 and entered the inner circle of the society's Council in 1982 as a DSBA nominee.

He became a made man when he was elected to Council in his own right in 1987, and every year since. While always garnering a respectable number of votes, he was never a poll-topper until last year's attempt by another Council member to prevent his re-election.

That was a reassuring vote of confidence for the fight ahead – and make no mistake, the Law Society under Gerry Griffin will be going to the mattresses. The gang war with the vested interests in the insurance and business lobbies is not over yet.

Griffin acknowledges that there is now no way to stop the Personal Injuries Assessment Board from being established, but he is quite prepared to shoot holes in the woolly thinking that underpins it.

'I think it's badly thought out and I don't think it's going to work', he says. 'It's just going to add another layer of bureaucracy where we don't need it. The difficulty about this whole debate is that nobody spoke on behalf of the victims. Indeed, during the very successful media campaign waged by Dorothea Dowling, logic was turned on its head. The victim became the person who collided with you or rear-ended you in traffic when they were drunk; the victim was the employer who took the guard off the machine that chopped your arm off. The legal profession has been the only one that effectively represented the victims.



'So far, no-one has explained how they are going to pay for the PIAB. I certainly don't think the insurers will pay for it out of their ample reserves. It seems to me that any costs will be passed on to the policy holders – and that's you and me and everybody else. What maybe seemed like a good idea on paper could potentially end up increasing premiums'.

White heat

Griffin takes over at what might politely be called a challenging time for the profession. Apart from the establishment of the PIAB, there has been the recent introduction of money-laundering regulations, the aforementioned Competition Authority study of the professions, questions about the profession's monopoly on conveyancing and probate work, and increasing talk of an end to self-regulation. Despite the concerted threats, the new president believes that the Law Society has enough firepower to see off the wiseguys.

'I think the future is bright enough', he says. 'Attacks on this profession seem to be cyclical, but we always survive, because at the end of the day the ordinary member of the public is more and more conscious of the need for legal advice. There was a time when the public would only go to a solicitor when they had a problem which had already manifested itself; now they tend to be more proactive'.

He points to the recent farce in Scotland, where conveyancing was opened up to a new breed of licensed conveyancers, only to see the system collapse, leaving the Scottish Law Society to pick up the pieces. Any similar move here is likely to end up the same way, he believes.

'When the Competition Authority or media commentators ask why solicitors have a monopoly on conveyancing or probate practice, there is one simple answer', he declares. 'We are professionals and we know what we are doing. Would they suggest the same thing of the medical profession? Should people be able to write their own prescriptions or perform their own brain surgery?

'There is so much paperwork involved in a conveyance, so much form-filling and so much compliance with legislative and other requirements before a matter can be closed that I just don't think any member of the public could do it. But I can see a situation where if they did try that, we would end up having to repair it.

'It's up to us to show that leaving this sort of work with a solicitor is in the public interest. That's my view and that's what I will be fighting for'.

And if any of those Competition Authority goombahs think differently, you can be sure that Gerry Griffin will make them an offer they can't refuse. G

DISCOVERY

MAIN POINTS

- Recent judgments of the master of the High Court
- *Rules of the Superior Courts*
- Requirements for a discovery order

The Master of the High Court, Edmond Honohan, has delivered a number of recent written decisions that may help practitioners clarify practice and procedure in seeking the discovery of documents. His decisions are reproduced here

Under the *Rules of the Superior Courts (No 2) (Discovery) 1999* (SI 233 of 1999), applicants for discovery are required to first serve the respondent with a letter specifying 'the precise categories of documents required and … the reasons why each category of document is required'.

In order to successfully obtain discovery of a particular category of document, applicants will have to show, first, that the documents sought relate to issues of fact upon which the applicant must succeed if the case against the respondents is to be won and, second, that the case will not be provable unless discovery of the documents is ordered.

These new rules have forced practitioners to ask themselves whether they really need to make an application for discovery. In addition, the Master of the High Court, Edmond Honohan, has struck down many applications and made an order for costs against the relevant applicant on the grounds that the letter seeking discovery failed to sufficiently identify the documents sought and the reason why their discovery was needed.

The proper way to make a successful discovery application was discussed in a *Gazette* article earlier this year (April issue, page 14), but the master has asked that the following decisions be published in full in the magazine to further clarify the requirements for practitioners.

Eileen McCord (plaintiff) and Dunnes Stores (Tralee) Limited
16 OCTOBER 2003

The plaintiff commenced proceedings just short of three years after an accident at her place of work, which she alleges caused her serious injury, injury such that she was 'forced to discontinue her employment' (particulars 26) and is claiming loss of earnings 'from the date of the accident' (particulars 24).

This is an application by the defendant for discovery of the plaintiff's medical records. Two categories are sought, pre- and post-accident, roughly speaking. The plaintiff has refused voluntary discovery, and there is an exchange of affidavits.

Strictly speaking, it is not necessary either for the applicant to put on oath a summary of the plaintiff's case or the existence of issues as an end product of the exchange of pleadings. The pleadings themselves will be read and the factual allegations therein will (however fanciful or farfetched) be taken as those which the alleging party wishes to prove if he can. The facts do not need to be proved now (by affidavit) but at the trial. Contrariwise, it is not necessary at this stage to swear the untruth of such allegations.

Nor should solicitors set out their legal submissions in the solemn form of an affidavit. Affidavits are to be used sparingly, to assert, as fact, circumstances which are the basis of a 'necessity' prompting the application for discovery or (in reply thereto) of a factual circumstance which may diminish the validity of the applicant's such assertion.

If a plaintiff alleges that he had suffered an injury to his or her person, his state of health immediately prior to the accident will be inquired into by the court. If a plaintiff alleges that he has suffered an injury to his or her person, his state of health after the accident will of course also be a central issue. The plaintiff will be highlighting the latter, while the defendant will be emphasising the former, if it is to his advantage to do so.

The plaintiff was (in December 1997) descending the stairs, lost her footing (falling backwards?), and ending six or seven steps further down, having bruised her buttocks and lower back. She carried on, 'battling with severe pain in her back', until her GP prescribed analgesia and rest. She was disabled by reduced and painful spinal movement with reduced straight-leg raising on the left side, through February and March 1998. She is 'still' (August 2001) unable to work, physiotherapy notwithstanding, and is under the care of a pain specialist.

Presenting herself to the defendant's doctor in June 1999, the plaintiff's complaints were of low-back pain radiating down the left leg. She also complained of pain in the back of the neck with occipital headaches. The doctor's view is that 'her current symptoms are now directly related to chronic osteoarthritis … the accident of December 1997 is unlikely to have significantly altered the progression of her chronic osteoarthritis over the years'.

The defendant's solicitor draws the attention of the court to his doctor's report to him that the plaintiff's consultant orthopaedic surgeon advised him that in September 1998 the plaintiff gave a history of low-back pain 'which started a few weeks ago', and gave 'no history of a trauma or fall'. The plaintiff's solicitor says that this is

CHANNELS

(defendant) [2000/1409P]

hearsay, and so it is, but it is still enough to prompt a request for discovery.

The request also encompasses records of an assessment of the plaintiff in August 1998, in which the consultant apparently saw a note that the plaintiff complained of 'chronic back pain for many years'.

The plaintiff's solicitor is incorrect in her view (para 12 of her affidavit) that 'no burden is placed on the defendant to disprove' the plaintiff's injuries. She has perhaps overlooked the defendant's specific plea that the injuries are derived from a pre-existing condition. But she *is* correct to state (para 13) that this is not a matter that can be 'resolved' by the production of medical notes and records, but only on oral evidence. Quite so, and to allow the defendant's expert witness to offer such evidence, he will have to be afforded access to the documents.

In general, pre-accident records will be discoverable only on a limited basis, particularly in terms of time frame. It is a snapshot of the plaintiff's health as at the date of the accident, which is being put together by the defendant. Early history, resolved conditions, childhood ailments and the like are usually immaterial. Asymptomatic conditions or predispositions may be candidates for discovery, but only when their materiality can be demonstrated, or stands to reason. If a 12 or 18-month search produces no written records of ailment, earlier history will (in the absence of expert evidence to the contrary) be unhelpful in the depiction of the plaintiff's immediate pre-accident state of health. In this case, I have clear evidence to the effect that earlier history is significant.

In answer to the request for post-accident records, the plaintiff's solicitor asserts privilege. While I am not concerned with privilege (it is not a factor inhibiting discoverability as such), it may be useful to comment here that this contention only applies in respect of documents prepared in contemplation of litigation. Many post-accident records are of a more mundane character and will be discoverable. In particular, admission records and treatment notes will have been prepared for standard hospital files and in-house communications. Even where a professional has been consulted with a view to his assessing the plaintiff's condition and ultimately offering evidence, it seems rather pointless to claim privilege when that professional's report will ultimately have to be furnished pre-trial. Some of the content of the correspondence between the solicitor and the professional may be privileged, but the records forming the basis of the professional's report should be available to both sides: how else is the value of the report to be challenged?

Practitioners (and the court) must now give effect to the dicta of the Supreme Court in last July's decision in *McGrory v ESB.* In the course of this judgment, the chief justice confirmed that: '*The court must be able to ensure that the defendant has access to any relevant medical records and to obtain from the treating doctors any information they may have relevant to the plaintiff's medical condition … There is no room today in properly conducted litigation for an approach which denies one side access to relevant material which in any event will be available at a later stage of the proceedings'.*

I will make the discovery order sought by the defendant.

Rose Ann Hardiman (plaintiff) and Eastern Regional Health Authority
17 OCTOBER 2003

This is an application by the plaintiff for discovery of five (categories of) documents. In brief, these are:

a) The accident report form
b) The safety statement
c) Records of training and instruction of the plaintiff
d) The size, weight and medical condition of a named in-patient
e) As to 'the decision to retire the plaintiff early on medical grounds'.

The plaintiff was employed in an old folks' home as a care attendant. Both the incidents to which she ascribes her injuries involved the same elderly resident and occurred, one week apart, in December 1997, just before Christmas. In the first incident, the resident was being helped to get up off a chair and stand, but 'leaned on the plaintiff's right arm and transferred her weight onto the plaintiff'. In the second, the resident, upright and supported by a zimmerframe, 'staggered and let go of the frame' and the plaintiff 'by linking with her right arm … had to take the full weight of the resident' to prevent a fall.

The plaintiff says the defendant could – and *should* in the due exercise of reasonable care – have prevented both these accidents by employing *at least* two male employees to assist the plaintiff in her work. I don't think the court will be overly impressed with this suggestion. The plaintiff also alleges that she was required to lift a patient (surely inconsistent with the accident as earlier described?) and that patients should have been required to wear a 'stout belt' which could be grasped and held by the plaintiff to prevent a fall.

In the particulars of personal injury, the plaintiff's complaints are of a painful right arm, especially the elbow. X-rayed in Tallaght in September 2000 (three years post-accident), minor osteoarthritic changes were noted in this elbow. Pain had become worse over time, extending to the right wrist and shoulder, limiting extension at the elbow joint and causing difficulties with housework and a forced retirement from work.

The plaintiff's particulars of carelessness on the part of the defendant recite (a), (b), (c), (d) and (j) allegations of a non-specific variety which could not possibly be the starting point for a discovery application: for example, 'exposing the plaintiff to a risk (unspecified) of damage or injury of which they knew or ought to have known', or 'being in breach of section 67 of the *Factories Act, 1955* as amended'. The pointless listing of general complaints is concluded with reference (k) to *all* the *Safety, Health and Welfare (General Application) Regulations 1993* and in particular six of them, including manual handling of loads and sudden movement of the load.

Whether any of this has any bearing on the plaintiff's case is difficult to tell. The plaintiff may have had to unexpectedly 'take' the full weight of the 'load', but she was not knocked down and indeed there is no description of any linkage between 'taking the weight' and the injury to the elbow joint.

David Kelly (plaintiff) and Mona (Ireland) Limited (defendant) [1999/
21 OCTOBER 2003

Accident at work, 20 February 1998. Statement of claim, May 1999. Particulars requested and supplied. Defence filed January 2000. Contributory negligence alleged – 'using a forklift truck in contravention of specific instructions'. Time passes … then, August 2002, a letter: 'please note that my client will be contending the hearing of the case that he has worked with forklifts in the past and in the presence of his boss and with the knowledge of his superiors'. *Finally*, March 2003, a request for discovery of documents.

Three categories of document are sought as follows:

a) Training and instruction for the use of the forklift, including specific instructions not to use
b) The forklift – use and control of; safety and instruction manuals; maintenance and modification, especially the switching
c) Safety statements, risk assessment, supervision and staff records.

It is quite apparent from this, and many, many other such letters in other cases, that practitioners have been in the habit of responding to the requirements of specificity in relation to discovery requests by first identifying categories of documents which would have come their way in the old days of general discovery, and having listed them, then turn their minds to figuring out some stateable 'reason' as to why they 'need' them. This is putting the cart before the horse. Practitioners ought to first ask themselves: what evidence am I missing which is crucial to the client's claim? Then: can I get this evidence without accessing the defendant's files? And, if not: what category of the defendant's documents may yield up evidence of the missing pieces of the jigsaw?

In this case, the letter requesting voluntary discovery, and the grounding affidavit, specify as reasons for the request various allegations by the plaintiff, using the formula (under the heading 'reason'): 'the plaintiff alleges … the plaintiff also alleges … and these documents are relevant for that reason … (or) … accordingly this category is necessary'.

Clearly, this is not enough. Discovery will, of course, only be ordered of documents which contain (or may lead to) evidence concerning (material and) relevant facts which are in issue, but relevance is no longer the only key to discovery. There is a second matter in respect of which the court must also be satisfied on affidavit. It is that, in the particular circumstances deposed to, discovery is necessary to enable the requesting party to prove a disputed material fact. Put another way, that the requesting party is critically hampered in the presentation of his case unless he is given access to the requested documents. Put even more simply, that in the particular circumstances deposed to, he needs access to the defendant's documents as his only source of proof of a disputed material/casual fact.

There are no such circumstances deposed to here or indeed circumstances of any description. Consequently, the respondent is unable to controvert such evidence, and the court is unable to judge

(defendant) [2003/8911P]

And so we come to the only issue which I have to decide, which is whether or not the plaintiff needs to know the weight of the resident who fell against her. It is correct, I think, to say that where the resident had her feet on the ground, the actual weight applied sidewards against the plaintiff would be significantly less than the resident's full weight, and the closer to each other the two were standing, the less was the weight applied sidewards. One must presume that the plaintiff carer, in the due performance of her duties, stood quite close to the resident. It follows that the actual full weight of the resident is of little practical assistance to the court or to the plaintiff, particularly where the plaintiff can offer her own evidence of whether the resident was significantly above or below average weight for elderly persons. That is likely to be as accurate a guess as to sidewards force as will be available to the court.

Note, in that regard, that the plaintiff feels she could have restrained the resident by holding only the 'stout belt' she has recommended in her particulars of negligence, so the resident couldn't have been *that* heavy!

As for categories 1, 2, 3 and 5, the defendant is consenting to an order with slight modifications to 2 and 3. I'm going to delete the reference in category 5 to the 'decision to retire the plaintiff early on medical grounds', since no such decision on the part of the defendant is alleged – in point of fact, the plaintiff records that she herself retired early from the job.

A final comment: in cases where 'necessity' is not self-evident, the court would not have to inform itself as to the 'necessity' for discovery if the applicant deposed to the factual basis of such a contention. Deposing to 'necessity' arising merely out of the existence of an issue is of no use – the court can read the pleadings for itself and deduce what allegations are in issue. The solicitor's opinion as to necessity (or even the much-favoured hearsay 'opinion of senior counsel's averment), even on affidavit, does not itself establish necessity and can, and often is, easily demonstrated to be incorrect – the court usually prefers its own opinion! The only solid evidence of the necessity to have access to certain documents is the testimony of the expert witness who deposes to being unable to form a considered view on the dispute without whatever data the documents may reveal. In turn, that expert's averment (or exhibited report) may prompt a replying affidavit from an equally qualified witness disputing its conclusion. (Of course, the court may not be satisfied as to the materiality of the disputed fact and may feel inclined to refuse discovery on that basis alone.)

In cases where the 'necessity' to prove a fact is incontrovertibly self-evident (and the fact is obviously material) and it is also clear that the evidence cannot be sourced other than by discovery, the court will not waste costs by insisting on formal averments of the logical basis of such self-evident necessity. In such circumstances, however, the party seeking discovery is unlikely to be awarded the costs of the application.

/833P]

the matter, except by guesswork purely on the basis of the accident description found in the pleadings. If I guess wrong, a fresh application can be brought. If I am right, then perhaps I may have saved a set of costs.

This apprentice plumber got up onto a 'live' forklift truck and set it in motion. It reversed ('perhaps') and ran into or alongside the guillotine machine nearby, trapping the plaintiff's leg against the machine's depth gauge and causing serious damage to the plaintiff's left lower leg bones and adjacent muscles. Initially in and out of consciousness, the plaintiff had a pin inserted and remained as an in-patient for eight days. The pin had to be replaced on a later occasion. He may be left with damaged toes and a risk of arthritis.

The defendant says the apprentice was specifically instructed not to attempt to drive the forklift. The plaintiff, on the other hand, blames the accident on the fact that the forklift was 'live' (instead of being switched off) and that he was not trained as to its use, and so on and so forth.

We may take it, I think, from the defendant's stance outlined above, that indeed the plaintiff was not trained in the use of the forklift. Their case is that he was warned off it altogether. So the first category is not necessary: the defendant will *not* be making the case that the plaintiff was trained. Whether the specific instruction alleged by the defendant was or was not recorded in writing will not dilute the plaintiff's evidence that he had *de facto* authorisation.

Then there is the second category. Actually, more like a number of clearly distinguishable categories, but with a common subject matter: the forklift. But the plaintiff's evidential problem apparently (quoting from the 'reason' offered) relates to the employer's failure to switch off the forklift, leaving it harmless to persons not authorised (and key-equipped) to use it. This case is, of course, completely at variance with the plaintiff's assertion that he had *de facto* authorisation, but a plaintiff is, of course, entitled to plead in the alternative. That said, however, it is clearly self-evident that the forklift was 'live': the accident could not have occurred otherwise. Discovery of none of the documents sought is necessary.

Finally, an old favourite – safety statements and risk assessment. The reason offered is not the usual one, viz, to prove the defendant's state of knowledge (not itself a material fact which the plaintiff must prove to succeed) but to prove the employer's failure to provide a safety statement or to have a risk assessment when so providing. These specific circumstances are non-causal – they are facts which, though alleged and denied, are surplus to the issues the court will determine. General non-specific breaches of the acts, insufficient staff and supervision are also cited – these are not specific enough for discovery purposes. Discovery in respect of non-specific pleas is the classic instance of 'fishing' – plead in general terms, then hope something turns up on discovery!

The application for discovery is dismissed with costs.

John Flaherty (plaintiff) and Cannon Concrete Products Limited (defendant) [2002/2477P]

9 OCTOBER 2003

The plaintiff's solicitor's affidavit contains the following description of the accident which occurred in January 2001: 'the plaintiff was descending a ladder which was secured to a machine when the said ladder became detached on one side from the said machine and swung out pivoting on pinned fixings on the other side in consequence whereof the plaintiff fell'.

The plaintiff now seeks discovery of four categories of document:
a) Three years' repair and maintenance records for the ladder
b) 'Damages and defects' in the said ladder during that period
c) Accident report
d) Safety statement.

In both the letter requesting discovery and in the affidavit grounding the application, the reasons advanced for this discovery consist only of the obvious, namely, because the plaintiff is making an allegation which is denied.

Why has the solicitor not deposed to any difficulty in proving a disputed fact? Perhaps on due consideration of her client's instructions, her engineer's report and the advices of counsel, it was not possible for her to depose to any particular gap in the evidence available or to any 'need' to access the defendant's files.

The case is actually about a ladder which was defective in a particular sense – that is to say, not a design defect, but rather that (because of an earlier accident and a makeshift repair) it was unsafe.

There may be an issue as to whether the plaintiff's loss of footing was as a result of the ladder becoming detached on one side and swinging or whether the foot slipped because of inappropriate footwear, but I am not concerned with the latter proposition.

To make sense of the plaintiff's request for discovery in relation to 'damage', 'defects' and 'repair', I have to trawl through the particulars for specifics.

At (1), we find the following: 'allowed or permitted the said ladder to be repaired in a makeshift fashion', and this points to the real alleged cause of the accident, and presumably prompted the request for discovery of categories (a) and (b). There is no other fact alleged with sufficient particularity which could serve as the basis for such discovery requests.

I cannot, however, ignore the fact that the plaintiff was in a position to furnish his own engineer with a full description of the accident and of the condition of the ladder. He 'outlined the condition of the ladder at the time' to the engineer on 5 July 2001, and the engineer has been able to complete his analysis and form his conclusions accordingly. (Although he states that the safety statement and any risk assessment 'should be obtained', this has not prevented him from forming an expert opinion; in any event, the contents of such documents merely serve to establish an undeniable state of knowledge on the part of the defendant, but such knowledge is not a material fact in the case – ignorance of the risk is no answer to the plaintiff's claim.)

My general conclusions in regard to the foregoing are borne out by the opinion of Ronnie Robins, senior counsel for the plaintiff, which ended up in front of me. (I won't here disclose anything of interest to the defence.) What is of interest to me is that he directed that discovery of documents be sought in two categories only, namely as to:
1) How and when the ladder was damaged
2) As and when repairs were carried out and the nature of the same and who they were carried out by.

Nor can I ignore Mr Robins' observation that 'the cause of this accident was the defective ladder, and while querist will undoubtedly be criticised for effecting the makeshift repair, the obligation was not on him but on his employer to repair it', from which I cannot but deduce that the plaintiff's instructions confirmed that some time before the accident he himself made the temporary repair of the ladder described in the engineer's report. It follows that the plaintiff is particularly well placed to describe the condition of the damaged ladder before and after the temporary repair.

This plaintiff has no need to discover the defendant's records for three years pre-accident of the repair, maintenance, damage and/or defects in the ladder. Obviously, the plaintiff's solicitor was correct in not deposing to the contrary.

As for the accident report, access to same is being sought (although senior counsel did not consider it necessary) just to see what's in it. As with requests for safety statements, the ubiquity of requests for same is the product of the practice of agreeing to discover same because (a) they are compact and identifiable, and (b) because it's less bothersome to agree to discovery than to embark on a dispute about relevance. Failure to dispute relevance, however, leads to an expectation (indeed, often an 'entitlement') on the part of the party requesting discovery. Unless a party is able to depose to an evidential lacuna which may be overcome via discovery of these documents (or part thereof), discovery will not be ordered. Even if there is a lacuna, it is necessary to satisfy the court as to the nature of the evidence which discovery may lead to, and as to the materiality, or even causality, of the fact of which the evidence may be probative. For example, the fact that there is no reference in the safety statement to the risk of which the plaintiff fell foul is not itself evidence of causal negligence – nor indeed is the fact that there is no safety statement at all! G

Fast on your feet

You may never need to argue a case in court but, as a lawyer, you should certainly be able to. That's the rationale behind the Law Society's advanced advocacy training for solicitors. Kathy Burke talks to a husband-and-wife team about their experiences on the course

MAIN POINTS

- Evidence lectures
- Dealing with expert witnesses
- Advanced advocacy course 2004

Imagine that you are in court with your client and your case has been called, but your barrister hasn't arrived and his mobile phone is turned off. You know your case inside out. So how do you feel about standing up and arguing it yourself?

This is the situation that Jennifer O'Riada found herself in, and the experience prompted her to undertake the *Advanced advocacy for solicitors* course. The course is run by the American National Institute for Trial Advocacy (NITA) and is organised in Ireland by the Law Society's continuing professional development section.

NITA is a not-for-profit organisation, set up in 1970 to improve the quality of courtroom advocacy. Its mission statement acknowledges that 'all people are entitled to quality legal representation by skilled and ethical lawyers' and commits itself to making education and training materials available to all lawyers, regardless of their ability to pay.

O'Riada is a partner in the Dublin law firm O'Riada Solicitors and specialises in litigation and personal injury. She saw the advanced advocacy course advertised in the *Gazette* at an opportune time, soon after that barrister's no-show. It seemed to suit her expertise, and she was one of 25 successful applicants on the first course in 2002.

'I never had any problem making applications in any court, but running a case is different', she says. 'If you are not up-to-date with the rules of evidence, and have not honed and refined the techniques involved in examining and cross-examining a client, summing up and arguing points of law before a judge, you are at a distinct disadvantage when your opponent does it on a daily basis'.

The actor in everyone

The advanced advocacy course has two parts. Before the five-day practical part, barrister Paul Anthony McDermott gives seminars on the rules of evidence.

ADVANCED ADVOCACY FOR SOLICITORS 2004

The September 2003 group will be invited to apply for a place on the weekend course from 11 to 14 March 2004 in Newcastle, Co Down. This course will be attended by members of the law societies of Ireland, Northern Ireland and the Scottish Society of Solicitor Advocates.

A brochure with details and an application form for the 2004 advanced advocacy course be sent to all solicitors with the January CPD brochure. The evidence lectures will take place on Wednesday 21 and 28 April and 5 and 12 May 2004. The five-day advocacy component begins on Monday 13 September 2004. The closing date for applications is Wednesday 11 February 2004.

In the first year, there were seven weekly two-hour lectures. This year, to facilitate colleagues who had to travel further to attend, the series was organised into four three-hour lectures. According to O'Riada, these lectures are perfect for a solicitor who has not studied the law of evidence for some time. Ironically, she adds, McDermott gave the students specific case law from the English Appellate Courts that, had she known it just weeks earlier, would have allowed a judge to rule in her favour on the admission of video evidence in the High Court.

The practical part of the course involves case analysis, followed by moot trials. The NITA tutors help participants to analyse the particular case on two levels: first for points of law, and then from the perspective of how to present these in the tight framework of the court. They analyse the other side's strong points and anticipate the weaknesses in their own case, which, O'Riada stresses, is very important. The course covers direct and cross-examination, opening statements and summing up, and other techniques such as the manner and order in which witnesses are presented.

'Irish lawyers are notorious for not looking at the witness during cross-examination'

NITA's courses are based on 'learning-by-doing'. Tutors give instructions based around a complex fictional case file. Participants put theory into practice in video-recorded mock trials in a simulated courtroom environment, which features trainee or newly-qualified solicitors and accountants playing the roles of witnesses and expert witnesses. NITA tutors, supported by Irish tutors, assess the individual participant's performance. The final 'trial' takes place in the Four Courts in front of real High Court and Circuit Court judges.

Jennifer admits that she was apprehensive before the practical part – most of all, of making a fool of herself in front of her peers and then having to watch it on video. 'I realised that I was not alone', she says, 'the beauty of the course is that you measure yourself against yourself; you see real improvement, and as you get better, you get more confident'.

Off-stage action

Being left in the lurch by counsel is rare, and not the only reason for a solicitor to study the skills of advocacy. Jennifer O'Riada points out that understanding the advocate's skill has allowed her to know if the barrister she is instructing is doing a good job. 'It can be hard to tell if they have got across to the judge one of the points you need them to get across. This is a skill you get from the course', she says.

Impressed by the first course, she took part in the follow-up weekend course in Cavan in March, and then trained to be a tutor for the 2003 group in September. Her husband Philip O'Riada, also a partner at the firm, was in the 2003 group. 'I heard very positive reports', he said, 'and saw people that I knew to be busy, competent colleagues ready to go back, giving freely of their time to act as tutors. That impressed me, as everyone is so pressurised these days'.

Philip specialises in conveyancing and probate, mainly for small-to-medium enterprises, which does not involve much time on his feet in the courtroom. Nonetheless, he saw a value in doing the course. 'What we learnt helps in case conferencing, where we analyse the case with clients', he says. 'They are impressed by our structured approach'.

Furthermore, he points out, in the growing number of quasi-judicial forums, such as the Employment Appeals Tribunal and the proposed Personal Injuries Assessment Board, clients expect their solicitors to be able to represent them, because clients can't always afford to instruct a barrister as well.

Communication skills were a new addition to the 2003 course and will be continued in the future. A communications expert, who is not a lawyer but who understands courtroom technique, came from America to instruct the group. Participants are taught to use body language appropriately. Jennifer gives an example of where some lawyers don't: 'Irish lawyers are notorious for not looking at the witness during cross-examination. Even senior counsel do it'. Softly-spoken people are taught to speak out so that they can be heard, while more voluble participants are encouraged to key down so as not to appear aggressive. 'They make it very clear to you that there are both intellectual and emotional agendas to be achieved', says Philip O'Riada. 'About 70% of all communication is non-verbal. This can come as a shock to lawyers!'

Bonfire of the vanities

Today, employers routinely send staff on communication courses. This means that advocates have to deal with increasingly sophisticated witnesses who, in some cases, can project themselves more effectively than the lawyers. In addition, says Philip, 'younger solicitors are getting more structured training and becoming more formidable competitors than would have traditionally been the case'.

Dealing with expert witnesses was another enhanced element in the 2003 course. Lawyers with a literary rather than a mathematical bent can have problems examining expert witnesses who give reports and evidence in technical language.

Participants were taught how to approach this situation and it was emphasised that expert witnesses were there to clarify issues for the court, not to add to confusion.

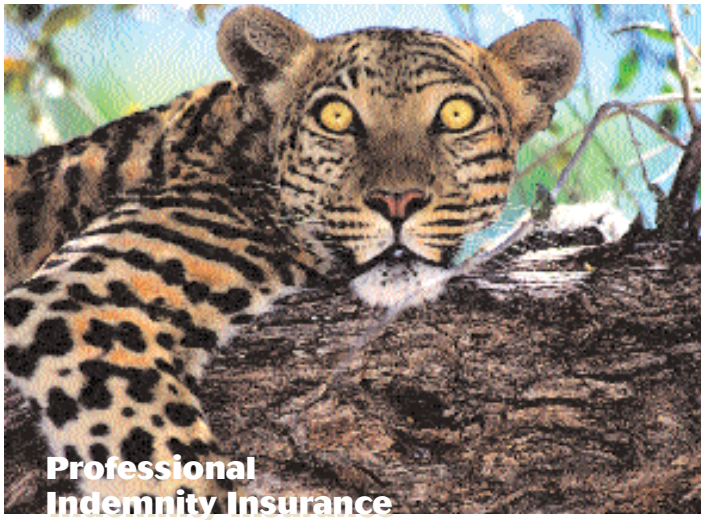
Some participants have commented on the fact that NITA was originally designed for the US legal system, which has distinct differences to our own. For example, there are fewer jury trials in Ireland. We also have a different style of opening statement, if any, and the traditional division of the roles of solicitors and barristers does not exist in the United States. But according to Jennifer O'Riada, this does not matter. 'The minutiae of the course are not important; you are learning the fundamental techniques', she says. And Philip adds: 'Our legal system looks for the best legal solutions available. Whether they are found in Canada, New Zealand, the US or another common-law jurisdiction, they could be here tomorrow. This course will improve the quality of law practised in this jurisdiction, for the benefit of all concerned'.

Solicitors have a right of audience in all Irish courts. According to Jennifer, outside the Pale few solicitors will instruct a barrister at District or Circuit Court level, but in Dublin the practice is widespread. She feels strongly that this situation needs to change. 'It's not about doing the work that barristers do', she explains. 'It's about being competent to represent your client if you need to'.

Participants and tutors from the 2003 group (Philip O'Riada, second row, far right)

Both of the O'Riadas have a piece of advice for the participants on next year's course. The five-day practical course requires you to take a full week away from your office, which can be difficult. If possible, get someone to cover for you. A huge amount of preparatory work must be done each evening for the next day, and they emphasise that there is no question of winging it. 'I had visions of slipping out at breaks to ring the office', Philip recalls, 'but you cannot do both'.

'It is exhausting', Jennifer concludes, 'but I have never felt so intellectually stimulated by anything to do with the law since I qualified'. G



In her third and final article on post-death planning, Anne Stephenson discusses the capital acquisitions and residential property tax consequences of deeds of family arrangements and the solicitor's role in protecting the personal representative

MAIN POINTS

- **CAT and residential property tax**
- **Secondary liability**
- **Protecting the personal representative**

The capital acquisitions tax (CAT) implications of deeds of family arrangement must be thought through carefully. Where the consideration in such a document or deed is that of natural love and affection, be particularly careful about the value at which the property is transferred for the purposes of the family arrangement. Remember that you will have filed a value in the schedule of assets as at the date of death.

In a deed of family arrangement, two possible charges to CAT arise:

- Inheritance tax: payable on the inheritance from the deceased to the beneficiary
- Gift tax: payable if the family member receiving the property has not paid full consideration to the beneficiary.

Certificates of discharge in respect of both dispositions will be required. It is our job as solicitors to ensure that the personal representative is fully protected. We must keep in mind that while the donee is primarily liable for the payment of this tax, the personal representative and the disponer are secondarily liable.

Section 8 of the 2003 *Capital Acquisitions Tax Consolidation Act* would not apply to a family arrangement because the initial disposition was not a gift, but could arise later (see below).

Death becomes her

The disponer – one of the children in the example given in last month's issue – is secondarily liable for payment of CAT by the donees. On a future disposition by the donees, they will have to produce certificates of discharge from CAT both in respect of the gift and the voluntary disposition. And they will also have to prove that the disponer survived the execution of the deed by more than two years. In this regard, section 8 of the *Capital Acquisitions Tax Consolidation Act, 2003* says:

'*Where a donee takes a gift under a disposition made by a disponer (in this section referred to as the original disponer) and, within the period commencing three years before and ending three years after the date of that gift,*

POST-DEATH PLANNING

'There are only two certainties in life'... and one of them is that you don't want this fella turning up at your door

the donee makes a disposition under which a second donee takes a gift and whether or not the second donee makes a disposition within the same period under which a third donee takes a gift, and so on, each donee is deemed to take a gift from the original disponer (and not from the immediate disponer under whose disposition the gift was taken) and a gift so deemed to be taken is deemed to be an inheritance (and not a gift) taken by the donee, as successor, from the original disponer if:

a) The original disponer dies within two years after the date of the disposition made by that original disponer, and

b) The date of the disposition was on or after 1 April 1975'.

In other words, if a sale takes place within two years from the date of the deed, the purchaser will require an indemnity in the form of an insurance bond against the eventuality of inheritance tax becoming payable by reason of the death of the disponer within a two-year period.

You need to advise your client of the tax implications of the proposed voluntary disposition from the perspective both of the disponer and that of the donee. However, you can only act for one

AND TAXES

party, because if you act for all parties involved there is an inherent conflict of interest. While the donee of the gift is the person primarily accountable for gift tax payable in connection with the gift of the disponer, as already mentioned, the donor is secondarily accountable for payment of such gift tax.

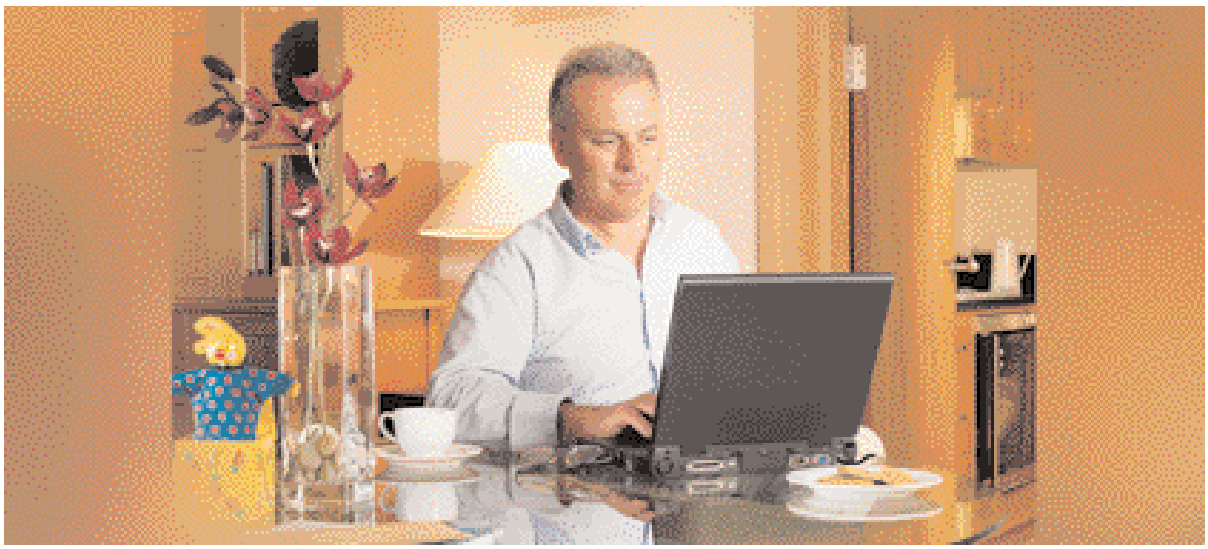
Therefore, it is in the interest of the disponer to ensure that any gift tax payable is discharged by the donee, and it is your responsibility to inform the disponer of this. Should the property be sold or mortgaged within 12 years of the date of the gift or the date of the inheritance, the purchaser or mortgagee will insist on an absolute certificate of discharge from CAT.

ROS

Revenue On-Line Service

Fast Access, Secure Filing

Electronic filing of Gift/Inheritance Tax Returns



ROS - the instant, easy and secure way to conduct business with Revenue

Benefits of ROS:

- File and pay tax returns on-line
- Instant access to tax details
- On-line calculation facilities
- Instant acknowledgement
- Effective and efficient use of time
- Elimination of clerical errors
- Secure 24x7 access
- Simpler user-friendly return forms
- Environmentally friendly
- Speedier repayments

For further information on ROS
visit the Revenue website at www.revenue.ie
You can also e-mail roshelp@revenue.ie

Revenue

ADVISING THE PERSONAL REPRESENTATIVE

The role of a personal representative is daunting and – considering his responsibility and the liability to the estate, the beneficiaries and the Revenue Commissioners – it is a wonder that any personal representative accepts the role in the first place. Very often, the implications of his role are not properly pointed out to him. He quite rightly depends on the solicitor to protect him in executing that function.

One of the most common reasons for a personal representative getting into trouble is forgetting what he was originally appointed and empowered to do under the will or under the *Succession Act, 1965*. His role is to protect and administer the estate, and ultimately to vest the estate in the persons entitled. In the absence of any legislation governing the variation of wills in this jurisdiction, it is not the function of the personal representative to vary or alter the circumstances on death or to go further than he is obliged to do.

Straightforward administrations can be brought to a standstill, or indeed a stand off, by disputes between the personal representative and the beneficiaries over family arrangements. In many cases where a personal representative is under pressure to go along with the 'better plan', the central function of the personal representative is overlooked. He is then bound up in the personal affairs of the beneficiaries which, at the very least, can result in a conflict of interest.

One has to ask, in relation to deeds of family arrangements in particular, would the personal representative have been better off vesting (and, in the process, obtaining receipts and indemnities) and letting the beneficiaries get on with whatever they wished to do from that point onwards? I believe there is a real need for us as practitioners to advise the personal representative on how his role should be discharged, not to encourage variations of the will that expose him to considerable additional, and sometimes unnecessary, liability.

In family situations, the tendency is for the personal representative to help. I am of the view that in assisting without due care, an unnecessary layer is added to the role of the personal representative, and we take on an unnecessary liability.

When the voluntary disposition has been completed and the deed stamped and adjudicated, you should ensure that the donee applies for a certificate of discharge from gift tax. If the disponer dies within two years of the taking the gift, that is, the date of the conveyance, the donee is deemed to take 'on her death'.

Section 3(1) of the 2003 act says:

'*1) In this act, "on a death" in relation to a person becoming beneficially entitled in possession, means:*

a) On the death of a person or at a time ascertainable only by reference to the death of a person

b) Under a disposition where the date of the disposition is the date of the death of the disponer

c) Under a disposition where the date of the disposition is on or after 1 April 1975, and within two years prior to the death of the disponer, or

d) On the happening, after the cesser of an intervening life interest, of any such event as is referred to in sub-section (2).

2) The events referred to in sub-section 1(d) are any of the following:

a) The determination or failure of any charge, estate, interest or trust

b) The exercise of a special power of appointment

c) In the case where a benefit was given under a disposition in such terms that the amount or value of the benefit could only be ascertained from time to time by the actual payment or application of property for the purpose of giving effect to the benefit, the making of any payment or the application of the property, or

d) Any other event which, under a disposition, affects the right to property, or to the enjoyment of that property'.

This means that a person is also deemed to take 'on a death' where a disponer dies within two years of making the gift.

Buried in paper

Depending upon the individual circumstances, a clearance certificate in respect of residential property tax (RPT) may also be necessary. RPT was an annual tax payable by a person who owned and occupied relevant residential property in Ireland up to 5 April of each year. A return of all relevant residential property on a form RP1 had to be submitted each year between 5 April 1983 and 5 April 1996.

Although RPT has been abolished with effect from 5 April 1997, a clearance certificate procedure remains in place in relation to the sale of certain residential properties in order to help the Revenue Commissioners to collect outstanding tax.

The value threshold relating to the residential property tax certificate of clearance has been increased to €1 million in accordance with the indexation provisions in the legislation. Where the sale consideration for residential property exceeds €1,000,000, the vendor must provide the purchaser with a certificate from the Revenue Commissioners indicating that all residential property tax due for years for which the tax was in operation has been paid (see the Conveyancing Committee's practice note in the May 2002 issue of the *Gazette*, page 33).

However, if the property was acquired after 5 April 1996, no RPT clearance certificate is required, irrespective of the amount of the consideration. Section 135 of the *Finance Act, 2000* provides that where a sale of an estate or interest in residential property is completed after 10 February 2000, the requirement to obtain a clearance certificate will not apply where such estate or interest had previously been acquired after the 5 April 1996 by a *bona fide* purchaser for value.

Always remember who you are acting for. If it is the legal personal representative, are you adequately protecting him? If you are acting for the legal personal representative, you cannot also act for the beneficiaries. If you act for the beneficiaries, remember that you cannot act for all of the beneficiaries simultaneously as there is a clear conflict of interest. There are a few other situations that can arise in an administration of an estate, with the possible exception of disclaimers or a section 117 action, which can cause you to forget who you are acting for or, at best, end up advising various parties with different interests.

Mary Laffoy's *Irish conveyancing precedents* gives an excellent precedent for a deed of family arrangement at precedent J24. G

Anne Stephenson is the principal of the Dublin law firm Fallon and Stephenson.

The Irish Institute of Legal Executives has had a busy year. Its continuing professional development programme was launched in October, while the first batch of graduates from its new diploma programme will be conferred this month. Naomi Murphy explains

A legal executive is a professional person who is a member of the Irish Institute of Legal Executives (ILEX) and assists in the operation of general and specialist legal matters with solicitors, barristers, in the Irish courts and in other areas of commercial and legal practice. Legal executives must perform their duties in accordance with the highest standards of integrity and conduct, as required by the legal profession and the institute's code of rules.

ILEX is recognised throughout Ireland and membership almost doubled in 2003. It now stands at 350 members.

This year, the institute has focused a lot of its

LEGAL EXECUTIVE COURSE CONTENT

The *Legal executive professional legal studies* programme includes the following modules:

Stage one

- The Irish legal system
- Introduction to the law of tort
- Introduction to contract law
- Civil litigation, procedure and case management
- Criminal law, the constitution and judicial review.

On completion of stage one, students will attempt a two-hour examination in each module.

Stage two

- Legal research, writing and communication skills
- The law of real property, conveyancing and succession
- Business law
- Elements of family law and procedure (elective)
- Criminal procedure and litigation (elective).

On completion of stage two, students will attempt one three-hour examination in each module.

Further information

Legal executives interested in becoming members of the institute or in learning more about ILEX's certificate and diploma programmes should see the flyer enclosed in this issue of the *Gazette* or contact the Irish Institute of Legal Executives, 22/24 Lower Mount St, Dublin 2 (DX no 17). Alternatively, you can contact Philip Burke, head of the professional law school at Griffith College Dublin, South Circular Road, Dublin 8, tel: 01 416 3341, e-mail: philip.burke@gcd.ie, or Pamela Morton, course administrator, tel: 01 415 0442, e-mail: pamela.morton@gcd.ie.

MAIN POINTS

- Irish Institute of Legal Executives
- Launch of CPD programme
- ILEX course content

UTIVE CLASS

energy on organising continuing professional development courses for its members, non-members and students. The launch of its CPD courses took place on Thursday 16 and Thursday 23 October.

The first CPD course included a lecture on the law of torts, consisting of recent developments concerning the *Statute of Limitations* and also asbestos litigation. Also included was a lecture on company law, which covered the impact of the *Corporate Law Enforcement Act, 2001* together with the *Section 150 list: practice and procedure*. Relevant recent case law was discussed in both areas. The speakers on the night were Vincent Nolan BL and Andrew Fitzpatrick BL.

The second course was in conveyancing and the speaker was Cathleen Noctor BL. Among the issues considered were common causes of action and remedies, including adverse possession, enforcing a contract for the sale of land and section 117 applications. Recent case law on specific performance, the statute of frauds, recission, and landlord and tenant was also discussed in this lecture.

The Law Society has confirmed that solicitors who attend the institute's CPD lectures will have their time credited by the Law Society if the subject is both beneficial and relevant in their area of law. ILEX would like to thank the Law Society's Education Committee for its assistance and for allowing the institute to host its CPD courses in Blackhall Place.

Any readers interested in attending courses in particular areas are invited to contact the institute with suggestions. Hopefully, we can arrange to cover such topics.

Professional legal studies

The role of the legal executive in professional legal life continues to grow. The first batch of legal executive students will be conferred this month at a ceremony in the Royal Hospital Kilmainham, where they will receive their diplomas in professional legal studies from Griffith College Dublin and ILEX. The course was established in 2001 and is run over a two-year period. Students receive a certificate in professional legal studies on successful completion of stage one.

Since the course's inception, the course committee has been guided by detailed feedback from students in an effort to keep the programme contemporary and highly relevant to the needs of today's legal executive (see **panel**).

The first stage of the programme begins in the week of Monday 19 January 2004 and concludes in the week ending Friday 4 June. The course entails four hours of lectures per evening, for one evening a week. Lectures for stage one will take place on Tuesday evenings from 6pm to 10pm. Lectures for stage two will be held on Wednesday evenings from 6pm to 10pm.

The student who attains the highest marks on completion of stage two will be awarded the *Frank Crummey Perpetual Trophy*. This award is named in honour of Frank Crummey, one of the founding members of the institute and an active council member who has tirelessly given his time to the institute down through the years. Griffith College has agreed to waive the stage-two course fee for the student who is awarded the highest grade-point average in stage one of the programme.

Full-time students

Griffith College will enrol all full-time students on this programme as student members of the institute. Those intending to take the course on a full-time basis should be aware that Griffith College runs a scholarship scheme for deserving students who have the talent and ability to enter a programme of study at the college but are unable to do so due to economic or social circumstances. The scheme is open to all students applying for full-time undergraduate programmes and who are presently attending an approved second-level institution.

Distance learning

More than a third of the students who have registered on the professional legal studies programme have elected to take the distance-learning option. This year sees the opening of a second examination centre in Cork for Munster-based ILEX students.

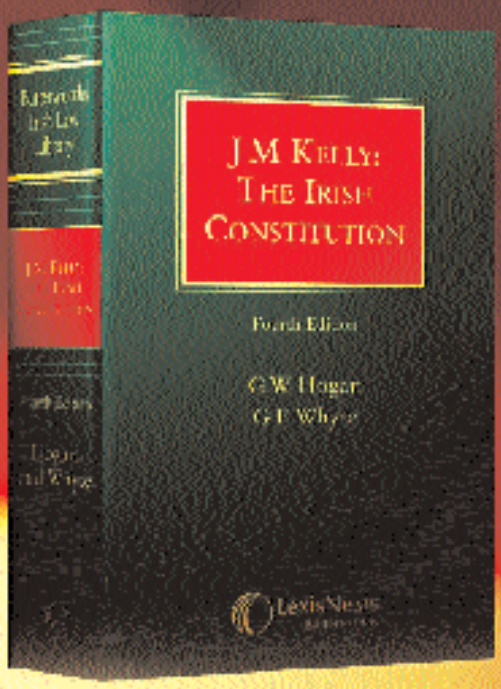
Distance-learners will be supported in their study by the provision of comprehensive course manuals, e-mail and telephone support. Homework is prescribed for completion at the end of each module. Distance-learning students are allocated their own distance-learning tutor for the duration of their study.

Court visits will be organised as part of the civil litigation, procedure and case management module in stage one. During stage two, students will visit Mountjoy prison as part of their criminal procedure module.

Now in its third year, the course has so far attracted over 300 students. G

Naomi Murphy is education officer at the Irish Institute of Legal Executives.

Announcing – The Definitive Treatise on Irish Constitutional Law



Order Kelly: The Irish Constitution before 30th November 2003 and take advantage of the special pre-publication offer price of €170 (a saving of €25!)

Kelly: The Irish Constitution

fourth edition

By Dr Gerard Hogan SC and Professor Gerry Whyte

The latest edition, fully up-to-date

This is the latest edition of the late JM Kelly's seminal work, recognised as the authoritative and definitive commentary on Ireland's fundamental law.

This work will provide you with an expert commentary on the Irish Constitution. To ensure you have all the information you need each Article is set out in full, in English and Irish, and is then analysed in detail, with reference to all the leading Irish and international case law.

New to the fourth edition

- Ease of Reference – marginal notes make it easier to use
- Content – commentary expanded to over twice that of the third edition
- Constitutional Developments – all constitutional developments since 1994 fully covered

To find out more about how this leading text can be of use to you or to place an order, please phone (01) 873 1555. Alternatively visit our online catalogue at www.lexisnexis.ie

LexisNexis™ Butterworths

Book reviews

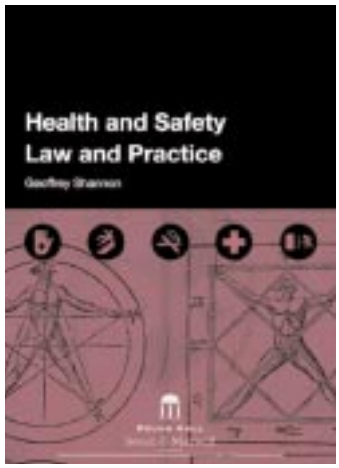
Health and safety: law and practice

Geoffrey Shannon. Thompson Round Hall (2002), 43 Fitzwilliam Place, Dublin 2. ISBN: 1-85800-277-X. Price: €89.

At a time when solicitors are required to be increasingly conscious of health and safety law, this book provides an excellent point of reference. It covers a wide variety of relevant and inter-related areas, including common-law duties owed by employers to employees, occupier's liability, and the *European Communities (Hygiene of Foodstuffs) Regulations 2000*, as well as the area of health and safety law itself.

The main piece of legislation in the area, the *Safety, Health and Welfare at Work Act, 1989*, is dealt with in detail. The regulations that solicitors in general practice may need to refer to most often are covered, including the *Maternity Protection Act, 1994*, the *Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000*, the *Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998* and the *Safety, Health and Welfare at Work (Construction) Regulations 2001*, which Shannon discusses in detail.

It is certainly a useful discussion of the main duties and obligations imposed by those regulations, as they very often form the basis of Health and Safety Authority (HSA) prosecutions. Shannon considers in some detail the *Safety, Health and Welfare at Work (General Application) Regulations*. As part of this discussion, he considers some areas of more recent development, such as bullying,



harassment and stress in the workplace.

The second half of the book usefully provides full texts of the principal pieces of legislation in the area and approved codes of practice and guidance material (mainly issued by the HSA), which are also important reference points for practitioners. Another area which is of benefit to solicitors, in their capacity as employers or self-employed persons themselves, and also for the service that they provide to clients, is the section which provides guidelines for drafting a safety statement.

All in all, the book provides a fantastic introduction to the area of health and safety law and will no doubt quickly become the first point of reference for many practitioners when confronted by a client who seeks advice in the area. G

Barrett Chapman is a solicitor with the Dublin law firm McCann FitzGerald.

Gaeilge agus bunreacht

Séamus Ó Tuathail. Coisceim/Institúid na hÉireann (2002). Price: €5.

Bunreacht na hÉireann: two texts or two constitutions?

Micheál Ó Cearúil. Insitiúid na hÉireann (2003). Price: €5.

In the past, economic liberalisation and competitiveness were seen as militating against Irish. What use is it? Wouldn't students be better off learning one of the continental languages? Who bothers with acts in Irish anyway? Even today, it is the *soi-disant* cosmopolitans who, ignorant of the meaning of the word, are most strident in shouting down any place for Irish in public life. These books simply and devastatingly demonstrate just how parochial and out-dated such thinking is. They are proof, if proof were needed, that a familiarity with the jurisprudence surrounding Irish and an awareness of the Irish text of *Bunreacht na hÉireann* can enrich and enliven the study of law as well as being the difference between winning and losing a case.

This point is timely. In his celebrated judgment in *Ó Beoláin v Fahy* (2 IR 279 [2001]), Mr Justice Hardiman pointed out that bilingualism (not to say multilingualism) is a feature of most modern states and warned, in the context of a prosecution under the *Road Traffic Acts*, that failure to publish legislative material simultaneously in both English and Irish would imperil prosecutions by the state. Nor is the issue confined to proceedings involving the state. It is surely only a matter of time before civil proceedings brought by an individual or company are challenged on the grounds that there has been a failure, for

example, to comply with order 120, rule 2 of the *Rules of the Superior Courts 1986*.

Ina theannta seo, is ábhar imní don stát é easpa aistriúcháin, le fiche bliain anuas, d'ionstraimí reachtúla. I gCeanada, sa chúis Attorney General of Québec v Blaikie ([1979] 2 SCR 1016), *pléigh Cúirt Uachtarach Cheanada an dualgas reachtúil chun dlíthe a chur amach as Béarla agus as Fraincís ar aon agus cé nach luaitear insan reachtaíocht sin ach achtanna, ghlac an chúirt leis gur gá ionstraimí reachtúla a aistriú chomh maith (lch 1027)*: 'It is apparent that it would truncate (the statutory duty) if account were not taken of the growth of delegated legislation. This is a case where the greater must include the lesser'. *Ó thaobh na hÉireann de, níl ambras ach gurb é seo brí airteagail 25(4)4 an bhunreachta freisin.*

Meeting the language requirements of both Irish- and English-speakers need not incur any additional cost. All that is needed is a timely consideration of the issue, together with proper planning and co-ordination. However, neglecting timely provision for language choice or leaving it to the last minute leaves one open to costly litigation to correct the error – and a costly process of remedying the neglect, as the registrar for companies found out in *Ó Murchú v An Cláraitheoir na gCuideachtaí* ([1998] TETS 42), and as the state was reminded in *Ó Beoláin*. Failing to plan is planning to fail.

In *Gaeilge agus bunreacht*, Séamus Ó Tuathail SC gives a lively and comprehensive overview of the cases dealing with the issue of language rights in general and the constitutional status of Irish in particular. It is made all the more valuable coming from someone who has been centrally involved in the mapping of language rights in Ireland. This involvement is reflected in the sureness of touch found throughout the book. In a mere two pages, for example, Ó Tuathail corrects the erroneous reading given to *Attorney General v Coyne and Wallace* ([1967] 101 ILTR 17) over recent decades by some of the brightest stars in the legal firmament.

Bunreacht na hÉireann: two texts or two constitutions? is a development of the introductory essay contained in Ó Cearúil's masterly *Bunreacht na hÉireann: a study of the Irish text* (all-party Oireachtas Committee on the Constitution, 1999). Together with the paper *Bunreacht na hÉireann: neamréireachtaí agus easpa leanúnachais?* (*An Aimsir Óg*, 2003), Ó Cearúil is fast creating a one-man *corpus* of constitutional studies. As with Séamus Ó Tuathail, a lifetime of experience is brought to bear on his analysis of the development of an Irish text of *Bunreacht na hÉireann*, although, in Ó Cearúil's case, this experience was in an Rannóg Aistriucháin of the houses of the Oireachtas.

Legal historians and practising lawyers alike will delight in the righting of a great wrong by Ó Cearúil. The Irish text of *Bunreacht na hÉireann* is not, as Cosgrave asserted in 1937 and Mr Justice McCarthy repeated in *Attorney General v X* ([1990] IR 1), 'a mere translation of the English'. It is in fact a text which was developed side-by-side with the English text as the thinking underpinning aspects of the constitution was teased out.

De Valera's deliberate intention appears to have been to frame an Irish text that would stand on its own merits linguistically, for which task he chose Micheál Ó Gríobhtha, a man of acknowledged literary skill, rather than to frame a translation, for which the staff of an rannóg aistriúcháin would have been more than equal. Unlike the English text of an bunreacht, Ó Gríobhtha did not follow the words used in the Irish translation of the 1922 constitution, even in those provisions which were carried over in their entirety from the earlier document. This led Ó Cearúil to opine that: 'de Valera's aim of bringing an end to the 1922 constitution – a constitution whose contents had been dictated by London and which had ... institutionalised the most repugnant provisions of the treaty between Great Britain and Ireland – was therefore more clearly realised in the Irish text than in the English text'.

Sa comhthéacs seo, bhí ciall leis an gcinneadh chun forlámhas an téacs i nGaeilge a aithint in airteagal 25 an bhunreachta. Glacadh leis sna cúirteanna fadó nár musclaítear aon deacrachtaí mar thoradh ar an gcinneadh seo. Mar a dúirt Budd Bmh sa chúis Ó Donovan v Attorney General ([1961] IR 114):

'It is not to be thought that those who framed or enacted the constitution would knowingly do anything so absurd as to frame or enact texts with different meaning in parts. It could only happen by inadvertence. It would seem to follow as a matter of commonsense that one should not approach the elucidation of the meaning of either text with a view to seeking a conflict, but rather with a view to seeing if they can properly be reconciled. I say "properly" advisedly, because if in fact the words used are not in a form really found to correspond, the Irish text must prevail'.

Leis an gcaint bhearrtha fágtha as, níl aon cúis iontais sa ráiteas seo. Tá taithí le fada an lá san Eoraip ar comhreiteach téacsanna i teangacha eagsúla agus de gnáth bíonn na téacsanna seo (an Ghaeilge ina measc) comhudarásach. Claoíonn an fhoirmle seo leis an coinbhinsiún Vienna *a bhforáilitear (in alt 33.1)*: '(w)here a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail'. *Gan forlámhas thugtha d'aon téacs Eorpach, comhréitíonn Cúirt na hEorpa neamhréireachtaí nó easpa leanúnachais idir na leaganacha eagsúla ar bon laethiúil trí anailís na gcuspóir níos mó ná anailís ghramadach. Ní don chéad uair, tá ceachtanna le foghlaim ó na hEorpaigh!*

Readable and informative in equal measure, these two monographs form a treasure trove of information made available to the lawyer and general reader alike, with almost reckless abandon. They are required reading for anyone with an interest in law, whether professional or intellectual. G

Benedict O Floinn is a practising barrister.

BOOKS PUBLISHED

Drunken driving and the law
Mark de Blacam
Thomson Round Hall (2003)
43 Fitzwilliam Place, Dublin 2
ISBN: 1-85800-287-7
Price: €89

Criminal justice history
Ian O'Donnell and Finbar McAuley
Four Courts Press (2003)
7 Malpas Street, Dublin 8
ISBN: 1-85182-768-4
Price: €45

The *Succession Act, 1965* and related legislation
Brian E Sperin with Paula Fallon
Lexis Nexis Butterworths (2003)
26 Ormond Quay Upper, Dublin 7
ISBN: 1-85475-2944
Price: €140

Civil procedure
Adrian Zuckerman
Lexis Nexis Butterworths (2003)
26 Ormond Quay Upper, Dublin 7
ISBN: 0-406-94898-4
Price: €188.45

LAW SOCIETY OF IRELAND ANNUAL CONFERENCE

14 – 18 April, 2004

SPONSORS:

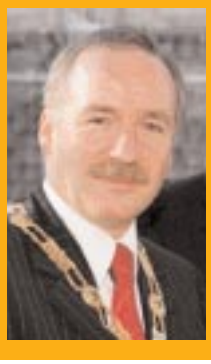
Bank of Ireland

Jardine Lloyd Thompson Ireland Limited

OSBORNE
www.osborne.ie

Solicitors' Mutual Defence Fund Limited

Message from the President



Dear Colleague,

I have pleasure in inviting you to join me at the society's Annual Conference in Sicily on 14 – 18 April 2004.

The island of Sicily, influenced by such notable civilisations as the Greeks, Romans, Arabs and Normans, awaits you. I look forward to meeting you there, for what I hope will be a stimulating conference in a truly magnificent location.

This year the theme of the conference will be **'Render unto Caesar: money laundering and the law',** and you cannot fail to be impressed by the panel of distinguished speakers who will address you on this topic.

We are most grateful to our sponsors – Bank of Ireland, Jardine Lloyd Thompson Ireland Limited, Solicitors' Mutual Defence Fund and Osborne Recruitment – for their continued support of the Law Society's Conference and I would ask you to give them your favourable consideration in return.

I thank all of you who have made advance bookings and I hope those who have not yet booked will now do so and look forward to a memorable conference, which we hope will be enjoyed by all.

Gerard F Griffin, President

BUSINESS SESSION:

Render unto Caesar: money laundering and the law

SPEAKERS WILL INCLUDE:

PATRICK R HOWETT

– PROFESSIONAL INDEMNITY INSURANCE

Patrick R Howett, graduated from UCD with a Bachelor of Commerce in 1975 and a Master of Business Studies degree in 1976.

He joined PriceWaterhouseCoopers in 1976 and completed his traineeship and became an Associate of the Institute of Chartered Accountants in 1979. He is a past chairman of the Dublin Chartered Accountants Students Society and was elected as a council member of the Insurance Brokers Association for three years, when he chaired the Strategic Review Group and Technology Committees

He joined Jardine Lloyd Thompson Ireland Limited in 1983 as accountant. Having served in different capacities he was appointed to his current position as managing director in 1995.

He has extensive experience in the area of professional indemnity insurance and in particular solicitors' professional indemnity insurance and is currently appointed as the manager of the Assigned Risks Pool and, in this capacity, he serves on the Professional Indemnity Insurance Committee of the Law Society of Ireland.

BARRY GALVIN

Barry Galvin was born in Cork, Ireland on 1 November 1943. In 1965 he graduated from University College Dublin with a Degree of Bachelor of Civil Law.

In 1966, he was admitted to practice as a barrister at law having attended lectures at Kings Inns Dublin.

In 1969, he was admitted to the roll of solicitors and began to practice as a solicitor. From 1969 to date, he has practised in the family law practice in Cork. In 1983, he was appointed by the then Attorney General to be State Solicitor for Cork City.

Between 1989 and 1995, he was an elected member of the Council of the Law Society of Ireland. He served on various committees, mainly on the regulatory side.

At various times. he has served as vice-chairman of the Compensation Fund Committee and chairman of the Professional Purposes Committee, the Registrar's Committee and the Anti-Moneylaundering Committee.

Between 1996 and 2003, he held the statutory position of Bureau Legal Officer of the Criminal Assets Bureau.

PADDY AGNEW

Paddy Agnew, Rome correspondent of the *Irish Times*, has been a journalist for the last 24 years. He started in journalism at *Magill* magazine in Dublin before moving to the *Sunday Independent* and then to the *Sunday Tribune*. In December 1985, he moved to Rome, where he and his family have lived ever since. As well as covering the basic Italian news and current affairs beat, he is also a member of Vatican Press Corps as well as being a specialised soccer writer and TV commentator.

A regular contributor to the BBC World Service, RTÉ, Today FM, *The Guardian* and ESPN international, Agnew is also the senior English language TV commentator for Raitrade, an affiliate of Italian state broadcaster, RAI. For the *Irish Times*, Agnew covers the broadest spectrum of Italian life, from Serie A controversy to Mafia killings and from Vatican concistories to Rome traffic jams.

Born in Kilrea, Co Derry in March 1952, Agnew is married to Dympna Hayes and has one daughter, Roisin, aged 15. He and his family live in the Northern Lazio village of Trevignano Romano, approximately 50 kilometres north of Rome.

PROFESSOR MARIO CENTORRINO

Full professor of Political Economy at the University of Messina (Faculty of Political Sciences).

External consultant for the Italian Interior Ministry from September 1996 to September 1997 concerning the connection between the economy and criminality. Consultant for the presidency of Confcommercio (1996 – 1997) on the issue of economic criminality. From September 1997 to June 1999, he served as external consultant of the Italian Parliamentary Enquiry Committee concerning the Mafia. He was economic consultant to the president of Sicily from December 1998 to September 1999; member of the socio-economic observatory concerning organised crime at the CNEL (1999 – 2001).

He has been director of the study centre for the documentation of Mafia crime at the University of Messina (1997 – 1998); member of the scientific committee of the international centre of documentation on Mafias and anti-mafia movement in Corleone (2000 – 2002).

He teaches and conducts research at Formez and the School of Local Public Administration, paying attention to local development and territorial marketing.

PACKAGE A
BASED ON CHARTER FLIGHT
Cost: €1,150.00 per person sharing

The cost includes return flights (Dublin/Sicily/Dublin), taxes, transfers, four nights' bed and breakfast at the Grande Albergo Capotaormina Hotel, welcome reception, conference seminar and gala banquet. Surcharges could apply in respect of changes in air fares or increases in insurance premiums or VAT/tax rates in respect of the hotel.

CHARTER FLIGHTS

- 14 April, 2004: departure from Dublin to Sicily – morning flight – times to be confirmed
- 18 April, 2004: departure from Sicily to Dublin – afternoon flight – times to be confirmed

(*Times are subject to air traffic control restrictions. However, we are endeavouring to secure morning departure and afternoon return flight times so that we may facilitate those wishing to travel from Cork, Shannon, etc. Exact times will be detailed in your booking confirmations. The charter flight will be allocated strictly in order of bookings received.)* Those delegates not allocated to the charter flight will be accommodated on scheduled flights which will incur a supplemental charge and transfer charges.

Note: Connecting flights from Cork, Shannon etc can be arranged by Sadlier Travel. Please complete relevant section on the reservations form.

PACKAGE B
BASED ON SCHEDULED FLIGHT

Delegates travelling on scheduled flights will travel via various European cities and will have the option of extending their stay subject to airline and hotel availability.

Price will be based on the charter package but will **not** include airport transfers and may incur airline and hotel surcharges.

Delegates intending to travel on scheduled flights should return a completed reservations form as soon as possible with details of their preferred travel arrangements.

REGISTRATION FEE

Payable by delegates only and **not** accompanying persons – €100

BOOKING ARRANGEMENTS

The closing date for receipt of bookings is 20 February 2004.
Please complete the reservations form and return with deposit of €400 per person travelling.

CONTACT DETAILS

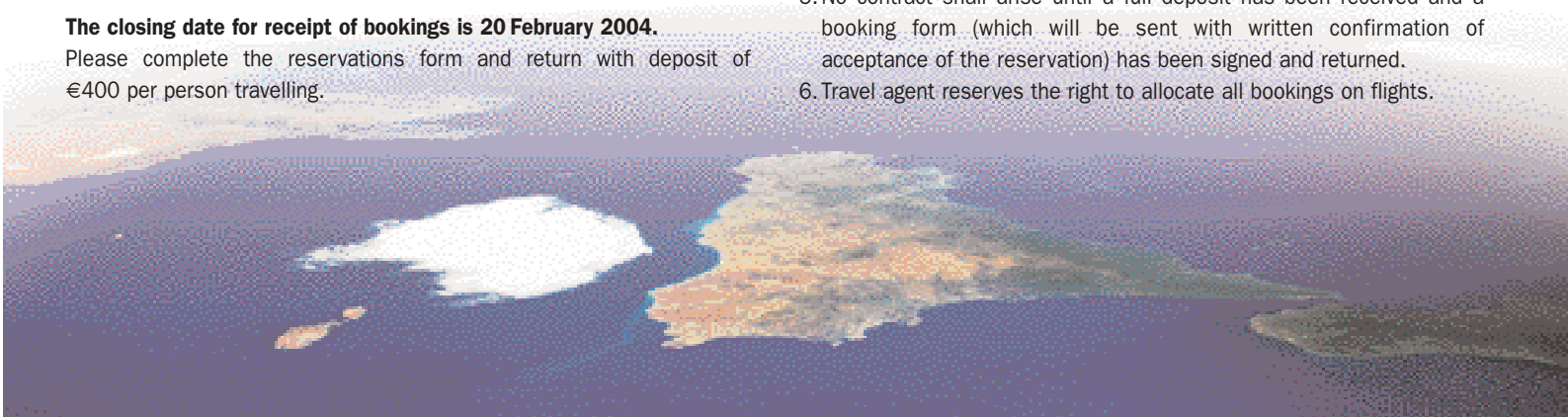
If you would like any further information, please contact any member of the organising team:

- Sarah Ellins, Law Society, tel: (01) 672 4823
  E-mail: s.ellins@lawsociety.ie
- James McCourt (Chairman), tel: (01) 660 6543
- Simon Murphy, tel: (021) 427 3305
- Mary Keane, tel: (01) 672 4800

For information on **extending your stay,** please contact the conference travel agent:
Alan Benson/Angela O'Brien
Sadlier Travel
Fleet Chambers
8-9 Westmoreland Street
Dublin 2.
Tel: (01) 670 4880
Fax: (01) 670 4883
E-mail: alan@sadliertravel.com

BOOKING/CANCELLATION TERMS AND CONDITIONS

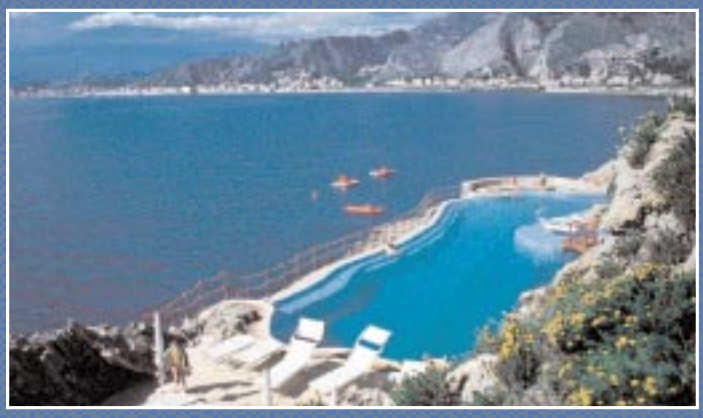
1. Notification of all cancellations must be sent in writing to Sarah Ellins, Law Society of Ireland, Blackhall Place, Dublin 7. DX79.
2. Balance payments must be received by 20th February 2004. Thereafter, 100% cancellation fees apply.
3. Substitute participation will be accepted.
4. Travel insurance will be automatically invoiced at approximately €26 per person unless delegates indicate on the reservations form that they have their own insurance and provide the name of the company with whom they are insured.
5. No contract shall arise until a full deposit has been received and a booking form (which will be sent with written confirmation of acceptance of the reservation) has been signed and returned.
6. Travel agent reserves the right to allocate all bookings on flights.



All delegates will be accommodated in the Grande Albergo Capotaormina**. The hotel offers a choice of restaurants, bars and lounges, room service, TV, air-conditioning, beauty centre, fully equipped gym, private beach and outdoor swimming pool.**

Social programme

- The conference will open on Wednesday evening with a welcome reception for all participants.
- On Thursday optional tours to Mount Etna:
  a) Full-day tour to the top of Mount Etna ***(certainly not for the faint-hearted!)*** with a stop-over for lunch (not included) at leisure.
  b) Half-day tour to Mount Etna but up to 1900 meters.
- On Friday afternoon a half-day optional historical walking tour of Taormina.
- The conference banquet will be held on Friday night. Dress – smart informal.
- On Saturday a full-day optional tour to Syracuse with a stop-over for shopping and lunch (not included) at leisure.



Programme

WEDNESDAY, 14TH APRIL 2004

Afternoon Arrival at Catania Airport. Transfer to hotel for check-in and conference registration

Evening Welcome Reception for all participants – sponsored by Osborne Recruitment
Venue: Grande Albergo Capotaormina Hotel

THURSDAY, 15TH APRIL 2004

Morning Half-day tour to Mount Etna (10.00am – 1.00pm)

All day Full-day tour to Mount Etna (10.00am – 4.00pm)

Evening At leisure

FRIDAY, 16TH APRIL 2004

Morning Conference Business Session – **Render unto Caesar: money laundering and the law,** together with **developments on professional indemnity insurance** – sponsored by Jardine Lloyd Thompson Ireland Limited and Solicitors' Mutual Defence Fund Limited
Venue: Grande Albergo Capotaormina Hotel

Afternoon Half-day historical walking tour of Taormina (2.30pm – 5.30pm)

Evening Reception – sponsored by Bank of Ireland. Conference banquet and dancing – sponsored by Bank of Ireland
Venue: Grande Albergo Capotaormina Hotel (Dress: smart informal)

SATURDAY, 17TH APRIL 2004

All day Full-day tour to Syracuse (10.00am – 4.30pm)

Afternoon & Evening At leisure

SUNDAY, 18TH APRIL 2004

Afternoon Departure

Accommodation

Grande Albergo Capotaormina Hotel, Via Nazionale, 105 - 98039, Taormina (ME), Sicily
Tel: +39 0942 572111. Fax: +39 0942 625467

Committee reports

BUSINESS LAW

Competition Authority notice in respect of non-notifiable mergers and acquisitions

The Competition Authority has published a notice relating to the review of non-notifiable mergers and acquisitions (decision no N/03.001, 30 September 2003). It relates to mergers in respect of which the turnover thresholds specified in section 18(1) of the *Competition Act, 2002* are not met, but which, nonetheless, may raise competition issues.

The notice urges parties and their advisers to avail of the voluntary notification procedure provided by section 18(3) of the act as regards transactions which raise competition concerns and warns that if, following contact by the authority, the parties do not indicate an intention to notify, the authority will carry out a preliminary inquiry to ascertain whether a section 4 or section 5 investigation is warranted and, if so warranted, the investigation itself.

The notice states that the parties may at any stage be asked for an undertaking not to implement the merger for a certain period and contains a clear statement of the authority's intention, where it considers necessary, to prevent, by means of injunction, the implementation of any un-notified merger that would substantially lessen competition in the relevant market or markets. It warns that, where such a merger has already been implemented, the authority may seek to have it reversed.

A copy of the notice is available on the authority's website at *www.tca.ie/notices.html*.

Business Law Committee

CRIMINAL

The Criminal Law Committee has received the following letter from an Garda Síochána, which has requested that it be drawn to the attention of practitioners:

'*Dear Mr McGonagle*,

I am aware that solicitors consider it necessary on occasions to write to the gardaí regarding execution of outstanding warrants (for example, bench warrants) in respect of their clients. On very many occasions, these letters are addressed to the prosecuting garda or one of a number of prosecuting gardaí.

The appropriate addressee in respect of such matters is the superintendent of the local garda station of their client. It is the local garda station of any individual that is primarily charged by the garda authorities with the execution of such warrants. In addition, letters addressed to individual gardaí may not be opened in their absence for any reason (for example, shift work, holidays, illness, transfer, retirement and so forth), with resulting delays. Where a letter is addressed to the superintendent of a garda station, it will receive attention on receipt.

I would request that the Law Society arrange to disseminate this information to all solicitors practising in the area of criminal law. However, if the committee has any other suggestions as to how this should be communicated to the relevant solicitors, I would be glad to facilitate same.

Yours sincerely,

NC Smith, assistant commissioner'.

Criminal Law Committee

GUIDANCE AND ETHICS

Practice management discussion groups

The Guidance and Ethics Committee is promoting practice management discussion groups to facilitate firms which wish to exchange management information, on a confidential basis, with a view to improving management systems in their own firms. Only managing partners or principals of firms will be eligible to attend meetings.

The committee will organise practices with similar profiles into small groups and will facilitate the first meeting of each group. Practices situated closer than 30 miles to each other will not be put together.

Topics for discussion would include the following:

- General management
- Practice development
- Risk management
- Profitability
- Drawings
- Fees
- Overheads
- Information technology.

Interested firms should complete and return registration forms before 1 February 2004. Forms are available from the committee secretary at the Law Society, by e-mail from a.collins@lawsociety.ie or can be printed from the Guidance and Ethics Committee web page on the Law Society website (*www.lawsociety.ie*).

Guidance and Ethics Committee

REMOVAL OF NOTICE OF MARRIAGE FROM FOLIO

A practitioner brought to the attention of the Conveyancing Committee a situation where a client was the sole owner of an apartment, title to which was registered in the Land Registry. The client was married and lived in the apartment with her spouse. The apartment, therefore, was the family home of the couple.

The client's spouse entered a notice of marriage under section 12 of the *Family Home Protection Act, 1976* on part 2 of the folio. The client subsequently entered into a separation agreement and her spouse executed a deed of waiver consenting to the sale of the said apartment.

The question put to the committee was whether it thought a notice of marriage must be removed from the folio before closing.

The view expressed by the committee was that, from a legal point of view, there are probably no conveyancing consequences of the continuation of the notice of marriage as a notice in part 2 of the folio. However, the committee suggested that it would be good practice to have the notice removed if the opportunity to do so presented itself.

The committee wrote to the Land Registry to inquire if there was any specific Land Registry procedure for having such a notice removed from the folio. The reply from the Land Registry indicated that rule 7 of the *Land Registration Rules 1972* allows for the removal of a notice that no longer affects or relates to a particular property, the ownership of which is registered on a folio. The Land Registry went on to say that an application could be made when the property ceases to be a family home or at or following the registration of the spouse as sole owner. The application can be made by adapting Land Registry form 71A and lodging it along with all supporting documentation in the Land Registry.

Practitioners should note that a notice of marriage pursuant to section 12 of the *Family Home Protection Act, 1976* registered in respect of property title which is registered in the registry of deeds cannot be removed from the register.

Conveyancing Committee

DEEDS VESTING COMMON AREAS IN MANAGEMENT COMPANIES

When closing sales of apartments or other property in complexes or estates in which the common areas are to be ultimately vested in a management company, the current practice is to take an undertaking from the vendor to furnish a copy of the vesting deed to the purchaser's solicitor in due course. This entails the purchaser's solicitor keeping the purchase file open for a considerable time, sometimes for years, pending the furnishing of the copy vesting deed in accordance with the undertaking given. It becomes a matter of urgency when the property is being re-sold. If, at that time, the deed is not available because it has not yet been executed or for any other reason, the sale, of necessity, proceeds with an undertaking by the second vendor's solicitor to the solicitor for the second purchaser to furnish the vesting deed as soon as received from the original vendor. In such circumstances, two solicitors now have files open, awaiting a copy vesting deed which may not come to hand for a considerable time.

It is recommended by the Conveyancing Committee that in such transactions involving management companies, the contract should provide that the initial sale of the property will be closed on foot of:

a) An undertaking by the vendor to the purchaser to furnish the vesting deed to the management company, and
b) An undertaking by the management company to the purchaser to furnish a certified copy of the vesting deed to the purchaser on request by or on behalf of the purchaser or his successor in title.

The undertaking at (a) will merely reflect what is required in any case in the contract for sale of the common areas between the vendor and the management company, but it will be an acknowledgment that the purchaser has an interest in the deed being furnished. Ideally, the contract between the developer and the management company should stipulate who is responsible for stamping and registering the deed.

The undertaking at (b) may be considered unnecessary, having regard to the fact that the purchasers themselves will control the management company and will be in a position to obtain a certified copy of the vesting deed in any case. The undertaking by the management company will, however, cover any period between the completion of the development and the furnishing of the vesting deed to the management company and will, in any case, provide the purchaser with a clear basis for requesting the certified copy vesting deed regardless of when this is done. In practice, it is envisaged that the question of taking up the copy vesting deed will arise usually when the property is being re-sold. At that time, assuming the development has been completed, it should be readily available from the management company. In the meantime, the purchaser's solicitor can close the file.

Conveyancing Committee

CAT RETURNS: ELECTRONIC FILING THROUGH REVENUE ONLINE SERVICE

Solicitors who wish to use the Revenue Online Service to file CAT returns should note that Revenue's current arrangements for electronic payment conflict with certain provisions of the *Solicitors' accounts regulations 2001*.

Until further notice, solicitors may proceed with filing the CAT return through ROS, but must make alternative payment arrangements.

This matter is the subject of ongoing discussions between the society and the Revenue. A further practice note will issue when the difficulties have been resolved.

Probate, Administration and Taxation Committee

PRACTISING CERTIFICATES

A practising certificate must be applied for before 1 February each practice year in order to be dated 1 January of that year and thereby operate as a qualification to practise from the commencement of the practice year.

It is misconduct for a solicitor to practise without a practising certificate. Any solicitor found to be practising without a practising certificate is liable to be referred to the Disciplinary Tribunal.

Assistant solicitors should note that it is the statutory obligation of every solicitor to ensure that he or she has a practising certificate in force from the commencement of the practice year. Assistant solicitors cannot absolve themselves from this responsibility by relying on their employers to procure their practising certificates. However, it is the society's recommendation that all employers should pay for their assistants' practising certificates.

Practitioners should also note that practising for any period of time without a practising certificate could jeopardise their professional indemnity insurance situation. Furthermore, a break in continuity of practising certificates may disqualify a solicitor from applying for judicial appointment.

PJ Connolly, registrar of solicitors

EVIDENCE OF COMPLIANCE WITH PLANNING CONDITIONS RE: SOCIAL/AFFORDABLE HOUSING

Queries have arisen as to whether independent evidence, in addition to an architect's opinion on compliance in the usual form, is required to vouch compliance with a condition in a planning permission imposing a social/affordable housing requirement pursuant to part V of the *Planning and Development Act, 2000* (as amended).

Where the architect is prepared to furnish an architect's opinion on compliance in the usual form, being either the form recommended for use by the Conveyancing Committee or the approved form as used by members of the RIAI (which forms address conditions attaching to the relevant planning permissions), then there is no necessity to require production of independent evidence with such a condition. There is no basis for distinguishing such a condition from the other conditions attaching to the planning permission.

However, if the architect is not prepared to certify compliance with the social/affordable housing condition, and qualifies his opinion or certificate of compliance to exclude that condition, then the purchaser's solicitor will require independent evidence of compliance, preferably by way of a letter from the planning authority.

Conveyancing Committee

CGT PAYMENT DATES

Practitioners should note changes in the dates for payment of capital gains tax introduced by s42 of the *Finance Act, 2003* (amending part 41 of the principal act).

Under the new provisions, tax due on gains made on disposals between 1 January and 30 September must be paid by 31 October. Tax due on gains made on disposals between 1 October and 31 December must be paid by the following 31 January.

Probate, Administration and Taxation Committee

DISCLAIMERS ON INTESTACY

It has come to the attention of the Conveyancing Committee, both from practitioners and from recent articles in the *Gazette*, that the precedent disclaimer on intestacy which appears at page 13.66 of the *Conveyancing handbook* may not be adequate for a situation in which a number of beneficiaries have agreed to execute a disclaimer, on condition that all of them do so, for the purpose of benefiting a particular person. If all of them disclaim except one, for example, the desired result will not be achieved and the one who has not signed may become entitled to the property.

It is considered best practice to have one disclaimer signed by all of them, where this is reasonably practicable, and to provide that it will take effect only when it is signed by all of them and from the date on which it is signed by the last person to sign.

A precedent taking account of the above is printed with this practice note. It should be used where possible to avoid having to deal with the consequences of a broken agreement which might have to be resolved by the court. It may be helpful to note that a disclaimer, once made, can be retracted, but only if it has not been acted on and no other party has changed their position in reliance on it and if no consideration has been given for the disclaimer.

Disclaimer on intestacy for execution by a number of beneficiaries

'Disclaimer of AB, CD and EF on death intestate of XY

Obit ..... day of ..... 20 .....

This deed of disclaimer is made this ..... day of ..... 20... by AB *(occupation)* of ..... in the county of ....., CD *(occupation)* of ..... in the county of ..... and DE *(occupation)* of ..... in the county of .....

Whereas:

1) XY late of ..... (hereinafter called 'the deceased') died on the ..... day of ..... 20..., having died intestate as to the interests hereby disclaimed
2) The deceased was *(marital status)* and *(occupation)* and was survived by *(state if survived by, for example, a spouse and two children or as the case may be)*
3) We are all children of the deceased *(or as the case may be)* and, as such, we are each entitled to a one-twelfth (that is, one quarter of a third) share of the deceased's estate (or of that part of the deceased's estate as to which he died intestate) (hereinafter called 'the said share' and collectively as 'the said shares') under the rules for distribution on intestacy set out in the *Succession Act, 1965. (Vary the shares in proportion to the number of beneficiaries and their entitlement)*
4) None of us has accepted the said share from the personal representative of the deceased or otherwise nor have any of us exercised any degree of beneficial ownership, control or possession in respect of the said share.

Now it is hereby witnessed that each of us hereby irrevocably disclaims absolutely all our respective rights to the said shares and we hereby acknowledge that on the execution by each of us of this disclaimer we will each lose any right we may respectively have (by virtue of our respective entitlement to the said shares) to extract a grant of administration to the estate of the deceased.

And it is hereby further witnessed that this deed shall:

1) Not become effective (as against all or any of the parties hereto) until it is executed by all parties hereto, and
2) Be deemed to operate with effect from the date upon which it is executed by the last of the parties hereto to execute it.

(Insert the following paragraph unless a grant has already issued to one or more persons disclaiming or the parties have already signed a renunciation.)

And we hereby acknowledge that on the execution by us of this disclaimer, we will each lose any right we may have (by virtue of our respective entitlements to the said share) to extract a grant of administration to the estate of the deceased.

In witness whereof the parties hereto have hereunto set their respective hands and affixed their respective seals the day and year first above written.

Signed, sealed and delivered by AB in the presence of:

Signed, sealed and delivered by the said CD in the presence of:

Signed, sealed and delivered by the said EF in the presence of:'

Conveyancing Committee

CRIMINAL LEGAL AID SCHEME: RETENTION OF NAME ON CRIMINAL LEGAL AID PANEL

For year commencing 1 December 2003: *Criminal Justice (Legal Aid) (Tax Clearance Certificate) Regulations 1999*

The Department of Justice, Equality and Law Reform has advised that a solicitor who wishes to have his or her name retained on a legal aid panel is required to furnish a tax clearance certificate to the relevant county registrars.

Current tax clearance certificate expires on or before 30 November 2003

Solicitors who are on a panel and whose tax clearance certificate expires on or before 30 November 2003 will be required to furnish a tax clearance certificate, which has an expiry date after 30 November 2003, to the relevant county registrar by **30 November 2003** in order to retain their name on the panel.

Applications for a tax clearance certificate should be made to the Collector-General's Office in good time. It is important to note, in this regard, that the regulations provide that an application submitted to the collector-general by 15 October 2003 guarantees the existing member's retention on the panel where:

a) Revenue has not made a decision on the application by 30 November 2003, or
b) The application has been refused and an appeal has been made as provided for in the regulations, which has not been determined or withdrawn on 30 November 2003.

Current tax clearance certificate expires after 30 November 2003

Solicitors who wish to have their name retained on the panel beyond 30 November 2003 and whose current certificate expires **after** that date need not apply for a new certificate. However, they must furnish their certificate to the relevant county registrar to be retained on the panel(s).

Multiple panels

Solicitors who wish to maintain their name on more than one panel should request the Collector-General's Office to issue the certificate and as many official copies thereof as they require. Solicitors must then furnish the certificate or official copy to each county registrar to remain on that county registrar's panel.

Issue of application form for tax clearance certificate

Those practitioners who are currently on the legal aid panels will have been issued with an application form directly from the Department of Justice, Equality and Law Reform before 1 October 2003. Panel members who did not receive a form at that time should make enquiries to the courts policy division of the department (tel: 01 602 8202).

Criminal Law Committee

LEGISLATION UPDATE: 21 OCTOBER – 18 NOVEMBER 2003

Details of all bills, acts and statutory instruments since 1997 are on the Law Society's library catalogue at *www.lawsociety.ie* (members' area) with updated information on the current stage a bill has reached and the commencement date(s) of each act.

ACTS PASSED

Criminal Justice (Temporary Release of Prisoners) Act, 2003
Number: 34/2003
Contents note: Amends the *Criminal Justice Act, 1960* to provide for the temporary release of persons serving sentences of imprisonment or of detention in St Patrick's Institution, or persons being detained in a place provided under section 2 of the *Prisons Act, 1970*
Date enacted: 29/10/2003
Commencement date: Commencement order to be made (per section 2(2) of the act)

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 2003
Number: 33/2003
Contents note: Amends the *Oil Pollution of the Sea (Civil Liability and Compensation) Acts, 1988 to 1998* to give effect to amendments to the limitation amounts in the protocol of 1992 amending the *International convention on civil liability for oil pollution damage 1969* (the *Liability convention*), and in the protocol of 1992 amending the *International convention on the establishment of an international fund for compensation for oil pollution damage 1971* (the *Fund convention*). This will increase the limits of compensation payable to victims of pollution resulting from oil spills from ships carrying oil in bulk as cargo
Date enacted: 29/10/2003
Commencement date: 1/11/2003 (per section 5(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Children Act, 2001 *(Part 11) (Commencement) Order 2003*
Number: SI 527/2003
Contents note: Appoints 7/11/2003 as the commencement date for part 11 of the act, which establishes the Special Residential Services Board on a statutory basis

District Court (Appeals to the Circuit Court) Rules 2003
Number: SI 484/2003
Contents note: Amend order 101, rules 1, 3 and 5, of the *District Court Rules 1997* (SI 93/1997) in order to clarify the position regarding the fixing of recognisances in situations where there are appeals to the Circuit Court

European Communities (Electronic Communications Networks and Services) Data Protection and Privacy) Regulations 2003
Number: SI 535/2003
Contents note: Give effect to directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector. Revoke *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (SI 192/2002)
Commencement date: 6/11/2003

European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment No 2) Regulations 2003
Number: SI 497/2003
Contents note: Implement directive 2001/107/EC (*Management directive*) which amends directive 85/611/EEC as amended by directive 88/220/EEC, directive 95/26/EC, and directive 2001/108/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). Amend SI 211/2003 as amended by SI 212/2003 to give effect to the *Management directive*, which broadens the range of activities that management companies can be authorised to undertake; also allow management companies to avail of the passport mechanism introduced by the *Management directive*

European Convention on Human Rights Act, 2003 *(Commencement) Order 2003*
Number: SI 483/2003
Contents note: Appoints 31/12/2003 as the commencement date for the act

Finance Act, 1983 *(Commencement of Section 107A) Order 2003*
Number: SI 513/2003
Contents note: Appoints 31/10/2003 and 1/11/2003 as the commencement dates for different provisions of section 107(A) of the *Finance Act, 1983* (repayments of residential property tax)

Finance Act, 2001 *(Commencement of Section 105A) Order 2003*
Number: SI 509/2003
Contents note: Appoints 1/1/2005 as the commencement date for section 105A of the *Finance Act, 2001*. Section 105A provides that action by the Revenue Commissioners to initiate recovery of underpayments of excise duty is limited to a period of not more than four years after the act or event giving rise to the liability, except in the event of fraud or negligence

Finance Act, 2001 *(Commencement of Section 105C) Order 2003*
Number: SI 510/2003
Contents note: Appoints 31/10/2003 as the commencement date for section 105(C) of the *Finance Act, 2001*. Section 105(C) provides for a four-year time limit for making a claim to the Revenue Commissioners for a repayment of excise duty, but if the claim relates to an act or event before 1/5/2003, the four-year time limit will not apply until 1/1/2005

Finance Act, 2001 *(Commencement of Section 105D) Order 2003*
Number: SI 511/2003
Contents note: Appoints 1/11/2003 as the commencement date for section 105(D) of the *Finance Act, 2001*. Section 105(D) provides for the payment of simple interest by the Revenue Commissioners in certain circumstances on repayments of excise duty

Finance Act, 2003 *(Commencement of Section 17) Order 2003*
Number: SI 508/2003
Contents: Appoints various commencement dates for section 17 of the *Finance Act, 2003*. Section 17 provides for a new scheme of interest on repayment of tax, time limits on claims to repayment of tax and on raising of assessments to tax by the Revenue Commissioners, in so far as income tax, corporation tax and capital gains tax are concerned

Finance Act, 2003 *(Commencement of Sections 124, 125, 129 and 130(b)) Order 2003*
Number: SI 512/2003
Contents note: Appoints 1/11/2003 as the commencement date for sections 124, 125, 129 and 130(b) of the *Finance Act, 2003* (VAT refunds)

Finance Act, 2003 *(Commencement of Section 142) Order 2003*
Number: SI 514/2003
Contents note: Appoints 31/10/2003 and 1/11/2003 as the commencement dates for different provisions of section

142(1) of the *Finance Act, 2003* (repayment of stamp duties)

Finance Act, 2003 *(Commencement of Section 145) Order 2003*
Number: SI 515/2003
Contents note: Appoints 1/11/2003 as the commencement date for paragraphs (a) and (d) of section 145(1) of the *Finance Act, 2003* in so far as it relates to section 57 (other than sub-sections 2 to 5) of the *Capital Acquisitions Tax Consolidation Act, 2003*. Appoints 1/1/2005 as the commencement date for paragraphs (b) and (c) of section 145(1). Appoints 31/10/2003 as the commencement date for section 145(1)(d) in so far as it relates to sub-sections 2 to 5 of section 57 of the *Capital Acquisitions Tax Consolidation Act, 2003* (CAT repayments)

Medicinal Products (Prescription and Control of Supply) Regulations 2003
Number: SI 540/2003
Contents note: Consolidate and update the controls applicable to the prescription and supply of medicinal products to the public in accordance with the requirements of EU directive 2001/83/EC. Certain exemptions are provided in respect of certain low-strength homeopathic medicinal products that will be available to the public without prescription. Impose restrictions on the sale of medicinal products containing paracetamol. Set out the restrictions relating to the dispensing of prescriptions, the requirements for the labelling of dispensed medicinal products and for pharmacy records.
Commencement date: 11/11/2003

Motor Vehicle (Duties and Licences) Act, 2003 *(Commencement) Order 2003*
Number: SI 485/2003
Contents note: Appoints 21/10/2003 as the commencement date for section 8 of the *Motor Vehicle (Duties and Licences) Act, 2003*

Official Languages Act, 2003 *(Commencement) Order 2003*
Number: SI 518/2003
Contents note: Appoints 30/10/2003 as the commencement date for sections 2, 3, 4 and part 5 of the act (place names)

Opticians (Amendment) Act, 2003 *(Section 12) (Commencement) Order 2003*
Number: SI 538/2003
Contents note: Appoints 11/11/2003 as the commencement date for section 12 of the act. (All other sections of the act were brought into operation on 31/7/2003 by SI 350/2003.) Section 12 is being brought into operation in conjunction with the *Medicinal Products (Prescription and Control of Supply) Regulations 2003* (SI 540/2003). These regulations provide an exemption whereby optometrists may administer, in the course of their professional practice, certain listed medicinal products that are not intended for intravenous administration

Protection of the Environment Act, 2003 *(Commencement) (No 3) Order 2003*
Number: SI 498/2003
Contents note: Appoints 22/10/2003 as the commencement date for the following provisions of the act: sections 1(2), 10, 11, 12, 13, 14, 20(1)(a), 22, 23, 24, 25, 29, 34, 46, 47, 48, 49 and 50

Public Health (Tobacco) Act, 2002 *(Commencement) Order 2003*
Number: SI 480/2003
Contents note: Appoints 15/10/2003 as the commencement date for sections 2, 3, 4, 5(1), 5(2) (in so far as it applies to section 47), 5(5), 5(6), 6, 7, and 47 of the *Public Health (Tobacco) Act, 2002*

Road Vehicles (Registration and Licensing) (Amendment) Regulations 2003
Number: SI 486/2003
Contents note: Facilitate the application for a driving licence on-line at *www.motortax.ie*

Social Welfare (Miscellaneous Provisions) Act, 2002 *(Section 16) (No 4) (Commencement) Order 2003*
Number: SI 501/2003
Contents note: Appoints 28/10/2003 as the commencement date for s16 of the *Social Welfare (Miscellaneous Provisions) Act, 2002* in so far as it relates to items in the schedule to the act relating to amendments to the *Registration of Births and Deaths (Ireland) Acts* and the *Marriages (Ireland) Acts* and the electronic registration of births and deaths in the civil registration offices in Killarney, Tralee and Castlegregory

Taxi Regulation Act, 2003 *(Part 4) (Appointed Day) Order 2003*
Number: SI 517/2003
Contents note: Appoints 4/11/2003 as the appointed day for the purposes of part 4 of the act (establishment of the advisory council to the Commission for Taxi Regulation)

Tobacco Smoking (Prohibition) Regulations 2003
Number: SI 481/2003
Contents note: Prohibit the smoking of tobacco products in a place or premises (other than a dwelling) as specified in the schedule to the regulations. The places or premises so specified are: 1) a place of work; 2) an aircraft, train, ship or other vessel, a public service vehicle or other vehicle used for the carriage of members of the public for reward, insofar as it is a place of work; 3) a place or premises to which paragraph (b), (c), (d) or (e) of section 47(1) of the *Public Health (Tobacco) Act, 2002* applies, insofar as it is a place of work; 4) a licensed premises, insofar as it is a place of work; 5) a registered club, insofar as it is a place of work
Commencement date: 26/1/2004. G

Prepared by the Law Society Library

SOLICITORS DISCIPLINARY

Before the president of the High Court: in the matter of Michael Owens, solicitor, formerly carrying on practice under the style and title of Michael Owens & Co at 5 Lower Main Street, Dundrum, Dublin 14, and in the matter of the *Solicitors Acts, 1954 to 2002* [2003 no 26 SA]
Law Society of Ireland (applicant)
Michael Owens (respondent solicitor)

On 6 October 2003, the president of the High Court ordered:

1) That the name of the respondent solicitor Michael Owens be struck off the Roll of Solicitors
2) That the said Michael Owens make restitution to the Law Society of Ireland in the amount of €414,596.21
3) That the said Michael Owens pay the costs of the application to the High Court and also the costs of the proceedings before the Disciplinary Tribunal, to be taxed in default of agreement.

The president had before him the report of the Disciplinary Tribunal to the High Court, which recorded that the following matters had been admitted by the respondent solicitor, that he:

a) Caused a substantial deficit in clients' monies resulting in a total of £489,371.01 being paid by the society out of its compensation fund as of 3 January 2001
b) Utilised clients' monies to fund the day-to-day running of his practice and for his personal expenditure, including the discharge of his Revenue liabilities
c) Systematically falsified the books of account by means of teeming and lading of clients' monies
d) Placed or caused to be placed on client files bills of costs which were not furnished to the relevant clients but which ostensibly supported *bona fide* entries which in fact disguised the withdrawal of clients' funds for office and personal expenditure
e) Concealed debit balances on the clients' account by making or causing false journal entries to be made in the books of account
f) Did not record some client financial transactions in the books of account at all
g) Failed to maintain proper books of account for each client to show all transactions on the client account in breach of regulations 10 and 19 of the *Solicitors' accounts regulations no 2* of 1984
h) Transferred round sums of money from the client account to the office account to cover withdrawals in breach of regulation 8.2 of the *Solicitors' accounts regulations no 2* of 1984
i) Caused the said deficit to be concealed from both his reporting accountant and the Law Society's investigating accountant by falsifying his books of account over a number of years
j) Allowed his reporting accountant to submit to the society certificates certifying compliance with the *Solicitors' accounts regulations no 2* of 1984, knowing that such certificates were incorrect and further knowing that they would be relied upon by the society
k) Drew monies from clients' accounts in excess of funds held for the time being in such accounts in breach of regulation 7 of the *Solicitors' accounts regulations no 2* of 1984, causing the clients' bank account to be overdrawn in or about February, July and October of 1995 and July 1996
l) Drew monies for costs without furnishing to the client a bill of costs or other written documentation in breach of regulation 7(iv) of the *Solicitors' accounts regulations no 2* of 1984
m) Transferred monies between ledger accounts in breach of regulation 9 of the *Solicitors' accounts regulations no 2* of 1984
n) Received £1,500 from a client for the purposes of stamping two deeds of assignment, failed to stamp the said deeds and failed to account to his client for the monies, necessitating a payment out of the society's compensation fund of £1,500 to his said client
o) Received monies on behalf of a client out of which he was instructed to discharge a building society mortgage in favour of the Irish Nationwide Building Society on behalf of his client, failed to discharge the said mortgage and failed to account to his client for the monies concerned, necessitating a payment out of the society's compensation fund of £71,053.64 plus a further £4,922.17 to the said client
p) Received £6,300, being a deposit on the sale of property for clients, the executors of an estate, failed to account to his clients for the deposit, necessitating a payment out of the society's compensation fund of £5,800 to the said clients
q) Received monies from clients, which included the sum of £2,780 in respect of stamp duty and Land Registry fees, failed to complete the transaction, necessitating the payment of the sum of £3,495 out of the society's compensation fund to the clients in compromise of the claim
r) Received the sum of £280 from a client for the purposes of purchasing a ground rent, failed to purchase the said ground rent and failed to account to his client for the said monies, necessitating the payment by the society out of its compensation fund of £280 to the said client
s) Received a deposit of £4,500 in respect of the sale of a premises on behalf of a client, failed to complete the transaction and failed to account to his client for the deposit, necessitating the payment out of the society's compensation fund to the client of £4,184
t) Received the sum of £9,000 from a client in respect of stamp duty on a purchase deed, failed to stamp the relevant deeds and failed to account to his client for the sum of £9,000, necessitating the payment out of the society's compensation fund of the sum of £9,000 to the said client
u) Received the sums of £65,950 and £250 on behalf of a client company, being the proceeds of a sale and a service charge, failed to account to his client for that part of the proceeds due to it, necessitating the payment out of the society's compensation fund of £47,445 to the said client
v) Received the sum of £5,775, being a deposit on the sale of premises on behalf of a client, but failed to account to his client for the said monies, necessitating the payment out of the society's compensation fund of £5,387.50 to the said client
w) Received the sum of £16,200 on behalf of a client in respect of stamp duty on the purchase of property, failed to stamp the relevant documents and failed to account to his client for the sum of £16,200, necessitating the payment out of the society's compensation fund of £15,700 to the said client
x) Received and held monies on behalf of a client, which, as of October 1996, totalled

TRIBUNAL

£115,073.97, failed to account to his client for these monies, necessitating the payment to the client out of the society's compensation fund of £124,661.97 plus an *ex gratia* payment of £4,537.50

y) Misappropriated monies of a client, necessitating the payment out of the society's compensation fund of £110,000 plus an *ex gratia* payment of £15,000

z) Received a sum of £21,000 on behalf of clients for the purposes of stamping a deed, failed to stamp the said deed and failed to account to his clients for the sum of £21,000, necessitating a payment out of the society's compensation fund of £21,000 to the said clients

aa) Received a sum of £50,000, a portion of which was to redeem a mortgage, failed to redeem the said mortgage or to account to his client for the said money advanced to redeem the mortgage, necessitating a payment out of the society's compensation fund of £22,269.99 plus additional legal fees of £901

bb) Received a sum of £3,900 from his clients for the purposes of stamping a deed and failed to stamp the said deed and further failed to account to his clients for the sum of £3,900, necessitating a payment out of the society's compensation fund of £3,900 to the said clients

cc) Received a sum of £2,750 plus the sum of £26 from clients for the purposes of stamping a purchase deed and failed to stamp the said deed and further failed to account to his clients for the sum of £2,776, necessitating a payment out of the society's compensation fund of £2,776 to the said clients

dd) Received a sum of £7,425 from clients for the purposes of stamping and registering a mortgage deed, failed to stamp the said deed and failed to account to his clients for the sum of £7,425, necessitating a payment out of the society's compensation fund of £7,425 to the said clients

ee) Received a sum of £524 from a client for the purposes of stamping and registering a purchase deed, failed to stamp the said deed and failed to account to his client for the sum of £524, necessitating a payment out of the society's compensation fund of £524 to the said client

ff) Retained a sum of £8,503 on behalf of clients for the purposes of stamping and registering a purchase deed, mortgage and assignment of a life policy and commissioner's fees, failed to stamp the said deeds and failed to account to his clients for the sum of £8,503, necessitating a payment out of the society's compensation fund of £8,503 to the said clients

gg) Misappropriated the sum of £6,213.17 out of an estate, necessitating the payment by the society of the sum of £7,713.17 out of its compensation fund

hh) Received monies from a client which included the sum of £4,650 for the purposes of paying stamp duty and Land Registry fees in respect of a conveyancing transaction, failed to stamp and register the documents and failed to account to his client for the sum of £4,650, necessitating the payment by the society out of its compensation fund of the sum of £4,650

ii) Received the sum of £5,011 on behalf of a client, being monies lodged in court, but failed to account to his client for the sum of £5,011, necessitating the payment by the society out of its compensation fund of £5121.69

jj) Received the sum of £7,222.94 from a client to discharge counsel's fees, failed to discharge the said fees, necessitating the payment by the society out of its compensation fund of £7,222.94

kk) Received a sum of £3,819 on behalf of a client for the purposes of stamping and registering a purchase deed, failed to stamp the said deed and failed to account to his client for the sum of £3,819, necessitating a payment out of the society's compensation fund of £3,819 to the said client

ll) Received a sum of £323 on behalf of clients for the purposes of stamping and registering documents, failed to stamp the said documents and failed to account to his clients for the sum of £323, necessitating a payment out of the society's compensation fund of £323 to the said clients

mm) Drew a cheque in favour of two clients in the sum of £8,373.61 when there was only £1,688.03 in the client account to meet it, misrepresented to the clients when the cheque was returned unpaid that he had in error stopped the cheque

nn) Breached a solicitor's undertaking to ACC Bank to discharge a mortgage for his client

oo) Failed to conclude a conveyancing transaction on behalf of the client referred to at (nn) above, thereby severely prejudicing his client in that a judgment was obtained against the client as a result

pp) Received monies from a client for the purposes of stamping an original and counterpart lease on behalf of the client but failed to stamp the original and counterpart lease

qq) Failed to account to the client referred to at (pp) above for the monies received, necessitating the payment by the society out of its compensation fund of the sum of £211, being the stamp duty. G

DISCIPLINARY TRIBU

Year ending 21 May 2003

The last year has seen the tribunal engage in a major move from its administrative offices in Manor Street to The Friary, Bow Street, Smithfield, Dublin. Our new premises allow the tribunal to hold its inquiries in comfortable and well-appointed accommodation. They are also centrally located and reflect the standing and independent nature of the Solicitors Disciplinary Tribunal, whose members are appointed by the president of the High Court. Notwithstanding the move, the tribunal continued to conduct its business despite the inevitable frustrations and pressures of changing premises.

DISCIPLINARY TRIBUNAL

Solicitor members
Thomas D Shaw (chairperson)
Ernest Cantillon
Michael Carrigan
Niall Casey
Clare Connellan
Jean Cullen
Frank Daly
Joe Deane
Paula Duffy
Carol Fawsitt
Isabel Foley
Berchmans Gannon
Maeve Hayes
Michael Hogan
Donal Kelliher
Brian McMahon
Caroline O'Connor
Geraine O'Loughlin
Michael O'Mahony
Ian Scott

Lay members
Mary Conlon
Ted Conlon
Denis Murphy
Pauline Kingston
Kristin Quinn

Tribunal registrar
Mary Lynch

The Friary, Bow Street,
Smithfield, Dublin 7
Tel: 01 869 0767
E-mail: general@distrib.ie

The tribunal also engaged in a comprehensive review of its rules to ensure compliance with the new *Solicitors (Amendment) Act, 2002*, which came into operation on 1 January 2003. On behalf of the tribunal, I would like to thank Michael O'Mahony for the many hours he worked on this project.

The inclusion of the regulatory function of the tribunal in the Law School's module *Professional practice conduct and management* in the professional practice course for trainee solicitors is welcomed by the tribunal. The tribunal recognises that not all solicitors are aware of its existence or its work and hopefully the contribution of the tribunal registrar to the module will help to improve this situation.

It will be observed from the table below that in 2002 there was an increase in the number of sitting days of the tribunal and new applications compared with 2001. As a consequence, the workload of the 15 members of the tribunal also expanded. Thankfully, ten new solicitor members were appointed in December 2002, and this has lightened the burden on their colleagues who have generously given of their time without any recompense. It is anticipated that a further five lay members will be appointed in the near future, and this should improve the position for our present lay members. I would like to take this opportunity to acknowledge the dedication and hard work of all members who willingly give their services to the tribunal.

Year ending 21 May	No of new applications	No of sitting days
2001	48	27
2002	67	34
2003	63	32

The function of the tribunal is best described as quasi-judicial. Its authority is derived from the *Solicitors Acts, 1954 to 2002* and the *Solicitors Disciplinary Tribunal Rules 2003*. Any inquiry undertaken by the tribunal must comply with the requirements of natural and constitutional justice. Procedural safeguards in place include giving a respondent solicitor sufficient notice and details of the application and the opportunity to respond. Because the consequences of disciplinary proceedings can have such a detrimental effect on the livelihood of a solicitor, the tribunal endeavours to ensure that the conduct of proceedings is scrupulously fair.

Apart from its jurisdiction in relation to misconduct, the tribunal may also make an order for the removal of a solicitor's name from the Roll of Solicitors, at his/her own request, where, for example, a solicitor is applying to become a member of the bar.

Constitution

The Solicitors Disciplinary Tribunal is an independent statutory tribunal appointed by the president of the High Court to consider allegations of misconduct against solicitors.

The tribunal consists of 20 solicitor members and five lay members. These latter members are nominated by the minister for justice, equality and law reform to represent the interests of the general public, while solicitor members are appointed by the president of the High Court after consultation with the Law Society.

Members are appointed for a period not exceeding five years as the president of the High Court may determine and may be re-appointed for one further period. Further, at least 40% of the solicitor members and of the lay members of the tribunal shall be men and at least 40% shall be women.

Applications

The number of applications coming before the tribunal for the year ending 21 May 2002 increased by approximately 42% and fell by 7% the following year.

While the majority of applications to the tribunal emanate from the Law Society of Ireland, members of the public may also make a direct application to the tribunal. The tribunal recognises that lay applicants, where an inquiry has been directed, may have a difficulty for one reason or another instructing a solicitor to represent them. Consequently, the tribunal allows lay applicants to be accompanied by a 'McKenzie friend', who may assist them but not take an active part in the proceedings.

The rules of the tribunal provide for certain time limits: for example, a respondent solicitor has 28 days (excluding Saturdays and Sundays) to forward to the tribunal an affidavit in response to the complaints made. The tribunal subsequently sends a copy of the respondent solicitor's response (if any) to the applicant, who may in turn file a further (second) affidavit responding to the matters raised by the respondent solicitor within 28 days (excluding Saturdays and Sundays). If appropriate, the tribunal may extend the time limit to allow either party to respond to the affidavit of the other party by a further 21 days (excluding Saturdays and Sundays). Further, in exceptional cases, the tribunal may permit a further exchange of affidavits between the parties and will fix the time allowed for this exchange. As a consequence of these time limits, a number of months may elapse from the lodgement of an application and the date the tribunal makes a decision in relation to whether or not there is a *prima facie* case for inquiry.

Continued on page 48 ➜

NAL ANNUAL REPORT

ANALYSIS OF APPLICATIONS AND DECISIONS

New applications, year ending 21 May 2002:	68	New applications, year ending 21 May 2003:	63	Applications carried forward from previous years (including y/e 21/5/2002):	104
Law Society applications	**57**		**43**		**76**
Prima facie cases found:	35	*Prima facie* cases found:	30	No *prima facie* case:	6
No *prima facie* case found:	2	Awaiting *prima facie* decision:	10	Awaiting *prima facie* decision:	1
Awaiting *prima facie* decision:	20	*Prima facie* decision deferred	3		
At hearing		**At hearing**		**At hearing**	
Misconduct:	2	Misconduct:	5	Misconduct:	47
No misconduct:	27	No misconduct:	1	No misconduct:	7
Adjourned:	1	Adjourned:	10	Leave granted to withdraw application:	3
Awaiting inquiry:	5	Awaiting inquiry:	14	Adjourned:	10
				Awaiting inquiry:	2
Lay applications	**11**		**18**		**28**
Prima facie case found:	3	*Prima facie* case found:	3	No *prima facie* case:	13
No *prima facie* case found:	4	No *prima facie* case found:	8	Withdrawn	1
Awaiting *prima facie* decision:	4	Awaiting *prima facie* case decision:	6	Awaiting *prima facie* decision:	2
		Prima facie decision deferred:	1		
At hearing		**At hearing**		**At hearing**	
Misconduct:	1	No misconduct:	1	Misconduct:	2
Adjourned:	1	Awaiting inquiry:	2	No misconduct	5
Awaiting inquiry:	1			Leave granted to withdraw application:	1
				Struck out:	1
				Adjourned:	3

Orders made by the Disciplinary Tribunal pursuant to section 7(9) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994* and amended by section 9 of the *Solicitors (Amendment) Act, 2002*:

Orders made by the tribunal in respect of the applications set out at table	Number of orders
Censure, fine and costs:	38
Censure, restitution and costs:	3
Fined and costs:	2
Censure and costs:	2
Advised, admonished, fined and costs:	2
Advised, admonished and costs:	1
Censure:	1
Reprimanded:	1

Fines ranged from €500 to €6,340.

Reports of the Disciplinary Tribunal under section 7(3)(b)(ii) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994* and amended by section 9 of the *Solicitors (Amendment) Act, 2002*:

RECOMMENDATIONS

The respondent solicitor not be permitted to practise as a sole practitioner, that the respondent solicitor be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Law Society of Ireland	4*
The name of the respondent solicitor be struck off the Roll of Solicitors and that the respondent solicitor make recompense, if possible, to the compensation fund of the Law Society	2
The respondent solicitor be allowed continue to practise as an assistant solicitor under the supervision of a solicitor of at least ten years' standing to be approved of by the Law Society of Ireland. The respondent solicitor is not to be allowed to handle clients' funds and will have no cheque-signing authority. The respondent solicitor be censured and pay the whole of the costs of the Law Society, to be taxed in default of agreement	1
The name of the respondent solicitor be struck off the Roll of Solicitors and pay the whole of the costs of the Law Society, to be taxed in default of agreement	2
The respondent solicitor be suspended from practice	1

** These relate to the same solicitor.*

PRINCIPAL GROUNDS ON WHICH PRO

Administration of estates

- Delaying in extracting a grant of administration to the estate
- Failing to apply for a grant of probate in a timely manner or at all and failing to account to the estate for assets and interest thereon and allowing a deficit in the estate
- Untruthfully stating in a letter to beneficiaries that the solicitor was awaiting a certified copy of the Inland Revenue affidavit from the Revenue Commissioners when the same had not been sworn or lodged with the Revenue Commissioners
- Untruthfully stating in four letters to beneficiaries that the administration was nearing completion when in fact the Inland Revenue affidavit was not sworn and the solicitor had not applied for the necessary administration bond and did not subsequently send papers for lodgement in the Probate Office.

Civil actions

- Delaying in prosecuting the personal injuries action of a client over a period of some 18 years
- Seriously prejudicing a client through gross neglect of their case
- Lying to a client about the progress of a non-existent 'appeal'
- Misleading clients in relation to the progress of their case and failing to tell them that any remedy in their favour could be statute-barred
- Putting a client in a very difficult situation with a financial institution by misleading the client
- Deducting fees from a settlement without a client's knowledge or consent
- Failing to advise a client of the correct amount of a settlement
- Failing to take the necessary steps to protect a client's interests
- Failing in duty of disclosure to a client in concealing from him and/or a colleague that the claim had been allowed to become statute-barred.

Communication with clients/ colleagues

- Failing to comply with a client's instructions to hand over a file to a new firm of solicitors, despite the fact that the solicitor had effectively stopped doing any further work to progress the case on behalf of the client
- Failing to respond to correspondence and telephone calls of enquiry from a client about the client's case
- Failing to comply with a commitment to a colleague to furnish title documents in a timely manner or at all
- Failing to reply to his colleagues' correspondence.

Conveyancing

- Failing to conclude a conveyancing transaction on behalf of a client, thereby severely prejudicing the client in that a judgment was obtained against the client as a result
- Misleading clients by informing them that a sale had closed and by paying out monies on foot of this purported closing when this was not the true position
- Failing to discharge a mortgage and failing to account to a client for the monies concerned, necessitating a payment out of the society's compensation fund
- Allowing a conflict of interest insofar as the solicitor never disclosed that his partner was purchasing the property
- Allowing a conflict of interest insofar as the solicitor never advised the clients to obtain separate legal advice.

Professional indemnity insurance

- Failing to hold professional indemnity insurance cover in breach of the *Professional indemnity insurance regulations* (SI no 312 of 1995 as amended)

Solicitors' accounts regulations

- Causing or allowing clients' monies to be misappropriated and misapplied for personal and office purposes
- Causing a deficit to be concealed from both solicitor's reporting accountant and the Law Society's investigating accountant by falsifying books of account over a number of years
- Lodging clients' monies into an account held at a building society in the name of a secretary, in breach of regulation 3 of the *Solicitors' accounts regulations*
- Lodging a portion of the proceeds of an estate to the solicitor's personal account, thereby being in breach of regulation 3 of the *Solicitors' accounts regulations*
- Breaching regulation 7(a)(iv) of the *Solicitors' accounts regulations no 2* of 1984 in retaining monies in respect of fees and outlay from monies held on behalf of a client without furnishing the client with a bill of costs or other written intimation of the amount of the costs
- Breaching regulation 8(1) and (2) of the *Solicitors' accounts regulations no 2* of 1984 by drawing monies from the client account in the form of cheques payable to clients but negotiated

Observations on complaints before the tribunal

The tribunal has considered a variety of complaints against solicitors. The most frequent grounds of complaint continue to be under the headings of delay and lack of information. This is of concern to the tribunal, as there are a considerable number of occasions where solicitors accepted instructions to attend to certain matters and subsequently failed to bring the particular business to a conclusion.

A number of complaints in relation to conveyancing matters reflect considerable slackness in attending to established conveyancing procedures, and in certain cases these failures have had very serious consequences.

To be in breach of the *Solicitors' accounts regulations* is a disciplinary matter. Every practising solicitor has a duty to file with the Law Society of Ireland an accountant's certificate for the end of his/her financial year. The absence of book-keepers or a proper system of book-keeping in solicitors' offices has resulted in a number of solicitors appearing before the tribunal and having serious fines, in addition to costs, being imposed on them. The importance of keeping up-to-date books cannot be overemphasised, for not only do they enable a solicitor's own accountant and the Law Society's investigating accountant to verify the position, but they also enable a solicitor to establish compliance with the regulations.

During the period under review, the tribunal has taken a very strong stance in regard to the failure of solicitors to adhere to the provisions of section 68 of the *Solicitors (Amendment) Act, 1994*. In one such case, the tribunal found a solicitor guilty of misconduct in regard to a failure to comply with the statutory obligation to furnish a bill in the format prescribed by section 68(6) of the *Solicitors (Amendment) Act, 1994* and imposed a fine of €2,000 in regard thereto. The tribunal also ordered the respondent solicitor to pay €5,078.95 as restitution to the client. By way of highlighting its attitude in regard to breaches of section 68, the tribunal asked the Law Society to publish the following notice in its *Gazette*:

'*The tribunal is concerned that it should go out from here that if there is any practice in relation to settlements in road-traffic accidents as between solicitors and their clients relating to fees, in so far as the tribunal is concerned they wish it to be stated very clearly that the provisions of section 68 of the* Solicitors (Amendment) Act, 1994 *is the law which is applicable to this area of practice. As far as the tribunal is concerned, that is the law that will be applied and no other practice will in any sense be deemed to take over that law.*

FESSIONAL MISCONDUCT WAS FOUND

by the solicitors for their own benefit and further without the authorisation by the Council of the society prescribed by regulation 8(2)
- Breaching regulation 9(1) of the *Solicitors' accounts regulations* in failing to keep a record of lodgements received in connection with the solicitor's practice. Further, minimum books of account were not maintained in connection with a building society account
- Failing to keep proper books of account to show dealings with clients' monies by withdrawing from the client account all funds held on behalf of a client by way of a cheque made payable to cash, thereby concealing that a solicitor/client fee had been charged and therefore breaching regulation 10(1) of the *Solicitors' accounts regulations*
- Breaching regulation 21(1) of the *Solicitors' accounts regulations no 2* of 1984 in failing to deliver to the Law Society an accountant's report
- Failing to reimburse clients the monies they advanced as a contribution to professional fees and costs incurred on doctors, engineers, actuaries and other witnesses, notwithstanding that their costs were subsequently received by the solicitor by way of party/party costs and solicitor/client fees
- Allowing or causing the books of account to be falsified by means of systematic teeming and lading, where funds which were received subsequently from other clients were placed to the credit of the client whose remittance was originally misappropriated to conceal the deficit arising on the client account.

Section 68
- Failing to comply with section 68(1) of the *Solicitors (Amendment) Act, 1994*
- Deducting or appropriating monies in respect of their charges from the monies payable to clients arising out of contentious business carried out on behalf of the clients in breach of section 68(3), (4) and (5) of the *Solicitors (Amendment) Act, 1994*
- Failing to furnish clients with bills of costs in breach of section 68(6) of the *Solicitors (Amendment) Act, 1994.*

Supervision
- Failing to exercise any or adequate supervision over non-qualified employees in the office
- Was aware that a law clerk/book-keeper signed the solicitor's name on cheques and failing to instruct him to desist
- Failing to exercise any or adequate supervision over an unqualified employee who represented a client in the prosecution of a case in the respondent solicitor's office.

Undertakings
- Breaching a solicitor's undertaking with a bank to discharge a sum of money to the bank on completion of a conveyancing transaction
- Failing to comply with an undertaking given to a client to deal with all Land Registry queries in connection with the registration of title.

Regulatory body: Law Society of Ireland
- Lying to the registrar of solicitors when the respondent solicitor stated regarding a delay in filing an accountant's report that the balances had been checked 'and everything was in order', whereas there was a deficit in client account
- Failing to respond to the society's correspondence in a timely manner or at all
- Failing to comply with undertakings given to the Registrar's Committee
- Failing to comply in a timely manner with the directions of the Registrar's/Compensation Fund Committees
- Misleading the Registrar's Committee and Compensation Fund Committees
- Failing to comply with a notice pursuant to section 10 of the *Solicitors (Amendment) Act, 1994* requiring the delivery to the society of the complainant's file and papers to investigate the complaint of the complainant.

Cases presented to the High Court

Struck off the Roll of Solicitors	2
Practising certificate be limited to the effect that the solicitor is limited to practise as an assistant to a solicitor of not less than ten years' standing	2*
Adjourned	4
Awaiting presentation to the High Court	2*

** Four referrals to the president of the High Court were made in respect of the same solicitor.*

Other orders made by the tribunal

For the period ending 21 May 2003, the tribunal made seven orders removing the names of the solicitors, at their own request, from the Roll of Solicitors. This was an increase on the previous period, when four such orders were made.

'The tribunal wishes it to be known that a solicitor who has been paid in full by the insurance company for the work done is not entitled to any extra fee from his client for that same work.

'We feel that it is very important for the future of the profession and the future of the clients of the profession that everybody knows what the law is and the fullest possible promulgation of the terms of section 68 should be made available to the profession, as has happened, but also to the general public.'

Another frequent cause of complaint is simply the solicitor's failure to reply to the correspondence of clients and the Law Society. Failure to keep clients adequately informed of the progress of their business means that clients naturally assume that nothing is happening and consequently blame their solicitors. Ideally, complaints of this nature should never reach the tribunal, but nevertheless such a failure may instigate a complaint to the Law Society and ultimately end with a referral to the tribunal.

The privacy of family law proceedings is protected by legislation which places an embargo on the production to any third party of information which derives from family law proceedings. In the decision of Murphy J in *RM v DM*, the primacy of the *in camera* rule was endorsed. It was also emphasised that the disclosure of any such material or information to a third party (and this would include the Solicitors Disciplinary Tribunal), even with the consent of the parties to the proceedings, could amount to contempt of court. In the circumstances, the tribunal, at the present time, is unable to prosecute applications alleging misconduct against solicitors arising out of family law matters. I understand the Law Society of Ireland and the independent adjudicator of the Law Society, Mr Eamonn Condon, have made submissions to the minister for justice, equality and law reform seeking amendments to the *in camera* legislation which would allow consideration of complaints relating to family law matters.

The last year has seen the expansion and enhancement of the tribunal's jurisdiction and powers under the *Solicitors (Amendment) Act, 2002*. As previously indicated, sometime during the coming months five additional lay numbers are due to be appointed. This will obviously place an extra burden on the staff and resources of the tribunal. The tribunal, however, is committed to ensuring that whatever staff and/or resources are required will be forthcoming, to ensure that the tribunal is enabled to carry out its function and to maintain its independence. G

Thomas D Shaw, chairperson.

Personal injury judgment

Road traffic accident – post-traumatic stress disorder – general damages – damages for future loss of opportunity

CASE

***Deirdre O'Brien Vaughan v Josephine Little*, High Court, judgment of De Valera J, delivered on 11 August 2003.**

THE FACTS

Deirdre O'Brien Vaughan was driving her motor car on 6 August 1999 at Colmoney, Co Clare. Her car collided with a car driven by Ms Little. Ms O'Brien Vaughan is a music teacher and suffered injuries, including initial shock and distress, neck pain (both left and right side), left-arm pain, lower-back pain, initial left-chest and breast bruising, back problems resulting in discectomy and osteophectomy, pain in her ankle, nausea, diarrhoea and vomiting, and psychological trauma resulting in post-traumatic stress syndrome. She claimed that her continuing pain and suffering interfered with her lifestyle and capacity to teach music and perform as a musician.

Liability was admitted. The High Court action proceeded only in relation to the amount of damages.

JUDGMENT OF THE HIGH COURT

De Valera J, in his judgment delivered on 11 August 2003 noted that Ms O'Brien Vaughan was a musician and a teacher who was obviously held in considerable regard and esteem by her peers and admirers in traditional music. The judge noted that Clare music and musicians had an enviable reputation; he accepted completely that Ms O'Brien Vaughan was a prominent exponent and teacher of traditional music, as had been described in court.

The judge also accepted that her injuries, in addition to causing her continuing pain and suffering, had interfered with her music endeavours (both teaching and performing) to a considerable extent.

Counsel in court had specifically asked the judge to consider the issue of loss of Ms O'Brien Vaughan's plans to set up and run an Irish traditional music institute as a loss to be considered in general damages.

In considering the appropriate amounts to be awarded for general damages, De Valera J made reference to the so-called 'cap' on amounts considered by the Supreme Court in *Allen v O'Suilleabhain and Mid Western Health Board*, Supreme Court, unreported judgment of 11 March 1997, *Kealy v The Minister for Health* ([1999] 2 IR 456) and *Fitzgerald v Treacy* ([2001] 4 IR 405).

De Valera J considered that in the instant case the injuries, although severe, could not be categorised as catastrophic injuries. The judge noted that the plaintiff had suffered serious pain and associated inconvenience. He accepted that these had the effect, among other things, of preventing her performing and enjoying her music up to January 2003 and into the future. He noted that her difficulties in regard to her music were a combination of physical and psychological problems. He accepted, however, that the plaintiff would, on the balance of probabilities, continue to suffer some ill effects into the future. However, he also found that, on the evidence before the court, there was a reasonable probability that Ms O'Brien Vaughan would improve over the years.

The judge stated he had considerable difficulty in accepting fully the psychiatric evidence adduced on behalf of Ms O'Brien Vaughan. However, he did accept that many of the psychiatric difficulties, such as they were, were associated with her physical limitations, and when the physical limitations would improve, so would her mental state. The judge accepted that because of her particular talents, there was a reference to her having 'lost her muse' and this was a special and significant loss for her. He did accept that she also had lost the opportunity of continuing with her plans for an Irish traditional music institute, but more so on the basis of a loss of a treasured cultural ambition rather than a financial loss.

Loss of earnings

De Valera J stated that there was an absence of any satisfactory financial records. Accordingly, a decision under this heading was difficult. The judge noted that as Ms O'Brien Vaughan's mental and physical condition improves, her musical talents and teaching capacity would allow for at least a supervisory role in teaching music in the future. Taking everything into consideration, including the inadequacies of evidence as to financial records, he considered a fair basis to calculate the plaintiff's loss of earnings to the date of the trial would be £250 a week for 40 weeks of the year (pre-tax) amounting to £8,160 a year (net).

The judge accepted that the plaintiff would gradually recover and he believed that, as she improved, her talents and her 'muse' would allow her to gradually get back to teaching and performing (perhaps not at the same level as before, but to some extent) and for this reason he could not measure accurately her loss on a specifically actuarialised basis. It would be more appropriate to measure it in a lump-sum basis for future loss of opportunity. Accordingly, the loss of earnings in the future was measured at €40,000. G

THE HIGH COURT AWARD

De Valera J awarded damages as follows:

- General damages to the date of the trial – €100,000
- General damages into the future – €80,000
- Special damages – €9,095
- Loss of earnings to date of trial – €41,444
- Loss of earnings into the future – €40,000
- Future medical expenses – €7,750.

Total: €278,289

This judgment was summarised by solicitor Dr Eamonn Hall.

First Law Update

www.firstlaw.ie

News from Ireland's on-line legal awareness service
Compiled by Karen Holmes for FirstLaw

CHILDREN AND YOUNG PERSONS

Family law, practice and procedure

Child abduction – Hague convention – *practice and procedure – preliminary issue – parties to proceedings – central authority – whether minister as central authority obliged to initiate or join in judicial proceedings for return of child wrongfully removed from jurisdiction* – Child Abduction and Enforcement of Custody Orders Act, 1991, *section 9* – Hague convention, *article 7* – Rules of the Superior Courts 1986, *order 15*

Article 7 of the *Hague convention* obliges central authorities to co-operate with each other to secure the prompt return of children and to achieve the objects of the convention. In particular, it obliges the central authorities to take all appropriate measures to do a number of things which are set out at paragraphs (a) to (i) of article 7, including: 'a) to discover the whereabouts of the child who was being wrongfully removed or retained … (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues … (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effect of exercise of rights of access; (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of counsel and advisors'.

The first applicant made a request to the minister for justice, as the central authority for Ireland under the *Hague convention*, for the return of the minors named in the title. Thereafter, the minister for justice directed the Finglas Public Legal Aid Law Centre to take instructions from the first applicant and proceed on his behalf with an application to the High Court for the return of his two children to the jurisdiction of their habitual residence. By order of the High Court (Abbot J), it was directed that the minister be joined in the proceedings. The minister then applied pursuant to order 15 of the *Rules of the Superior Courts 1986*, to be removed as a party to the proceedings, being, essentially, *functus officio* at that stage.

In directing that the minister for justice be removed as a party to the proceedings, Finlay Geoghegan J held that section 9 of the *Child Abduction and Enforcement of Custody Orders Act, 1991* required that where the central authority received an application to which the *Hague convention* applied, 'it shall take action or cause action to be taken under that convention to secure the return of the child'. The fact that the central authority was obliged to take action or cause action to be taken did not require the central authority to be an applicant in any court proceedings which were taken, as the 'action' referred to in section 9 of the 1991 act had to be construed in accordance with the provisions of article 7 of the *Hague convention*. On the facts of this case, the central authority did take action of the type envisaged at paragraphs (f) and (g) of article 7. ***DGH and Minister for Justice, Equality and Law Reform v TCH*, High Court, Miss Justice Finlay Geoghegan, 24/6/2003** [FL8084]

COMPANY

Directors' duties, liquidation

Application to restrict company directors – official liquidator – obligation of liquidator to bring application for restriction of directors – persons in respect of whom obligation exists – statutory interpretation – principles of construction – whether liquidator obliged to bring application in respect of persons who were directors within 12 months prior to commencement of liquidation – Companies Act, 1990, *section 150* – Company Law Enforcement Act, 2001, *section 56*

USIT World plc was wound up by order of the High Court on 15 May 2002. The liquidator issued a motion pursuant to section 150 of the *Companies Act, 1990*, seeking declarations of restrictions in respect of persons who it was alleged were directors of the company within one year of the commencement of the winding-up. Included among such persons was a Mr Connolly, who had been appointed a director on 18 January 2001 and ceased to be a director on 2 July 2001. The liquidator took the view that he was obliged to do so, as he had

Office of the Director
of Corporate Enforcement

Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

REQUEST FOR EXPRESSIONS OF INTEREST FROM PROVIDERS OF LEGAL AND ACCOUNTING SERVICES

The Director of Corporate Enforcement has a requirement from time to time to obtain external legal and accountancy services from suitably qualified firms and persons. In retaining such services, he is anxious to give consideration not only to those providers who are already known to his Office but also to other suitably qualified experts. In that context, the Director proposes to establish panels of professional experts who wish to be considered for outsourced work during 2004. This work is likely to comprise specific assignments and to be time-sensitive.

LEGAL EXPERTS: The Director seeks expressions of interest from Senior and Junior Counsel and from Solicitors with relevant expertise and experience particularly in the areas of Company Law, Commercial Law, Criminal Prosecution and Judicial Review.

ACCOUNTING EXPERTS: The Director seeks expressions of interest from Accounting Firms and Professionals who possess relevant expertise and experience in forensic accounting, auditing, insolvency and corporate rescue.

LEGAL COSTS ACCOUNTANTS: The Director seeks expressions of interest from Legal Costs Accounting Firms and Professionals with relevant expertise and experience in legal accountancy services.

Firms and persons who believe that they possess the requisite expertise and experience in any of the above areas are invited to register their interest by supplying the following information:

- name, business address and contact details;
- details of qualifications of principals;
- details of qualifications of key staff (in the case of a firm);
- details of relevant experience;
- indication of the range and extent of skills and resources available (in the case of a firm);
- indication of general availability, where possible, and
- details of the geographical area within which the service provider predominantly operates.
- proof of Financial and Economic Standing, including;
  - appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
  - balance sheets or extracts therefrom;
  - statements of the undertaking's overall turnover and the turnover in respect of similar services carried out in the last three years;
  - statement under Article 29 of EU Council Directive 92/50/EEC of 18/6/92, as amended by EU Directive 97/52;
  - Proof of Tax Compliance (e.g. Tax Clearance Certificate);

The Director does not guarantee to retain firms or persons applying for inclusion on the panels but will, where practicable, accord due recognition to firms and individuals who respond to this request. The Director reserves full discretion to consult and engage firms and persons who are not on the panel, whenever he considers it advisable to do so.

Information on the work of the Director's Office may be obtained from its website at www.odce.ie.

Expressions of interest should be sent for consideration before
31 December 2003 for inclusion in evaluation for the first tranche,
via post, fax or e-mail to;

Ms Phil Flood
Corporate Services Unit
Office of the Director of Corporate Enforcement
16 Parnell Square
Dublin 1

Fax: (01) 8585 801
Email: phil_flood@odce.ie

Later expressions of interest will also be considered.

not been relieved of such obligation by the director of corporate enforcement pursuant to section 56 of the *Company Law Enforcement Act, 2001*. Mr Connolly contended, as a preliminary issue, that the official liquidator was not obliged under section 56 of the 2001 act to bring a section 150 application in respect of him.

Finlay Geoghegan J found that the liquidator was under an obligation to bring a section 150 application in respect of Mr Connolly, holding that while the legislature, in imposing an obligation under section 56 of the 2001 act in respect of 'each of the directors of the company', did not expressly specify the point in time at which a person must be or have been a director of the company in order to come within the section – if a literal approach were applied to the construction of that section, it would mean that the section only referred to persons who were directors of the company at the date the obligation arose, which would lead to an absurd result. Likewise, there was nothing in the section, either when construed on its own or in conjunction with the other relevant sections of the 2001 act, which suggested that the Oireachtas intended that the obligation be confined to persons who were directors at the date of the commencement of the winding-up. Accordingly, section 56(2) had to be construed in conjunction with section 150 of the 1990 act and, when so construed, it appeared that the intention of the legislature was that, at a minimum, the obligation of the liquidator under section 56(2) of the 2001 act was to bring an application pursuant to section 150 of the 1990 act in respect of persons who were directors of the company at the date of the commencement of the winding-up or within 12 months prior to that date.

***USIT Ireland Ltd (in liquidation)*, High Court, Miss Justice Finlay Geoghegan, 30/7/2003** [FL8079]

Equity and trusts, solicitors

Land law – equity and trusts – partnership – property – solicitors – practice and procedure – furnishing of documents of company – whether company entitled to return of documents

Proceedings were issued on behalf of the plaintiff against its former solicitors (the defendants). The plaintiff had sought the return of all documents relating to its business, along with its corporate seal. The plaintiff's position was that it needed sight of the documents in order to assess more fully transactions which had been entered into in its name. A member of the defendant's firm (O'Brien) had also been involved in the plaintiff's business and was a director of the company. Mr O'Brien asserted that, together with the other directors of the plaintiff, they had in fact established an undisclosed trust and that, when preparing contracts, he was doing so on behalf of the partnership and not on behalf of the plaintiff.

Mr Justice Smyth found in favour of the plaintiff. The fact that persons in a partnership set up business under the aegis of a company does not mean that the company does not have its own legal personality with its own rights and duties, together with the rights and duties of shareholders. On the basis of the evidence adduced, the plaintiff was a client of the defendant and was entitled to the documents that it sought, no matter what the views of the persons in the partnership were. An order was made to this effect, along with an order restricting the pledging of certain title documents.

***Bayworld Investments v McMahon and Others*, High Court, Mr Justice Smyth, 19/6/2003** [FL8051]

CRIMINAL

Appeal, evidence

Accomplice evidence – admissibility – whether witnesses could consider their evidence to have been bought – whether that evidence so suspect that it could not be relied upon – corroboration – whether corroboration required of accomplice evidence – whether circumstantial evidence can amount to corroboration of accomplice evidence in relation to drugs offences – whether applicant afforded trial in due course of law – whether applicant lawfully convicted

The applicant had been convicted by the Special Criminal Court of importing controlled drugs into the state and of possessing such drugs with the intent to supply, contrary to section 15 of the *Misuse of Drugs Act, 1977*. On a charge of murdering a journalist, the Special Criminal Court held that, while the facts admitted in evidence during the trial gave rise to a suspicion that the applicant had some part in the murder, it was no more than a suspicion and that was not a basis upon which a person could be convicted. Evidence used to support those convictions came largely from the testimony of accomplices of the applicant. Those witnesses had, among other things, been given immunity against prosecution of various offences and substantial sums of money in return for agreeing to testify against the applicant. However, the court, in its judgment, recited various pieces of circumstantial evidence which it relied upon as corroboration of such accomplice evidence.

The applicant sought leave to appeal his convictions on the grounds, among others, that the evidence had been obtained, at least to some degree, by offering incentives to the witnesses who had been the applicant's accomplices. The applicant did not argue that there could not be a witness protection programme, but criticised the manner in which the programme had been carried out. The applicant further complained that while the court may have set its standards as to its examination of the evidence of these witnesses at a high level, when it came to consider the actual evidence it accepted a lower standard than it had set itself, and if it had adhered to its own standards, it would not have accepted the evidence of the accomplices.

In upholding the applicant's conviction in relation to the importation charge and the offence under section 15 of the 1977 act, the Court of Criminal Appeal held that if there was an agreement between a witness and the gardaí or the prosecuting authorities that he would give certain specific evidence and in return would be paid a specific amount of money, that evidence would be unlawfully obtained and could be excluded. The events in the case did not approach that situation, however. In considering accomplice evidence, the following questions should be asked:

1) Was it recognised by the court that there were dangers in accepting the evidence without corroboration?
2) Were those dangers identified by the court?
3) In the light of the particular facts relating to the evidence of each accomplice, were those dangers safeguarded against?
4) With regard to the particular circumstances of each accomplice, were the measures taken and identified to safeguard against the dangers properly applied?
5) If all these matters were properly addressed, could the evidence of the accomplice be reasonably accepted?

In considering the evidence of the accomplices, the Special Criminal Court had been aware of such dangers and kept them in mind when considering their evidence. This was not a case where corroboration was essential. However, the court required of itself significant corroboration of evidence given by the accomplices. What the Special Criminal Court appeared to mean by corroboration was circumstantial evidence or independent testimony which may lawfully amount to corroboration. There was circumstantial evidence that cartons imported by an accomplice of the applicant contained drugs. The Special Criminal Court was entitled to find beyond reasonable doubt on the evidence before it that the applicant had unlawfully imported the drugs and had them in his possession with intent to supply.

***DPP v Gilligan*, Court of Criminal Appeal, 8/8/2003** [FL8123]

Extradition, detention

Criminal law – constitutional law – extradition – detention – habeas corpus – *delay – multiplicity of actions practice and procedure – Garda Síochána – whether applicant should be extradited – whether improper pressure brought to bear on applicant –* Extradition Acts, 1965-2001 – Bunreacht na hÉireann 1937

The extradition of the applicant to England had been sought on foot of charges relating to an alleged assault. Judicial review proceedings and proceedings under section 50 of the *Extradition Act* had been initiated in order to challenge the extradition. An issue arose as to whether it was appropriate to have two separate sets of proceedings in train in order to challenge the extradition. It was contended by the applicant that a member of an Garda Síochána had improperly attempted to use the existence of the extradition warrants in order to force the applicant to disclose information relating to other alleged criminal activity committed in this jurisdiction. It was also argued, by reason of delay as well as alleged violation of the applicant's constitutional rights, that an order of extradition should not be made.

McKechnie refused the relief sought and confirmed the extradition order. There was nothing to preclude an applicant, in challenging his extradition, from issuing both judicial review proceedings and proceedings under the *Extradition Acts*. However, in the interests of convenience and practicality, both sets of proceedings should be heard by the same court at the same time. There had been an attempt by an Garda Síochána to improperly use the existence of the extradition warrants in order to gain further information from the applicant. Despite this conduct, no information had been elicited from the applicant and no constitutional rights had been infringed. All the relevant statutory requirements had been complied with and it had not been established that the applicant's right to an expeditious trial had been breached.

***Lynch v Attorney General and Others*, High Court, Mr Justice McKechnie, 8/4/2003** [FL8104]

Licensing, liquor

Licensing offence – case stated – District Court – summons – validity of summons – statute – interpretation – whether statute

or part thereof repealed by new act – whether summons charging liquor licence holder with offence should expressly state on its face that licence holder required to produce licence to trial court – Intoxicating Liquor Act, 1927, *section 32* – Intoxicating Liquor Act, 1988, *section 31* – Intoxicating Liquor Act, 2000, *sections 13 and 14*

Section 32(1) of the *Intoxicating Liquor Act, 1927* provides that where the owner of the licence is charged with an offence to which part III of that act applies, the summons shall state that such holder will be required to produce such licence to the court at such trial. Section 14(1) of the *Intoxicating Liquor Act, 2000* deleted the provision previously contained in section 31(3) of the *Intoxicating Liquor Act, 1988*, which provided that 'the offence [under section 31 of the 1988 act] shall be deemed to be an offence to which part III of the act (of 1927) applies'.

The accused was the holder of an off-licence who was charged with an offence under section 31 of the 1988 act of permitting alcohol to be sold to a minor. The summons charging him did not state on its face or otherwise that the accused was required to produce his licence to the court at the trial. The accused contended that the summons was flawed because the offence with which he had been charged was an offence to which part III of the 1927 act applied and, accordingly, should have stated on its face that he was required to produce his licence to the trial court. The district judge stated the following questions for determination by the High Court: 1) did section 14(1) of the 2000 act repeal section 32(1) of the 1927 act?; 2) is an offence under section 31(2) of the 1988 act an offence to which part III of the 1927 act applies?; and 3) did section 32(1) of the 1927 act apply in respect of a summons charging the accused with an offence under section 31(2) of the 1988 act?

Quirke J held that the summons was valid *ab initio* and was not flawed in the manner contended for by the accused, and:

1) Answering the first question posed in the negative, held that the enactment of section 14(1) of the 2000 act was intended for the purpose of amending section 31 of the 1988 act, which deemed offences under the section to be offences to which part III of the 1927 act applied, and its enactment had no effect upon the provisions of section 32(1) of the 1927 act
2) Answering the second and third questions posed in the negative, held that section 14(1) of the 2000 act deleted the mandatory requirement to endorse a licence in respect of premises where an offence occurred under section 31 of the 1988 act. Accordingly, on the date when the summons requiring the accused to come to court was issued, the offence with which he had been charged had not been deemed to be an offence to which part III of the 1927 act applied and there was accordingly no requirement for a statement of the type referred to in section 32(1) of the 1927 act to be contained in the summons.

Obiter dictum: the court, however, retained a discretionary power to order that a conviction for an offence under section 31 of the 1988 act be recorded on the licence held by the accused, but it was only upon the exercise of that discretionary power that the offence would be deemed to be an offence to which part III of the 1927 act of would apply.

***DPP v Joyce*, High Court, Mr Justice Quirke, 20/5/2003** [FL8078]

PLANNING AND DEVELOPMENT

Certiorari

Judicial review – planning and environmental law – European law – certiorari – *environmental impact statement – whether application should be certified for appeal to Supreme Court – whether delay bar to grant of certificate* – Local Government (Planning and Development) Act, 1963 – Local Government (Planning and Development) Act, 1992 – Planning and Development Act, 2000

The applicant had brought an application seeking leave to seek judicial review in respect of a decision issued by an Bord Pleanála to dismiss her appeal against the grant of permission for a development. The application for leave was dismissed. The applicant now sought to appeal to the Supreme Court on the basis that the application involved points of law of exceptional public importance and sought the appropriate statutory certificate. It was contended on behalf of the applicant that matters were raised regarding the applicable thresholds for the furnishing of an environmental impact statement (EIS). The first-named notice party submitted that the earlier court judgment had refused leave to seek judicial review as no substantial grounds had been established. Accordingly, no point of law of importance could be said to have arisen. It was not permissible to allow an appeal to the Supreme Court on theoretical points of law. It was also in the public interest that planning decisions should be implemented as soon as possible.

Murphy J refused the application. The matter of the threshold relating to EIS's had

been considered in the context of the decision of the court refusing leave. It was of some significance that the present application was not made at the time when the application for leave to seek judicial review was made. Given the overall import of the legislation and the clear indications of the courts regarding time restrictions, parties should be aware of the importance of acting promptly. The applicant was not entitled to apply for a certificate after the application had been determined by the court. In addition, no issues arose involving points of law of exceptional public importance.

***Ní Ghruagáin v an Bord Pleanála and Others*, High Court, Mr Justice Murphy, 19/6/2003** [FL8033]

Construction, environment

Planning permission – declaratory relief – true meaning of planning permission – approach to construction

The defendant granted the plaintiff planning permission. This case involved a dispute between the parties as to the use to which the premises could be put. The defendant's real concern was that the plaintiff was attempting to use the premises for a purpose for which they were never intended by reference to the planning permission. It believed that the plaintiff was attempting to turn the centre into a concert and entertainment venue. In essence, the court was asked to grant a declaration as to the true meaning of the planning permission.

Kelly J in the High Court made a declaration that the plaintiff's centre could be used for the type of uses set out in the schedule of activities, including the service of food and drink ancillary to such cultural activities. The plaintiff could not use the centre for non-cultural activities and could not use it to hold weddings or as a nightclub.

***Grianan an Aileach Interpretative Centre Company Ltd v Donegal County Council*, High Court, Mr Justice Kelly, 22/8/2003** [FL8100]

PRACTICE AND PROCEDURE

Interim relief

Application for interim relief – stay on Circuit Court order – production order in respect of infant – whether relief should be granted – alternative remedies – whether application premature – whether applicant should pursue appeal before bringing application

The applicant sought an interim stay on orders of the Circuit Court granting the respondent custody of the infant MS, an order for the inclusion of the attorney general as a party to the proceedings, an order for the production of the infant MS to the High Court, an order for the surrender of the passport of the said infant and an order prohibiting the removal of the said infant from the state by anyone apart from herself. She indicated her intention to appeal the said Circuit Court orders but had not yet filed the appeal papers.

Gilligan J in refused the application, holding that the court would have to be satisfied that there was something wrong in the decision-making process in respect of the Circuit Court orders before it would grant the relief sought. The applicant could have applied for interim access to her child pending a full hearing of the appeal of the Circuit Court orders, which she did not do, therefore no order in respect of the production of the infant or his passport would be made. As the attorney general did not have any role to play in the proceedings, he would not be joined as a party thereto.

***FS v MN*, High Court, Mr Justice Gilligan, 15/4/2003** [FL8068] G

The information contained here is taken from FirstLaw's Legal Current Awareness Service, published every day on the Internet at www.firstlaw.ie. *For more information, contact bartdaly@firstlaw.ie or FirstLaw, Merchants Court, Merchants Quay, Dublin 8, tel: 01 679 0370, fax: 01 679 0057.*

Eurlegal

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

Intellectual property licensing in Europe – proposed new EU competition rules

On 1 October 2003, the European Commission published for public consultation a proposed EU regulation on the application of the EU competition rules to agreements for licensing of patent (and other types of) intellectual property (IP).

This note summarises why readers of the *Gazette* (and their advisers) should take account of these changes in developing their individual IP licensing strategies and why, in response to the consultation, they may wish to submit comments to the commission.

Exemption from article 81 of the *EC treaty*

The proposed EU regulation (published with 60 pages of draft guidelines) sets out the conditions that IP licensing agreements must satisfy to be automatically exempted from the application of article 81 of the *EC treaty* (the prohibition on anti-competitive agreements). The proposal also explains the circumstances in which that exemption will not be available to, or could even be withdrawn from, IP licensors/licensees.

Enforcement

The proposal will enter into force on 1 May 2004. There will be a transition period (only until 31 October 2005) for IP licensors/licensees to review and, if necessary, amend their existing IP licensing agreements that do not meet the proposal's conditions for exemption from the application of article 81 of the *EC treaty*.

Change of licensing culture

- *Market share thresholds* – the proposal will require licensors and licensees of intellectual property rights (IPR) to constantly review that their shares of the market affected by the licensing agreement do not exceed certain thresholds, thus avoiding the risk of violating article 81 of the *EC treaty* and attracting possible fines and/or legal challenges. Staying below these thresholds will be especially relevant for IP licensors/licensees in dynamic, innovation technology markets
- *Prohibited restrictions* – under the proposal, including certain prohibited restrictions on competition (for example, certain types of cross-licensing obligations between 'competitors') in their licensing agreements will prevent IP licensors/licensees enjoying the legal and commercial benefits of automatic exemption from the application of article 81
- *Individual assessment* – from 1 May 2004, IP licensing agreements that do not meet the proposal's conditions for automatic exemption from article 81 may need to be notified for individual assessment by the EU member states' national competition authorities ('national agencies') and *not* the commission. This is the result of a separate reform of the EU competition rules (regulation 1/2003, OJ L 1/1, 4 January 2003). Having regard in part to other EU guidelines, IP licensors/licensees will need to be confident that these national agencies will apply the proposal correctly and consistently across the expanded European Union, especially where an assessment of the possible anti-competitive effects of a particular licensing agreement requires a full understanding of the relevant industry
- *Outside the scope of the new EU regulation* – the proposal also explains how the European Commission and national agencies should apply article 81 to licensing agreements that are *not* covered by the new regulation (for example, patent pool agreements and multiparty licensing)
- *What else is new?* – the proposal also explains how the commission will apply many aspects of the law that are not covered by the current EU competition rules (regulation 240/96 of 31 January 1996, OJ L 31/2), for example, IP licensing of the results of jointly-developed R&D to other companies
- *Implications for global IP licensing* – because of the key differences between the proposal and the competition and IPR regimes in, for example, the US and Japan, IP licensors/licensees will probably welcome more certainty about how their global licensing strategies can be developed in Europe without risking violation of article 81.

Existing IP licensing agreements

After 31 October 2005, the proposal will apply to IP licensing agreements signed by IP licensors/licensees on or before 30 April 2004. Therefore, before then, both licensors and licensees should check that the proposal's fundamental changes do not undermine the legal value of their existing IP licensing agreements drafted under the current EU competition rules.

Next steps

The proposal can be downloaded from the European Commission's website at *http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_235/c_23520031001en00100054.pdf*. G

Conor Maguire is a solicitor practising in Brussels.

Recent developments in European law

COMPETITION

Case T-203/01 *Manufacture Française des Pneumatiques Michelin v Commission of the European Communities*, 30 September 2003. Michelin has a dominant position on the French market for replacement tyres for trucks and buses. In 2001, the commission adopted a decision finding that Michelin had abused its dominant position through a system of discounts, refunds and financial advantages with its dealers. The system operated by Michelin tied dealers to the company and undermined competition. Michelin was fined €19.76 million. Michelin brought an action before the CFI for annulment of the decision. It argued that the discounts and bonuses were not loyalty-inducing and challenged the commission's argument that the cumulative effect of the various systems of rebates amounted to a further abuse. The CFI upheld the decision of the commission. It held that a company in a dominant position that operates a system of loyalty discounts and bonuses impedes normal price-based competition.

DATA PROTECTION

Case C-101/01 *Bodil Lindqvist*, 6 November 2003. Ms Lindqvist was involved in preparing people for communion in a parish in Sweden. In 1998, she set up a website to enable parishioners to obtain information they were likely to need. These web pages included data on Ms Lindqvist and her parish colleagues. The names of her colleagues were given, along with a description of their work and their hobbies. In several cases, family information, telephone numbers and other information was given. She mentioned that one of her colleagues was working part-time on medical grounds, as she had injured her foot. She was fined approximately €450 for processing personal data by automatic means without notifying the Swedish supervisory authority in writing, for transferring data to third states without authorisation and for processing sensitive personal data (that relating to the foot injury). A Swedish court referred the case to the ECJ, asking whether the activities with which she was charged are contrary to the provisions of the *Data protection directive*. The ECJ held that referring to people on a web page and identifying them by name and giving other information about them constitutes 'processing of personal data … by automatic means'. Reference to the state of an employee's health amounts to processing of data concerning health. The court held that the directive does not restrict freedom of expression or other fundamental rights. It is for national courts and authorities responsible for applying the national legislation implementing the directive to ensure a fair balance between the rights and interests in question, including those fundamental rights.

EMPLOYMENT

Case C-151/02 *Landeshauptstadt Kiel v Norbert Jaeger*, 9 September 2003. Mr Jaeger is a German doctor who works at a hospital in Kiel. He performs on-call duty that requires him to be present in the hospital and available to work when called on. This additional duty is partly offset by additional time off and partly by additional pay. He is allocated a room with a bed in the hospital where he can sleep when his services are not required. Mr Jaeger argues that this on-call duty must be deemed to constitute working time. German law defines on-call service as rest time except for that part of it where professional tasks are actually performed. The *Working time directive* defines working time as 'any period during which the worker is working, at the employer's disposal and carrying out his … duties'. A German court sought a ruling from the ECJ as to whether the German law was in conformity with the directive. The ECJ held that the totality of time spent on call is working time. The decisive factor is that the doctor is required to be present at a place determined by the employer and to be available to provide their services immediately in case of need. Doctors are not free to choose the place where they stay during waiting periods. The court held that its interpretation was not altered by the fact that a rest room was made available to the doctor. A doctor who is required to make himself available at a place specified by his employer is subject to greater constraints than a doctor on stand-by, as he is apart from his family and social environment and has less freedom to manage the time during which his professional services are not required. Under these conditions, a doctor required to be available at the place determined by his employer cannot be regarded as being at rest during the periods of his on-call duty when he is not actually carrying on any professional activity.

ESTABLISHMENT

Case C-168/01 *Bosal Holding BV v Staatssecretaris van Financien*, 18 September 2003. Bosal is a Dutch company involved in financing and licensing transactions. It is subject to corporation tax in the Netherlands. In 1993, it declared costs in excess of €1,800,000 in relation to the financing of its holdings in companies established in nine other member states. It claimed that these costs should be deducted from its own profits. The Dutch tax office refused to allow this deduction. The case was referred to the ECJ. It held that the Dutch rules were an obstacle to setting up subsidiaries in other member states. This was an unjustified restriction on freedom of establishment.

FREE MOVEMENT OF PERSONS

Case C-109/01 *Secretary of State for the Home Department/Hacene Akrich*, 23 September 2003. Mr Akrich is a Moroccan citizen. Since 1989, he has made a number of attempts to enter and reside in the United Kingdom. His applications for leave to remain were always refused. In 1996, while residing illegally in the UK, he married a UK citizen and applied for leave to remain in his capacity as her spouse. His spouse was established in Ireland from June 1997 and he was deported to Dublin in August 1997. His spouse was offered a position in the UK commencing in August 1998. In early 1998, Mr Akrich applied for permission to enter the UK as the spouse of a worker exercising her EC rights of free movement. The secretary of state refused his application. The refusal was on the basis that the move to Ireland was no more than a temporary absence designed to manufacture a right of residence for Mr Akrich and to evade the provisions of the UK legislation. He appealed against the refusal to the Immigration Appeal Tribunal, which referred the matter to the ECJ. The court observed that a member state is obliged to grant leave to enter and remain on its territory to the spouse of a national of that state who has gone, with his spouse, to another member state to work there as an employed person and who returns to settle in the state of which he is a national. Regulation 1612/68 refers only to freedom of movement within the EC and is silent as to the rights of a national of a non-member state, who is the spouse of a citizen of the EU, in regard to access to the territory of the EC. In order to benefit from

the right to move with the citizen of the EU, the spouse must be lawfully resident in a member state when he moves to another in order to work there as an employed person. The court held that the motives of an EU citizen intending to seek work in another member state are irrelevant in assessing the legal situation of the couple at the time of their return to the member state of origin. Where a marriage is genuine and a national of a member state, married to a national of a non-member state, returns to this state of origin, where the spouse does not enjoy EC rights, not having resided lawfully on the territory of another member state, the authorities of that state must none the less take into account the right to respect for family life under article 8 of the *European convention on human rights*.

FREE MOVEMENT OF SERVICES

Case C-6/01 *Associaçno Nacional de Operadores de Máquinas Recreativas (Anomar) and Others v Portuguese State*, 11 September 2003. In Portugal, gambling can only take place in casinos holding a public licence. Anomar is an association of Portuguese gaming machine operators. Together with a number of private companies, it brought an action arguing that they were entitled to operate slot machines outside the areas set aside by law for gambling. The Portuguese court made a reference to the ECJ as to the compatibility of the national law on gambling with EC law. The ECJ found that the activity of operating gaming machines is a service within the meaning of the treaty. Article 59 applies to national legislation where it is liable to prohibit or impede the activities of a provider of services established in another member state where he legally provides such services. This was the case here, where national legislation restricts gambling solely to casinos located with areas established under the law. Such restrictions can be justified by overriding reasons relating to the public interest, provided that the restrictions are proportionate. Portugal defended its restrictions on the ground that it was seeking to maintain fairness in games of chance and there was the possibility of deriving some benefit for the public sector. The ECJ identified these as objectives that pursue the protection of consumers and the maintenance of order in society. These objectives can justify interference with the freedom to provide services.

STATE LIABILITY

Case C-224/01 *Gerhard Köbler v Republic of Austria*, 30 September 2003. Mr Köbler had been employed since 1 March 1986 as a university professor in Austria. In 1996, he applied for a long-service increment for university professors. Austrian law confined the grant of that benefit to service for 15 years solely in Austrian universities. The applicant had 15 years of service, but much of it had been spent in universities in other member states. His request for the increment was refused and he challenged this refusal in the Austrian courts, arguing that it amounted to indirect discrimination. The Austrian administrative court of last instance (the Verwaltungsgerichtshof) referred the matter to the ECJ. Following a judgment of the ECJ in a similar case, the Austrian court withdrew its request for a ruling. On 24 June 1998, the applicant's action was dismissed. The Austrian court held that the increment was a loyalty bonus that justified a derogation from the provisions on free movement of workers. The applicant then brought an action for damages against the Republic of Austria, arguing that this judgment was contrary to EC law. The court hearing this action referred a number of questions to the ECJ. The ECJ held that member states are obliged to make good damage caused to individuals by infringements of EC law attributable to national courts adjudicating at last instance. There are three conditions that are necessary to make the state liable for infringements of EC law attributable to it: the rule of law infringed must be intended to confer rights on individuals, the breach must be sufficiently serious, and there must be a direct causal link between the breach of the obligation incumbent on the state and the loss or damage sustained. In determining whether the infringement of a national court of last instance is sufficiently serious, a national court must determine whether the court of last instance manifestly infringed the applicable law. The ECJ also held that the Austrian legislation concerning the grant of the increment was incompatible with EC law and could not be justified. Confining the increment to those who experience was gained solely in Austrian universities is an obstacle to the free movement of workers. The ECJ held that the judgment of the Austrian court of last instance was based on an incorrect reading of an ECJ judgment and infringed EC law. However, the infringement cannot be described as manifest. The ECJ had not had an opportunity of ruling whether a loyalty bonus could be justified under EC law. Thus, its reply in that regard was not obvious. The court of last instance should have maintained its request for a preliminary ruling. It was owing to its incorrect reading of the previous ECJ judgment that it did not persist with its request. G

Put a Cork in it

Pictured at a meeting of the West Cork Bar Association are *(back row, from left)* Jim Brooks, Con Murphy, Sean Cahill, Jim Long, Anne Marie Hourihane, Tony Greenway, Paul O'Sullivan and Richard Barrett; *(middle row, from left)* Ciaran O'Brien, PJ O'Driscoll, Diarmuid O'Shea, Maria O'Sullivan, Fergus Applebe, Eamonn Fleming, Letty Baker, Veronica Neville, Maurice O'Connor, Flor McCarthy, Ted Hallissey and Malachy Boohig; and *(front row, from left)* Karen Crowley, Roni Collins, Colette McCarthy, Law Society immediate past-president Geraldine Clarke, director general Ken Murphy, Ray Hennessy, Áine O'Donovan and Flor Murphy

Great balls of fire

SADSI committee members at the annual SADSI ball on 15 November, *(from left)*: Sonya Heney, Eamonn Kelly, Lorraine Rowland, Sinead Lynch, Cormac O'Regan, Nessa Barry

Taking the FLAC

Mrs Justice Catherine McGuinness speaking at the opening of the new head office of the Free Legal Advice Centre, Dorset Street, Dublin, in October

Guests of honour

Guest speakers at the SADSI careers day *(from left)*: SADSI treasurer Eamonn Kelly; Keith Walsh, Fawsitt Solicitors; Kevin Kinsella, Bank of Scotland (Ireland); Orla Fee, Thomson Round Hall; Mary Reynolds, Chief State Solicitor's Office; Mr Justice Michael Peart; and SADSI auditor Des Barry

Parlez-vous?

Law Society director general Ken Murphy in the company of Alan Dukes, director general of the Institute of European Affairs, François Chambraud, director of Alliance Française, and Law Society director of education TP Kennedy at the recent conferral of the *Diploma in legal French*

Gerard A Lee: 1917-2003

Gerard A Lee SC lectured on the law of practice and procedure of the courts to a generation of solicitors. He lectured in the 1960s and 1970s in the relatively early hours of the morning, often in a hired room, such as the hall adjacent to St Andrew's Church, St Andrew's Street, Dublin. The location was barren of any atmosphere worth remembering – save that of the genial and generous lecturer.

Gerry Lee was born on 17 October 1917 and died on 15 November 2003. He is remembered with fondness by a generation of solicitors, colleagues and friends. Son of a medical doctor, he was educated at St Munchin's College, Limerick, and UCD, where he was awarded first class honours in his BA (arts and law subjects). He was subsequently awarded a master's degree.

He recalled how one afternoon in 1940, when he sat for the autumn degree examination in UCD, then located at Earlsfort Terrace, a great noise filled the room as a black German warplane flew past the window, apparently with a British fighter plane in pursuit. The noise interrupted the quietness of the intellectual endeavours of UCD's finest as they contemplated profound responses for the Roman law examination. Thankfully, 'Roman law' prevailed and there followed a life-long love affair between Gerry and matters European.

Awarded a gold medal for oratory and legal debate in King's Inns and the Law Society in UCD, Gerry Lee was called to the bar in 1942 and practised principally in the southwestern circuit and in Dublin. In 1952, he was awarded a Council of Europe scholarship and studied at the University of Strasbourg and the Academy of International Law in The Hague. He lectured in UCD, principally in constitutional law. He subsequently lectured on practice and procedure for the Law Society during the 1960s and 1970s.

Gerry Lee was made a senior counsel in 1979 and elected a bencher of King's Inns.

Mr Justice Gerard Lardner, a former judge of the High Court, observed in his foreword to Gerry Lee's *A memoir of the south-western circuit* (1990) that the author's book revealed a person 'apt for friendship, a lover of books and landscape, a man of civilised tastes and interests, someone who has been preserved from worldliness'. Gerry Lee was both of the world and yet sensibly attuned to a 'cosmos' that he believed existed outside our comprehension of our mundane day-to-day existence.

In the foreword to Gerry Lee's second book, *Dublin as a European city*, Mr Justice Declan Costello, a former president of the High Court, wrote that Gerry Lee had been an enthusiast all of his life. As a young man, he travelled widely throughout Europe. History and literature enthralled him; his stories were legendary. He was a successful law reporter with the Incorporated Council of Law Reporting for Ireland and the *Irish law times* series of reports.

Author of numerous articles in national and international publications, his writings on history (including legal history), constitutional law and literature will survive. Although he was a dedicated romantic, he never married. His sense of romanticism may be gleaned from the following words of one of his poems, bearing the appropriate title *Utopia*:

Find me a land where beauty never fades,
Where love is not a promise for tomorrow
Or yesterday's regret, find me a land
Where truth is reigning yet.
In ancient towns where art is bred
My soul was thrilled with joy,
But sadness whispered in my heart
'This beauty too shall die'. G

Dr Eamonn Hall.

SADSI
Solicitors Apprentices Debating Society of Ireland

Bigger and brassier

October and November saw two spectacularly successful events: the trainee career development day and the SADSI ball. Both events were bigger and more flamboyant then ever before, and recognition must be given to those that made the events possible. Careers day would not have happened without the invaluable work of our treasurer Eamonn Kelly, who worked tirelessly on scheduling and arrangements for the guest speakers while keeping his usual close eye on expenditure. Lorraine Rowland was central to the organisation of the SADSI ball. The committee was in awe of her dedication and efficiency. Sinead Lynch, Simon Hannigan, and PPC1 rep Michelle Geraghty were involved in selling tickets and collecting sponsorship. The regional reps, Cormac O'Regan, Dawn Carney and Sonya Heney, ensured that the ball was well attended by trainees based outside Dublin. Finally, kudos to public relations officer Nessa Barry for organising sponsorship and wine for both SADSI events.

As we hurtle towards the Christmas vacation, the SADSI committee is hard at work preparing for the upcoming elections and AGM. A mailshot detailing the nomination and election process will be sent out soon. We would encourage all interested trainees, particularly those on the current PPC1 course, to involve themselves in the formation of next year's committee.

Des Barry, auditor

SADSI ball 2003 – yet another flaming success

The highlight of the trainee social calendar was 15 November in the salubrious surrounds of the Berkeley Court Hotel. An unprecedented number of guests gathered for a pre-dinner wine reception in the main lobby sponsored by Comans Wholesalers, before enjoying a five-course meal in the main ballroom. Dinner was followed by a bonanza of enviable spot prizes, kindly sponsored by BrightWater Selection, Kelly & Ping Restaurant, HMV, the Unicorn Restaurant, Sunway Holidays and Arthur Cox Solicitors. It was then time for the band, Lightning Strikes, to take the helm. Everyone present will agree that they provided the finest of entertainment, and were overshadowed only by a rendition of *Suspicious minds* by PPC2 trainee Karl Sherlock, who took to the stage in the guise of Elvis, no less (see photo, bottom left). The live performances were followed by a disco DJ, before an entourage made their way to Leggs on Leeson Street, despite the crisp weather conditions. All in all, it was a great night, and I would like to thank everyone for coming along.

The committee would like to thank the sponsors who made the 2003 SADSI ball possible: BrightWater Selection; Rochford Brady Law Searchers; BCM Hanby Wallace; Ivor Fitzpatrick & Company; Whitney Moore & Keller; McCann FitzGerald; LK Shields; Ellis & Ellis Law Searchers; Dillon Eustace; Frances E Barron & Co; Harrison O'Dowd; Holmes O'Malley Sexton; and Blake and Kenny Solicitors.

Lorraine Rowland, eastern rep

Trainee career development day

This year, the annual SADSI careers day was held on Thursday 30 October in the Presidents' Hall at Blackhall Place, and was followed by a wine reception in the Blue Room.

Our guest speakers, drawn from across the legal field, highlighted the spectrum of options available to trainees and soon-to-be-qualified solicitors. Keith Walsh of Fawsitt Solicitors gave much-appreciated advice on career options for those of us soon to face the job market. Mary Reynolds of the Chief State Solicitor's Office made us envious of the career benefits available to those who choose to represent the state's legal interests. Orla Fee of Thomson Round Hall described her career in legal publishing, an interesting alternative to becoming a solicitor. Judge Michael Peart spoke warmly of his career in litigation and advised us to seek job satisfaction above all else in the workplace. And, finally, Kevin Kinsella of Bank of Scotland (Ireland) talked about the challenging and satisfying experience of working as an 'in-house' lawyer.

Voice of experience
Mr Justice Michael Peart addressing the 2003 SADSI careers day in October

The committee would like to offer our sincere thanks to the guest speakers, who put on a great show for the largest audience in years. We would also like to thank our sponsors, the Law Society and Ulster Bank, without whom the event would not have been possible.

Eamonn Kelly, treasurer

PARCHMENT CEREMONIES 2003

Newly-qualified solicitors at the presentation of their parchments on 7 March 2003

Fidelma Bane, David Beggan, Mel Bourke, Deirdre Brophy, Laurence Burke, Liam Collins, Ruth Collins, Marianne Crowley, Orla Cummins, William Cummins, Marianne Deely, Ian Devlin, Sandra Doyle, Emma Farrell, Aine Feeney, Triona Feeney, Averil Field, Susan Fleming, Reginald Ferguson, Jane Emma Garry, Bernadette Goff, Eilis Grealy, Francis Harty, Aisling Hayes, Gareth Henry, Helen Kealy, Catherine Kearney, Roisin Kelly, James Kinch, Fergus Kinsella, Jacqueline Lacey, Eoin Langford, Olivia Lynch, Ciara Macklin, John McCarthy, Olive McDaid, Una McEvoy, Patricia McHugh Treacy, Celine Monaghan, Patrick E Moran, Dermot F Murphy, Helena O'Carroll, Noirin O'Connor, Gerard O'Donoghue, Michael O'Flaherty, Darren O'Keeffe, Simon O'Neill, Susan O'Reilly, Daire T O'Shea, Michael A Otobo, Connor Quigley, Michael Quinlan, Gerard Rudden, Sinead Ryan, Mary Scriven, Michael Small, Karina Smyth, Sabine Walsh, Peter White

Newly-qualified solicitors at the presentation of their parchments on 12 March 2003

Annette Barry, Deirdre Blackwell, Jaqueline Breen, Hilary Callanan, Antonia Canney, Colin Carroll, Shane P Connolly, Daragh Feeney, Rory Fitzgerald, Garrett Fitzpatrick, Hazel Flynn, Mary Flynn, Dorothea Gleeson, Elaine Guinan, Jennifer Haughton, Alan Heuston, Pauric Hyland, Deirdre Kennedy, Siobhán Laighléis, Ian Lynam, Gearoid Lynch, Jennifer A McCarthy, Andrea McGill, Marc McLoughlin, Antonia Moore, Gerard O'Brien, Martin O'Carroll, Róisín Peart, Donnacha O'Connor, Violet Quigley, Louise Rouse, Jean P Scanlan, Marcella Sheehy, Brendan Slattery, Aislinn Walshe, James Wall

Newly-qualified solicitors at the presentation of their parchments on 4 September 2003

Hilkka Becker, Mary Jo Bradley, Mary Campbell, Niall Clancy, Mona-Claire Costelloe, Susan Donegan, Anthony Donagher, Suzanne Dunphy, Mary Hegarty McRedmond, Vanessa Hogan, Raymond Lannon, Christine Le Beau, Niall Lenihan, Thomas A McDonnell, Ciara McElinn, Paul McKenna, Alexander McLean, Kate Madden, Ian Mallon, Nicola Murtagh, Sharon Oakes, Sinead O'Sullivan, Linda Power, David Thorpe, Stefan Ziegenhagen

Newly-qualified solicitors at the presentation of their parchments on 15 May 2003

Sinead Baggott, Roisin Bennett, Alice Boland, Elizabeth Bradley, Kelly Breen, Mary Browne, Lisa M Chambers, Stephen Coakley, Brenda Costello, Daniel Cronin, Niall Crowley, Deirdre Crowley, Denise Dockery, Julienne Dockery, Paula Fearon, Eimear Fitzgibbon, Annette Fogarty, Sinead Gallagher, Winifred Gallagher, Sinead Garry, Muiris Michael Gavin, Aoife Gibson, Aine Gleeson, Aoife Hallissey, John Herbert, Claire Higgins, Valerie Hourigan, Caroline Keane, Margaret Kennedy, Paul Keogh, Anne Marie Kiernan, Catherine King, Caitriona Lanigan, James St John Lee, Elaine McCormack, Fiona McGinn, Hilary McGrath, Fiona McLafferty, Arleen McMahon Elliott, Lesley Morris, Martina Murphy, Nicola Murray Hayden, Gavan Neary, Edel O'Brien, Finola O'Brien, Moira O'Connor, Grainne O'Donovan, Clodagh O'Hagan, Ciara O'Kennedy, Michelle O'Leary, Claire O'Regan, Alice O'Reilly, Patrick Timothy O'Riordan, Alison Quail, Russell Rochford, Alice Scollan, Laura Scott, Peter Stapleton, Collette Staunton, Therese Thornton, Patrick Turley, Fiona Webber, Fiona Woodyatt, Kathleen Burke

Newly-qualified solicitors at the presentation of their parchments on 29 May 2003

Connor Bass, Sabrina Burke, Brian Burns, Aisling Butler, Cassandra Byrne, Dara Callaghan, Jill Callanan, Rachel Carney, Lisa Carty, Niall Colgan, Eamon Concannon, Joanne Conlon, Kathleen Connolly, Cliona Costelloe, Ian Cunningham, Claire Curran, Lisa Davy, Iseult Doherty, Gillian Dully, Simon Earls, Helen Flynn, Ian Foley, Simone George, Michelle Golden, Thomas Karl Gordon, Anita Gubbins, Kerry Hiles, Donal Houlihan, Collette Hunt, Edward Johnston, Maeve A Joyce, Malachy Kearney, Emma Keegan, Yvonne Kelly, Evana Kirrane, Stephen Lydon, Noeleen Maughan, Simon McArdle, Eileen McCabe, Aine McCabe, Patrick McClean, Ruth McDonagh, Derval McGinley, Maureen McGrady, Plunkett McGreevy, John McKenna, Anna McLaughlin, Leona McMahon, Orla McMullin, Barry Moloney, Leo Moore, Edel Murray, Gerard Nevin, Lynne Northridge, Dan O'Connor, Eibhlin O'Donnell, Mary O'Farrell, Brid O'Flynn McSwiney, Hazel O'Keeffe, Aileen O'Leary, Niamh O'Leary, Rosemary O'Loughlin, Michael Reilly, Thomas Reynolds, Keith Robinson, Neasa Ryan, Sarah Scally, Zoe Mary Smith, Mairead Sweeney, Caitriona Timmins, Jennifer Tuite, Claire Mary Waterson, Elaine C White

Newly-qualified solicitors at the presentation of their parchments on 4 June 2003

Marc Bairead, Erin Barrett, Cillian Bergin, Louise Boughton, Suzanne Carthy, Angela Casey, Brian Clarke, Muireann Cody, Anne Marie Collins, Majella Costello, Katrina May Crooks, Conor Delaney, Quentin Denis, Peter Fagan, Anthony Greenway, Jennifer Higgins, Maura Hurley, Audrey Huggard, Laurena Hughes, Alan Johnston, Graham Jones, Aisling Kelly, Cliona Kelly, Barry Kennelly, John James Lacy, Hazel Larkin, Ian Larkin, Rachel Lee, Barry Lonergan, Emily MacNicholas, Robin McDonnell, Brian McGill, Jennifer McGivern, Stephen McLoughlin, Catriona McMahon, Kevin McMeel, Kelly McNamara, John J McNamara, David Meares, David Molloy, Patricia Murphy, Carol Murphy, Charles Murtagh, Anthony Nagle, Linda Ni Chualladh, Michael Nicell, Sinead Nolan, Karl O'Connor, Kathy O'Connor, Michael O'Doherty, Siobhan O'Donoghue, Katharine O'Reilly, David Ridgway, Aisling Ryan, Robert J Ryan, Avril Scally, Michelle Scarry, Jonathan Tomkin

Newly-qualified solicitors at the presentation of their parchments on 9 July 2003

Marie Therese Allen, Etain Boyce, Sinead Boyle, Freda Rosemary Brennan, Eileen Burke, Katherine Butterly, Michael Byrne, Robert Cannon, Hilary Nora Casey, Sarah Cassidy, Eleanor Cleary, Emma Comyn, Sean Conlan, Garry Connolly, Aisling Costello, Ann Coyle, Orla Cullinan, Ann Marie Dooley, Wendy Doyle, Robert Duff, Mary Catherine Dwyer, Anne Ellis, William Fogarty, Louise Forrest, Noelle Galvan, Peter Gleeson, Michael Kieran Griffin, Dara Harrington, Sinead Healy, Helen Hennessy, Clodagh Keating, Donal Keenan, Shane Kelleher, Alma Kelly, Ludhaidh Kerin, Edwena Lynch, Catherine M McDarby, John Mark McFeely, Claire McGrade, Anita Mary Moran, Lynda Mullin, Enda Nevin, Sinead Nolan, Susan Noone, Sharon Oakes, Heather Maria O'Byrne, Aidan O'Connell, Joanne Mary O'Donnell, Clare O'Shea-O'Neill, Fionnuala O'Sullivan, Lillian O'Sullivan, Alison Power, Margarita Purtill, Alyson Rodi, Richard Ryan, Jonathan Sheehan, Andrew Synnott, Gerald Thornton

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 5 December 2003)

Regd owner: John F Baxter, Bellsgrove, Ballynarry, Co Cavan; folio: 894F; lands: Bellsgrove; area: 0.7334 hectares; **Co Cavan**

Regd owner: Suzanne Crowe; folio: 666; lands: townland of Doon and barony of Bunratty Upper; area: 64.5163 hectares; **Co Clare**

Regd owner: John Hanrahan and Anne Hanrahan; folio: 8149F; lands: townland of Doonaun and barony of Tulla Upper; area: 0.422 acres; **Co Clare**

Regd owner: John Houlihan and Kathleen Houlihan; folio: 3719F; lands: townland (1), (2), (4) Ross, (3) Carrowmore South and barony of (1), (2), (4) Moyarta, (3) Ibrickan; area: (1) 0.6660 hectares, (2) 32.8807 hectares, (3) 0.1922 hectares, (4) 8.8197 hectares; **Co Clare**

Regd owner: John Moylan; folio: 4137L; lands: a plot of ground being part of the townland of Coolroe and barony of Muskerry East in the county of Cork; **Co Cork**

Regd owner: the lord mayor, aldermen and burgesses of Cork; folio: 12900; lands: a plot of ground being part of the townland of Knocknaheeny and barony of Cork in the county of Cork; **Co Cork**

Regd owner: Charles Doherty, Greencastle, Co Donegal; folio: 308F; lands: Eleven Ballyboes; area: 0.1821 hectares; **Co Donegal**

Regd owner: Donald Loughran, 30 Meadow Hill, Kiltroy, Letterkenny, Co Donegal; folio: 43710F; lands: Ardrawer; **Co Donegal**

Regd owner: Alfred and Stephen McCroary, Drumbane, Castlefin, Co Donegal; folio: 2588; lands: Graffy; area: 6.8040 hectares; **Co Donegal**

Regd owner: Peter and Hugo Sweeney, Summerhill, Donegal; folio: 12274F; lands: Summerhill; area: 1.480 hectares; **Co Donegal**

Regd owner: George White, Cully, Laghey, Co Donegal; folio: 4472R; lands: Cuilly; area: 7.9242 hectares; **Co Donegal**

Regd owner: Andrew Brady; folio: DN18373; lands: property situate in the townland of Crumlin and barony of Uppercross; **Co Dublin**

Regd owner: John Collins; folio: DN8237; lands: property situate in the townland of Kilcrea and barony of Nethercross; **Co Dublin**

Regd owner: Shane Fearon and Valerie Fearon; folio: DN21620F; lands: property known as 33 Craigmore Drive, Tallaght, situate in the townland of Oldbawn and barony of Uppercross, shown as plan 453K; **Co Dublin**

Regd owner: Cormac Hade; folio: 23042L; lands: property situate in the townland of Jobstown and barony of Uppercross situate to the north side of the Tallaght to Blessington Road in the town of Tallaght; **Co Dublin**

Regd owner: Henry Haynes; folio: DN11308; lands: a plot of ground known as 3 Shanliss Grove, in the parish of Santry and in the district of Santry and in the county borough of Dublin; **Co Dublin**

Regd owner: Daniel Patrick O'Connor; folio: DN13151; lands: property situate in the townland of Ballinteer and barony of Rathdown; part of the property situate on the north side of Ballinteer Avenue in the village of Ballinteer; **Co Dublin**

Regd owner: Laurence and Deirdre O'Toole; folio: DN6331L; lands: Shalamar, 11B Wellington Park, Whitehall Cross, Dublin 6W; **Co Dublin**

Regd owner: Miriam Duffy and Michael Harris; folio: DN18673; lands: a plot of ground situate to the north of the Howth Road in the parish and district of Killester and city of Dublin; **Co Dublin**

Regd owner: Kay Scanlon; folio: DN77210F; lands: property known as 2 Mill Cottages, Dartry, situate in the parish of St Peters and district of Rathmines; **Co Dublin**

Regd owner: Pierce White; folio: DN108523F; lands: property situate in the townland of Balgaddy and barony of Uppercross; **Co Dublin**

Regd owner: Declan Wogan; folio: DN119012F; lands: property situate in the townland of Ballisk Common in the barony of Nethercross, known as site no 52 Hazelwood, Beaverstown Road, Donabate; **Co Dublin**

Regd owner: Brendan Doran and Josephine Doran; folio: 49226F; lands: townland of Treanalaur and barony of Dunkellin; area: 0.146 hectares; **Co Galway**

Regd owner: Michael Feehan (deceased); folio: 2275F; lands: townland of Keeraunbeg and barony of Moycullen; area: 0.2930 hectares; **Co Galway**

Regd owner: John Gaffney and Mary Josephine Gaffney (deceased); folio: 12036F; lands: townland of Tisaxon and barony of Tiaquinn; area: 0.500 acres; **Co Galway**

Regd owner: Patrick Keane (deceased); folio: 20075; lands: townland of Caheronaun and barony of Loughrea; area: 27 acres, 2 roods, 8 perches; **Co Galway**

Regd owner: Gerard Kenny; folio: 3881F; lands: Headford and barony of Clare; **Co Galway**

Regd owner: William Murphy (deceased); folio: 26277; lands: townland of (1), (2) Caherawoneen and (3), (4) Northhampton and barony of (1), (2), (3) and (4) Kiltartan; area: (1) 3.1540 hectares, (2) 4.7190 hectares, (3) 2.0040 hectares, (4) 2.6700 hectares; **Co Galway**

Regd owner: Gerald Quinn; folio: (1) 13449, (2) 14567; lands: townland of (1) and (2) Cloonlyon and barony of (1) and (2) Killisn; area: (1) 3.4904 hectares and (2) 10.3650 hectares; **Co Galway**

Regd owner: Michael Breslin; folio: 8951F; lands: townland of Liss and barony of Dunkerron South; **Co Kerry**

Regd owner: James and Maura Mortell; folio: 3511F; lands: townland of Toor and barony of Dunkerron South; **Co Kerry**

Regd owner: Joseph Carr; folio: 795L; lands: townland of Morristownbiller and barony of Connell; **Co Kildare**

Regd owner: Robert Cusack; folio: 14920R; lands: townland of Farnane and Liscreagh and barony of Owneybeg; **Co Limerick**

Regd owner: Dina Fitzgerald; folio: 25929; lands: townland of Ballybrown and barony of Pubblebrien; **Co Limerick**

Regd owner: William and Irene Lenihan; folio: 6473F; lands: townland of Abbeyfeale East and barony of Glenquin; **Co Limerick**

Regd owner: John Moran: folio: 2062F; lands: townland of Cloonreask and barony of Connello Lower; **Co Limerick**

Regd owner: David Jones, Dring, Granard, Co Longford; folio: 6797; lands: Ballinrooey; area: 34.9547 hectares; **Co Longford**

Regd owner: James Shiels, Dungooley, Dundalk, Co Louth; folio: (1) 7108, (2) 8446; lands: Lurgankeel, Dungooley; area: 5.293 acres, 5.331 acres; **Co Louth**

Regd owner: James Moran (junior); folio: 8577; lands: townland of (1) and (2) Carrowbrinoge and barony of (1) and (2) Carra; area: (1) 9.0421 hectares and (2) an undivided moiety of 8.8575 hectares; **Co Mayo**

Regd owner: Kathleen and Robert O'Regan (deceased); folio: 26097F; lands: townland of (1), (2) and (3) Keel East and barony of (1), (2) and (3) Burrishoole; area: (1) 0.334 hectares, (2) 0.627 hectares, (3) 0.185 hectares; **Co Mayo**

Regd owner: Patrick Walsh (deceased) folio: 13170; lands: townland of Cavanquarter and barony of Kilmaine; area: 8.1490 hectares; **Co Mayo**

Regd owner: Maura McGuinness, Oakley Park, Kells, Co Meath; folio: 9942; lands: Oakleypark or Lawreneetown; area: 11.1667; **Co Meath**

Regd owner: Cornelius Gleeson (deceased); folio: 12771; lands: townland of Maudemount and barony of Kilnamanagh Lower; **Co Tipperary**

Regd owner: Michael J McGowan (deceased); folio: 13421; lands: townland of Carrowhubbuck South and barony of Tireragh; area: 28 perches; **Co Sligo**

Regd owner: Mary Keane, Ballinagrenia, Rosemount, Moate, Co Westmeath; folio: 5309; lands: Custorum; area: 15.4387 hectares; **Co Westmeath**

Regd owner: Michael Kiernan, c/o Miss Kathleen Smith, Carrick, Castlejordan, Edenderry, Co Offaly; folio: 4317; lands: Grange Beg; area: 21.6506 hectares; **Co Westmeath**

WILLS

Brady, Margaret (deceased), late of 205 Brookvale Lawn, Drogheda, Co Louth. Would any person having knowledge of a will made by the above named deceased who died on 15 January 2003 at Our Lady of Lourdes Hospital, Drogheda, Co Louth, please contact Thornton Solicitors, 52 O'Connell Street, Limerick; tel: 061 315 543, fax: 061 315 503, ref: BD/3894

Bukin, Betty (deceased), late of 45 Forest Walk, Rivervalley, Swords, Co Dublin. Would any person having any knowledge of the whereabouts of a will made by the above named deceased please contact O'Scanaill & Co, Solicitors, 41 Main Street, Swords, Co Dublin; tel: 01 840 4371, e-mail: ckiely@scanlaw.ie

Donohoe, Eamonn (deceased), who died on 6 August 2003 and late of 187 Clonsilla Road, Blanchardstown, Dublin 15, Crott, Moyne, Co Longford and 51 Cannanbury, Enfield, Middlesex, EN1 3LW. Would any person having knowledge of a will made by the above named deceased please contact O'Sullivan Steen and Co, Solicitors, Main Street, Castleknock, Dublin 15; tel: 01 820 9924/820 9925, fax: 01 820 9929, e-mail: osullivansteen@eircom.net

Farrell, Kieran (deceased), late of Beltichburn, Drogheda, Co Louth. Would any person having knowledge of the whereabouts of a will executed by the above mentioned deceased who died on 21 August 2003, please contact Branigan Berkery, Solicitors, 29 Laurence Street, Drogheda, Co Louth; tel: 041 983 1238, fax: 041 983 1145

Gallagher, Marita (deceased), late of 66 Herberton Road, Rialto, Dublin 12 and formerly of Bridge Street, Donegal Town. Would any person having knowledge of a will made by the above named deceased who died on 1 November 2003 at Killiney Nursing Home, Co Dublin, please contact PC Carroll & Co, Solicitors, 115 Lower Baggot Street, Dublin 2; tel: 01 676 7676, fax: 01 676 2344, e-mail: carrollpc@eircom.net

Glavin, Desmond Joseph (deceased), late of 43 Hardiman Road, Drumcondra, Dublin 7. Would any person having knowledge of a will made by the above named deceased who died on 12 August 1980 at Jervis Street Hospital, please contact Bryan F Fox and Co, Solicitors, 46 North Circular Road, Dublin 7

Glavin, Ann (deceased), late of 43 Hardiman Road, Drumcondra, Dublin 7. Would any person having knowledge of a will made by the above named deceased who died on 3 March 2002 at Wexford General Hospital, please contact Bryan F Fox and Co, Solicitors, 46 North Circular Road, Dublin 7

Guidera, Timothy (deceased), late of Sringfield, Borris in Ossory, Co Laois. Would any person having knowledge of a will made by the above named deceased who died on 24 October 2003, please contact Devitt Doorley MacNamara, Solicitors, Roscrea, Co Tipperary; tel: 0505 21176, fax: 0505 22113, e-mail: devdoorley@eircom.net

McGath, Patrick (or Pat) (deceased), late of 9 Whitehall Place, Galway. Would any person having knowledge of a will made by the above named deceased who died on 5 Septmeber 2003, please contact Elaine Brady, Hehir Mulryan, Solicitors, 17 Foster Street, Galway; e-mail: hehirmulryan@eircom.net

O'Reilly, Mary Bridget, late of 32 Glendoher Drive, Rathfarnham, Dublin 14 and formerly of Ardamagh, Ballyhaise in the county of Cavan, born 1 February 1921. Would any person having any knowledge of a will made by the above named deceased who died on 14 January 2003 at St James Hospital, Dublin 8, please contact Sarah Ryan, Mangan O'Beirne Solicitors, 31 Morehampton Road, Dublin 4; tel: 01 668 4333, fax: 01 668 4252, e-mail: solicitors@manganobeirne.ie

Power, Deirdre (deceased), late of 38 Sherlock Park, Skerries, Co Dublin. Would any person having knowledge of a will made by the above named deceased who died on 5 June 2003, please contact Gerrard L McGowan, Solicitors, 29 Thomas Hand Street, Skerries, Co Dublin; tel: 01 849 2075, fax: 01 849 2098

Walsh, Meadbh Agnes (orse Meadh/Meadb/Meave) (deceased), retired shop assistant late of 'Cascia', San Antonio Park, Salthill, Galway. Would any person having knowledge of a will made by the above named deceased who died on 21 March 2002, please contact L O'Connor and Co, Solicitors, 196 Upper Salthill, Galway; tel: 091 525 346

Walsh, John Patrick (deceased), (doctor) late of 'Cascia', San Antonio Park, Salthill, Co Galway and formerly Santa Maria, Knocknacarra, Salthill, Galway; 'Suncroft', 61 Lower Salthill, Galway; 8 Fr Griffin Road, Galway; and 90 Fr Griffin Road, Galway. Would any person having knowledge of a will made by the above named deceased who died on 25 September 2001, please contact L O'Connor and Co, Solicitors, 196 Upper Salthill, Galway; tel: 091 525 346

EMPLOYMENT

Apprentice solicitor available. A mature law graduate seeks position as apprentice solicitor urgently. Hard working, bright and enthusiastic. Considerable employment experience. Computer literate. First Irish examination passed. Available for immediate start. Any area considered. Please reply to **box no 100**

Experienced solicitor available for locum/part-time work in North Kerry area. Please contact **box no 101**

Experienced solicitor available for locum, part-time, contract work in probate and conveyancing – Sligo, Leitrim, Roscommon, Longford. Reply to **box no 102**

Locum solicitor required from January 2004 to June/July 2004 with experience in conveyancing and probate. Apply with CV to Niamh Kavanagh, Keane Solicitors, Hardiman House, Eyre Square, Galway; tel: 091 566 767

Part-time locum solicitor required for conveyancing and probate practice, to cover six months' maternity leave commencing 5 January 2004 to 1 July 2004. Clonmel practice. Reply to **box no 103**

Publication of advertisements in this section is on a fee basis and does not represent an endorsement by the Law Society of Ireland.

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. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry; tel: 080 1693 61616, fax: 080 1693 67712

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

Solicitor's practice for sale. Dublin city-centre practice. Fees circa €225K. Replies to McCann Kane and Co, Chartered Accountants, Orchard House, Beaumont Avenue, Churchtown, Dublin 14

TITLE DEEDS

In the estate of Mary Bridget O'Reilly, late of 32 Glendoher Drive, Rathfarnham, Dublin 14, and formerly of Ardamagh, Ballyhaise in the county of Cavan. Anybody with any information regarding the whereabouts of the title deeds of 32 Glendoher Drive, Rathfarnham, Dublin 14, purchased on 9 September 1975 from Mr Eamonn Mooney for the sum of £10,700, please contact Sarah Ryan, Mangan O'Beirne, Solicitors, 31 Morehampton Road, Dublin 4; tel: 01 668 4333, fax: 01 668 4252, e-mail: solicitors@manganobeirne.ie

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 Petrogas Engineering Ltd

Take notice that any person having an interest in the freehold estate of the following property: land situate at Conyngham Road, Kilmainham, Dublin 8, held under lease dated 9 August 1842 and made between William Worthington of the one part and Andrew O'Toole of the other part for the term of 200 years from 1 July 1842 at the yearly rent of £25.

Take notice that Petrogas Engineering Ltd, the applicant, intends to submit an application to the county registrar in the county of the city of Dublin for the acquisition of the freehold interest together with any intermediate interest in the aforesaid property and any persons 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 undersigned within 21 days from the date of this application.

In default of any such notice being received by the undersigned solicitors, the said Petrogas Engineering Ltd intends to proceed with the application before the county registrar in the county of the 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 to the aforesaid property are unknown and unascertained.

Date: 26 November 2003
Signed: McGarr Solicitors (solicitors for the applicant), 34/35 Wicklow Street, Dublin 2