



Liberty and terror
States of emergency and the *European Convention on Human Rights*



Finding its level
Examining the Irish law on landowners' rights to abstract water



Monster mash
How the LSRA will affect clinical negligence litigation

gazette

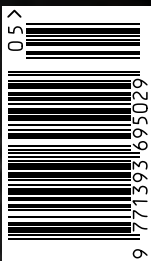
LAW SOCIETY

€4.00 MAY 2016



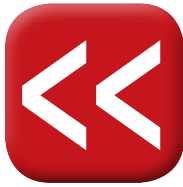
THE WHOLE TRUTH

The necessity of swearing
on religious texts





navigating your interactive
gazette
LAW SOCIETY



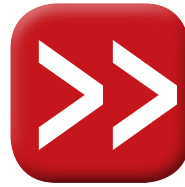
BACK TO
CONTENTS
PAGE



PREVIOUS
PAGE



NEXT
PAGE



NEXT SECTION/
FEATURE

... enjoy

IMPORTANT NOTICE FOR ONLINE READERS

In order to enhance your enjoyment of the online, interactive version of the *Gazette*, readers are strongly advised to download the magazine first to their computer or device.

Prior to downloading the *Gazette*, make sure that you are using the most up-to-date versions of your favourite browser, for example, [Internet Explorer](#), [Safari](#), [Firefox](#) or [Chrome](#).



JUNIOR SOLICITOR – FUNDS

International Law Firm in Dublin is offering a unique opportunity for a Junior Solicitor interested in growing their career in the funds space. The applicant does not require previous funds experience but a keen desire to upskill in this area. Training from a Top Tier firm desired. For the right candidate this role offers above market salaries, secondment opportunities abroad and an excellent partner track.

CONSTRUCTION – JUNIOR SOLICITOR

Our client, one of Ireland's Top Law Firms requires a Junior Lawyer to join their award winning team. The ideal candidate will have trained with a Top Practice in Dublin, Cork or London and have excellent academics. This is an exciting role which allows for career progression with one of Ireland's leading firms.

IN-HOUSE COMMERCIAL CONTRACT COUNSEL – ASSOCIATE LEVEL

Excellent in-house position available with large multinational based in Dublin. The successful candidate will ensure all contracting processes and procedures are followed with respect to the negotiation and execution of commercial contracts. Ideal for a Practice Solicitor looking to move in-house or somebody already working in commercial contracts.

COMMERCIAL PROPERTY – ASSOCIATE SOLICITOR

Commercial Property Solicitor required for our client, a Top Tier Dublin Law Firm. This is an excellent opportunity for an ambitious Solicitor to join an internationally renowned team. The right candidate will gain exposure to domestic and international property transactions.

AVIATION FINANCE LAWYER – SENIOR ASSOCIATE LEVEL

International private practice firm in Dublin seeks an experienced Aviation Finance Lawyer to join their team. The ideal candidate will have gained Aviation Asset Finance experience within a top tier law firm or as in-house counsel to an airline or aircraft leasing company.

CORPORATE LAWYER – ASSOCIATE LEVEL

Top tier private practice firm require corporate lawyer to join their team at associate level. With their leading market position this firm is offering the right candidate a fantastic opportunity to grow their career among Ireland's best corporate team. The ideal candidate will have experience from a top Dublin or London firm.

To apply for any of the above vacancies or for a strictly confidential discussion, please contact Sean Fitzpatrick on 01-5005916, Cora Smith B.Corp Law on +353 1 5005925 or cora.smith@cpl.ie

A QUESTION OF SPORT

I am writing this message in the immediate aftermath of what was a very successful Law Society annual conference, held at the magnificent Fota Island Resort in my native county of Cork.

The theme of the conference was the role of law in sport – we were very fortunate to have the best line-up of speakers that I can remember at such an event, all under one roof.

The speakers included our colleagues Eddie Evans (Beauchamps) and Julie O'Mahony (senior in-house counsel of the Rugby World Cup), Judy Khan QC (who represented 77 of the bereaved families of the Hillsborough disaster), David Walsh (well-known journalist) and two very special Cork women, Sonia O'Sullivan and Valerie Mulcahy, who need no introduction. Valerie announced her retirement from Gaelic football a few days before the conference, so she was in a position to give the conference her full attention!

My thanks to Attracta O'Regan and her team at Law Society

Skillnets, who assembled such a stellar line-up of speakers, and to Teri Kelly, Kathy McKenna and Sarah Carroll (Law Society) and our event organisers, MCI Dublin. It was a great pleasure to work with all of these highly professional people in delivering what was an excellent conference.

Finally, my sincere thanks to my colleagues in the Southern Law Association who did everything they could, and more, to ensure the success of the event.

High calibre

Elsewhere, I had the pleasure in recent weeks of officiating at my first two parchment ceremonies. Such ceremonies are, for obvious reasons, among the most pleasant that a president of the Law Society has to perform. I have been very fortunate so far in being joined on the podium by such high-calibre speakers as Kevin O'Malley (US Ambassador to Ireland), Mr Justice Michael Peart (Court of Appeal), Garda Commissioner Nóirín O'Sullivan, and Mr Justice Patrick McCarthy (High Court).

The only blot on each ceremony was that I came across sons and daughters of old classmates who were receiving their parchments. All very upsetting – where does the time go?

It will be fortunate if the *Legal Services Regulation Act 2015* becomes operative in 2016, given the length of time it is taking to put a government together, which obviously must take precedence.

In accordance with the act, the appointment of the members of the board of the Legal Services Regulatory Authority requires resolutions to be passed by both houses of the Oireachtas.

However, as part of the strategy of the LSRA Task Force, the director general and I continue to impart information on the act at our ongoing visits to the bar associations. In the past few weeks, we met with the Kildare Bar Association and the Wicklow Solicitors' Association. Next on the list in our 'sweep through Leinster' is Carlow, where I am looking forward to continuing my engagement with as many colleagues as possible, during the course of my year in office.

Simon Murphy
President



“ We were very fortunate to have the best line-up of speakers that I can remember at such an event ”



28

gazette

LAW SOCIETY



38

cover story

34 Nothing but the truth

Mr Justice Peter Kelly recently deemed the swearing of an affidavit to be invalid, as the deponent had not sworn on a Bible when taking the oath. Colette Reid tells the truth, the whole truth, and nothing but the truth



features

38 Badge of honour

Cork county sheriff Sinead McNamara speaks with Mark McDermott about her role as debt collector and responsibilities as returning officer for three Cork constituencies

42 Way down

While the position of Irish Water may be subject to political ebb and flow, Ireland must comply with EU environmental law. Heather Murphy examines the law on water abstraction

46 Generation game

Section 61(7) of the *Registration of Title Act 1964* allows a person, entitled in succession, to become registered as the owner of registered land. Samantha Geraghty cuts the red tape

50 Boys will be boys

In April 1916, the elegant building at Blackhall Place was a school that was home to curious boys who peered out of the windows to see the conflict unfolding. Current students tell the tale



50

law society gazette

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

PROFESSIONAL NOTICES: send small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie.

All cheques should be made payable to: Law Society of Ireland.

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9, tel: 01 837 5018, mobile: 086 811 7116, email: sean@lawsociety.ie. See the *Gazette* rate card online at www.lawsociety.ie/gazette-rates

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



Law Society Gazette

Volume 110, number 4

Subscriptions: €60 (€90 overseas)

Editor: Mark McDermott FIIC

Deputy editor: Dr Garrett O'Boyle

Art director: Nuala Redmond

Editorial secretary: Catherine Kearney

Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Patrick Ambrose, Aoife Byrne, Mairéad Cashman, Hilary Forde, Richard Hammond, Teri Kelly, Tracy Cruikshank, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan



22



32

regulars

4 Frontline

4 Nationwide

5 News

17 People

22 Comment

22 **Viewpoint:** The changing nature of clinical negligence litigation

24 Analysis

- 24 **News in depth:** Report on the Law Society's annual conference
- 28 **News in depth:** The recent Moriarty judgment on suspended sentences
- 30 **News in depth:** Law Society Managing Partner Survey, part 2
- 32 **Human rights watch:** States of emergency and the ECHR

55 Obituary

Joan M Smith



56 Briefing

- 56 **Council reports:** 4 March and 8 April
- 57 **Legislation update:** 12 March – 11 April
- 59 **Regulation**
- 60 **Eurlegal:** Tackling 'marriages of convenience'

63 Professional notices

67 Final verdict

68 Recruitment



24



67

Get more at

www.lawsociety.ie

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

You can also check out:

- Current news
- Forthcoming events, as well as the fully interactive version of the *Gazette* and the magazine's indices
- Employment opportunities
- The latest CPD courses
- ... as well as lots of other useful information

No material from the *Gazette* may be published or used without the permission of the copyright holder. The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting or refraining from acting as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.



FSC independently certified wood and paper products used by the *Law Society Gazette* come from ecologically managed forests. Visit: www.fsc.org



PEFC certifies that wood and paper products used by the *Law Society Gazette* are sourced by suppliers from sustainable, managed forests. Visit: www.pefc.org



The *Law Society Gazette* is a full participating member of the Press Council of Ireland and supports the Office of the Press Ombudsman. This scheme, in addition to defending the freedom of the press, offers readers a quick, fair and free method of dealing with complaints that they may have in relation to articles that appear on our pages. To contact the Office of the Press Ombudsman go to: www.pressombudsman.ie or www.presscouncil.ie.



nationwide

News from around the country



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

LOUTH

No more bingo in Drogheda

Work has begun at last on the construction of a new courthouse in Drogheda. The District Court has been sitting at temporary venues for upwards of 30 years. Drogheda Bar Association has been campaigning for a permanent court for many years. The facilities at one temporary venue, St Mary's bingo hall, were particularly poor. There was no room to meet clients except outside in the cold.

If it was raining, the only place to consult with clients was in the toilets. Matters came to a head when the Drogheda Bar Association boycotted a criminal day list one Friday, and the members stood outside in protest. The new courthouse is expected to be completed towards the end of 2017. Association president Colm Berkery, recalls the last permanent courthouse, located at Fair Street (appropriately enough), which was a fine old distinguished building until it was deemed too dangerous to continue due to its condition. Ironically enough, it now is host to the council engineers' office.

The new courthouse will be located adjacent to Drogheda Garda Station. The association had no input into the new location, advises Colm.

KILDARE

Capacity crowd for KBA event in Naas



PICT: TONY MURPHY

The Kildare Bar Association hosted a very successful CPD evening at Killashee House Hotel, Naas, on 6 April. Solicitor Patricia Rickard-Clarke gave an informative talk on the recently enacted *Assisted Decision Making (Capacity) Act 2015*. KBA President Niall Farrell welcomed Law Society President Simon Murphy and director general Ken Murphy to the meeting. Both spoke about the recently enacted *Legal Services Regulation Act*. Pictured are Ken Murphy, Patricia Rickard-Clarke, Niall Farrell, Simon Murphy, Martin Crotty, Helen Coughlan (CPD officer, KBA) and David Osborne (secretary, KBA)

CORK

SLAGS Easter outing in Castlemartyr

David O'Mahony, captain of the Southern Law Association Golf Society (SLAGS), tells 'Nationwide' that their Easter outing was hosted by Castlemartyr Resort on 8 April. Although the season so far has not been blessed with sunshine, and despite some further inclement

weather, a good cohort of golfers braved the elements and managed to conquer the challenging conditions.

The outing was notable for the quality of vintage golfers on show, with Basil Hegarty being joined by John Jermyn (Senior), Niall Cronin and James

Sheridan. Their indomitable spirit continues to sustain the society!

The next outing is summer, which will take place at Fota Island Resort on 15 July, and thereafter the autumn outing will take place at Killarney Golf Club on 9 and 10 September.

CARLOW

Carlow kept busy with CPD

Carlow Bar Association secretary Deirdre Coleman tells 'Nationwide' that they held their AGM on 21 April. President Joe Farrell will serve a second year, while treasurer Barbara Jordan also returns for another year, as do Deirdre and social secretary David Clery.

Tony Wilkins of Cyril O'Neill Legal Costs Accountants gave Carlow solicitors a talk on costs on the day, and the

association held another well-supported CPD seminar on 25 April in the Talbot Hotel, Carlow. Kate Butler BL spoke on the *Assisted Decision-Making (Capacity) Act*, solicitor and tax practitioner Finola O'Hanlon gave an excellent presentation on dealing with the Revenue, while Jean Cullinane of Cullinane Consulting gave some tips on recruitment, retention, and managing a team.

DUBLIN

Dinner and a good book

DSBA president Eamonn Shannon tells 'Nationwide' that one of the highlights of the Dublin solicitors' social calendar – the DSBA annual dinner and law book awards – will take place on Friday 17 June 2016 in the DoubleTree by Hilton hotel, Dublin 4. Tickets are on sale from the DSBA office for €75 (www.dsba.ie). Eamonn advises to book now to avoid disappointment.

Cyber-criminals hit Brit law firms for £85m

British PII insurer QBE has reported that around Stg£85 million has been stolen from client accounts in the past 18 months.

The firm estimates that 150 successful raids have been made on client funds during that time, with at least 1,500 failed attempts. Only a small proportion of the stolen money has been recovered.

Law firms have increasingly become targets for cyber-criminals in the past 12 months, and a market expert has predicted that insurers will want to see firms' plans for dealing with cyber-threats when setting premiums this year.

QBE says: "The nature of how a business risk is assessed



may be moving away from the typical focus on what business a law firm does – be that conveyancing, corporate, trusts

and wills, and so on – but more to how they transact business, including what security and IT systems they have in place."

New LRC commissioner appointed



The Government has appointed Raymond Byrne as a full-time commissioner of the Law Reform Commission for a five-year period, with effect from 14 April 2016.

Prior to his appointment, Mr Byrne was director of research in the commission. He qualified as a barrister in 1982. From 1982 to 2007 he was a lecturer in law in the School of Law and Government at Dublin City University.

He is the author of a number of texts on health and safety law and chaired a working group whose efforts led to the Council of Europe's 2009 *Principles Concerning Missing Persons and the Presumption of Death*. He is currently a member of the Research Ethics Committee of the Royal College of Physicians in Ireland and was previously chair of the Irish Council for Civil Liberties and president of the Irish Association of Law Teachers.

UCC connects start-ups to free legal advice

UCC has become the first university in Ireland to offer free legal information to start-ups.

A total of 12 postgraduate law students work with academic staff and established law firms – including McCullagh Wall, Ronan Daly Jermyn, and O'Dowd Solicitors – to respond to legal

questions from start-ups, dealing with issues such as how to protect copyright and ensuring websites comply with data protection law.

Start-ups can contact the new IT Law Clinic at 021 490 3452, by email to itlawclinic@ucc.ie, or on Twitter @ITLawClinicUCC.



Landmark cluster event set for Leitrim

The first CPD cluster event of 2016 will take place at the Landmark Hotel in Carrick-on-Shannon on 12/13 May.

This regional two-day event is presented in collaboration with the Leitrim, Longford, Midlands,

Roscommon and Sligo bar associations and Law Society Skillnet.

Delegates can attend day one, day two – or both – and claim up to ten hours of CPD points.

Topics will include criminal law, practice regulation, the

Assisted Decision Making (Capacity) Act 2015, the *Workplace Relations Act 2015*, conveyancing, the LSRA, probate, and legal costs. For the full programme and to book, contact cpdclusters@lawsociety.ie.

Reforming the Dublin Regulation

The European Commission has put forward various options for reforming the so-called *Dublin Regulation*.

One option is to add some sort of weighting or distribution key to the

system. The current system obliges any asylum seeker arriving in Europe to apply for refuge in the first EU country they set foot in. Recent turmoil in the Middle East and North Africa has led to unprecedented

pressure on first countries of entry, such as Greece and Italy.

The commission has insisted that any EU rules should be applied in a uniform fashion by all member states, without some countries

going solo on their approach, "thereby creating various pull-and-push factors".

For more information, see http://europa.eu/rapid/press-release_IP-16-1246_en.htm.



REDEFINING LEGAL SERVICES

Finding Simple Solutions to Complex Problems.

Johnson Hana International is a unique and innovative Legal Process Outsourcing company and the only one of its kind in Ireland. We aim to drive efficiency into legal services to save our clients time, energy and money by outsourcing their legal process work to our teams of specialist lawyers.

Johnson Hana International offers a wide range of support services to help its clients reduce costs, refine internal processes and remedy inefficient resource allocation. We partner with law firms, large corporates and lending institutions to manage growing amounts of data, discovery related documentation and regulatory pressures whilst freeing up the administrative burdens associated with process driven legal work.

If you would like to find out more about Johnson Hana International contact :

Dan Fox BL, CEO of Johnson Hana International,
Directly on: (01) 514 3613 or email dan@johnsonhana.com



30, Kildare St, Dublin 2.

Johnson **HANA**
INTERNATIONAL

eXpd8 invests €0.25m in cloud solution for legal practices

Irish IT company eXpd8 has launched a new cloud solution for law firms on the Microsoft platform, investing €0.25 million in the process. 'eXpd8 Cloud' has been designed to share data and applications in a secure, scalable and accessible practice environment on a pay-as-you go basis.

eXpd8 Cloud brings together all the applications, transactions, collaboration and content tools required to operate a modern law firm.

This cloud solution provides increased security compared with traditional data storage methods, which are under the ever increasing ransomware attacks from professional criminals.



Declan Branagan (eXpd8) and Patrick Ward (Microsoft Ireland) at the eXpd8 Cloud launch

Declan Branagan (CEO of eXpd8) explains: "eXpd8 has been providing specialist

services to the legal industry for over 30 years. Due to recent increased attacks, more practices

have been moving their entire working environment to eXpd8 Cloud for an even higher level of security in line with EU compliant data protection. To date, 200 clients have made the switch."

Patrick Ward (developer experience lead at Microsoft Ireland) adds: "eXpd8's success is a great example of an independent software vendor (ISV) building their business on Microsoft's Azure Cloud platform – making our data centre their data centre."

The Irish company is one of only six Microsoft Gold Partners for small and mid-market cloud solutions in Ireland. Find out more at www.expd8.com.

New tax appeals process offers settlement opportunity for 3,000 cases under appeal

Recent changes to the tax appeals system, which came into force with the introduction of the *Finance (Tax Appeals) Act 2015*, mean that dissatisfied taxpayers can now appeal directly to the Tax Appeals Commission (TAC) rather than the Revenue Commissioners, writes Julie Burke (tax partner at Ronan Daly Jermyn).

As Revenue prepares to transfer more than 3,000 existing appeals to TAC, it is planning to offer those taxpayers a 30-day window to enter into settlement negotiations before they transfer their files.

Revenue announced that it would be writing to all taxpayers whose appeals have not yet been transferred to TAC, requesting them to confirm within 30 days whether or not they wished to enter into settlement negotiations.

It is understood that there are approximately 3,000 such cases. The letters from Revenue will issue before the end of April. If taxpayers do not wish to try to settle the matter, or if they do not respond to Revenue within 30



Tic-tac-toe – Revenue or TAC?

days, then the case will be referred onwards to the TAC.

If the taxpayer decides to settle the matter, they will have a three-month window for discussions with Revenue to try and reach an agreement. If an agreement cannot be reached in this timeframe, the case will be transferred to TAC for a hearing.

There are also significant legal issues in relation to the new tax appeals system for existing appeal cases – not least of which is the fact that the taxpayers will no longer have a right to a Circuit Court rehearing, as under the old

appeal system. This means that the only avenue of appeal will be to the High Court on a point of law. This will result in significant legal costs and a public hearing.

Many of these cases have been lying dormant for some years. If TAC ultimately decides in favour of Revenue, then the tax liability will attract significant interest in addition to penalties. This presents a significant incentive for taxpayers to either attempt a resolution of their tax appeal in the coming months or to continue with the appeal under the new TAC regime.

Boost your adjudicatory skills with new diploma

The Diploma Centre has launched a new Diploma in Legal Decision-making Skills, which begins on 26 May. It is open to solicitors who wish to move into a higher-profile litigation management or adjudicatory role.

It will provide participants with case-management leadership skills and practical training on how to run a case in any forum. It will prepare participants for adjudicatory, tribunal and board roles, and explore the skills needed to preside over various forums.

The course will employ blended-learning methods, with lectures available online or on campus. Onsite workshops will be interactive and facilitated by senior practitioners and members of the judiciary.

For further information, see www.lawsociety.ie/diplomacentre or contact Deirdre Flynn (course leader) at d.flynn@lawsociety.ie.

FOCUS ON MEMBER SERVICES

Sign up for job alerts with Legal Vacancies

The Law Society's 'Legal Vacancies' microsite helps members save time and makes job-hunting easier with its new job-alert facility. Whether you are actively seeking work, want to relocate or merely monitor new opportunities in your area, job alerts ensure you will always be aware of jobs on the day they are advertised.

Signing up to job alerts takes only a few minutes and is user-friendly. Alerts will be sent, no more than once daily, to your preferred email address. You can choose to hear about jobs in particular practice areas and/or locations. You can also select to be notified about jobs according to contract duration and/or type (full-time or part-time). It is even possible to edit your preferences so that you only receive advertisements placed by employers, not recruiters, or vice versa.

Members can opt in to receive a twice-monthly newsletter containing tips for job seekers and an overview of the current

employment market.

Applying for jobs has been simplified – most job advertisements on Legal Vacancies now allow members to apply online via the microsite by clicking on the 'apply now' button.

To sign up for job alerts or the newsletter, or to view job searching tips, log in to www.legalvacancies.ie.

Twitter users can follow @LawSocietyJobs to keep up-to-date on some of the latest job advertisements and read recent articles about the job market.

Legal Vacancies offers a range of advertising options for employers. Employers can upgrade from the basic advertising package to a more high-profile listing, such as 'hot jobs' or 'job of the week'. You can opt to personalise your ad with the firm or company logo. Legal Vacancies continues to offer services such as candidate screening or a full recruitment service. For more information on the range of options and price packages available, see www.legalvacancies.ie.

Cashell Solicitors opens new office in Listowel

The only brother duo working in the legal profession in Kerry has expanded its business in North Kerry. Cashell Solicitors of Rock Street, Tralee, was founded by Damien Cashell in 2011. Now Damien has been joined by his brother John, who recently qualified from Blackhall Place, and the Cashells have opened an additional office in Charles Street, Listowel.

"Opening in recessionary times was a challenge. Of course, the recovery in the economy has facilitated a growth in the property market," Damien says.



State civil legal aid explained



Despite the popular perception, state civil legal aid is not free, writes Ciarán Finlay (*legal and policy officer with the Free Legal Advice Centres*). However, it is subsidised. Eligibility depends on a number of tests, including a means test of the applicant's income. Further, the Legal Aid Board, which provides civil legal aid services, may seek to recoup its costs in certain circumstances, although it may waive its fees in others.

So how does the system work?

To qualify, the applicant must first show a relevant annual disposable income of under €18,000. 'Disposable income' is calculated in accordance with the *Civil Legal Aid Act 1995* and attendant regulations. It equals total income, less allowable deductions. The person must also have disposable capital assets of less than €100,000, not including his or her family home.

Unlike criminal legal aid, applicants must pay a 'contribution' towards the cost of their case, with the exception of child-care cases instituted by Túsla. A separate fee is payable for each case, except for District Court family law matters, where a number of issues – such as guardianship, maintenance and custody – are expected to be heard at the same sitting. The minimum contribution for legal advice is €30 and for legal representation is €130. This can rise to €150 for advice

and to a four-figure sum for representation, depending on the means of the applicant.

The board may, in certain circumstances, require a person to repay some or all costs at the end of a case. The amount depends on a number of factors, including the solicitor's time. The board will only pursue costs out of money that it has recovered for the applicant.

Where the applicant is unable to pay the fee in full or at all, the Legal Aid Board has power to waive all or part of its fees, or to accept a contribution by instalments, where not doing so would cause 'undue hardship'. There is no set definition of 'undue hardship'. Guidelines state that the board takes into account a person's current finances and personal circumstances.

FLAC is aware that contributions for legal-aid services have been waived in certain situations, such as where the applicant's only source of income is supplementary welfare allowance, and where the applicant is an asylum-seeker living in direct provision.

A refusal to waive or accept payment by instalments can be reviewed or appealed to an appeal committee of the board.

More information is available at www.legalaidboard.ie/lab/publishing.nsf/Content/Recovery_of_Costs_and_Damages.

Law School to host national 'EdTech' conference

The Irish Learning Technology Association has chosen the Law School as its host for the annual EdTech conference, which will take place on 26 and 27 May. EdTech is Ireland's longest running national e-learning conference. It attracts 230 national and international delegates each year, with a similar online global audience.

The theme of the conference is 'Reconstituting technology-enhanced learning: rising to the challenge'. Educators will

reflect on the current state of technology-enhanced learning in Ireland in 2016 and consider the opportunities and challenges presented by an increasingly globalised world.

Keynote speakers will include Prof Rhona Sharpe (Oxford Brookes University) and Audrey Watters (international author and creator of HackEducation.com). For more information, including the preliminary programme and registration, visit <http://ilta.ie/edtech/edtech-2016>.

A&L Goodbody garners European gongs



PIC: SHANE O'NEILL PHOTOGRAPHY

Julian Yarr (managing partner, A&L Goodbody) and Allison Aldred (CEO, SUAS) with Evan Conroy (9) from St Laurence O'Toole Junior School and Brooke Kelly (7) from St Joseph's School

A&L Goodbody was presented with the 'best community engagement' award at the Managing Partners' Forum Awards in London on 9 March. The award was for its literacy support programme with the educational development organisation Suas. Since 2013, 158 A&L Goodbody volunteers have participated in a programme supporting 8-14 year olds from the firm's local community.

The firm's bespoke 'business bid platform' won it its second award

on the night. The initiative has increased the quality and speed of providing solutions to client requests for the firm's services. The customised technology was designed, built and rolled-out entirely in-house.

Separately, the firm was named Ireland's Intellectual Property Law Firm of the Year 2016 at the Managing Intellectual Property awards in London. The firm has won the award three times over the past four years.

THERE'S AN APP FOR THAT



The times they are a changin'

APP: MICROSOFT WORD PRICE: FREE

With so much talk and pressure for some colleagues regarding 'clouding', sharing and collaborating on documents and projects online, it's nice to remember that the option to keep things simple and super-quick is always there with good old MS *Word* and its brilliant 'track changes' facility, writes *Dorothy Walsh*.

The reason this came back on my radar was that, recently, I had been attempting to draft a complex piece of correspondence with counsel and, as with all things legal, it was urgent! I was anxious to be able to keep a hold of my original letter and not have to save several copies of essentially the same document in my case-management system.

What I really wanted was a document that could be worked on by me and my counsel – and to be able to identify the changes that were made, and by whom. I wanted one document, not several marked 'Draft 1 DW's changes', 'Draft 2 counsel's changes', and so on.

I also wanted something that was quick and easy and effortless for the person I was collaborating with, as this person doesn't use *Dropbox*,

OneDrive or *OneNote*, for example.

So, in the absence of living in the cloud, I came back down to earth and opened up an 'old-fashioned' new document in my Microsoft *Word* app on my iPad. I started my draft letter and sent it directly to counsel with one simple request: please open the document, click 'track changes', make your changes to the document and email it straight back to me. This meant that I didn't have to have the usual discussion about 'Do you have *Dropbox*?', 'use an iPad?', 'have access to *Pages*?' Sure everyone uses MS *Word*.

I am always a fan of keeping things simple, and the whole point in being able to work together is that it has to be easy and not a big operation to get a simple task done and dusted. I am always open to talking any of my colleagues through the ins-and-outs and benefits of an app and have set up many of them with *Dropbox* and *OneNote*, but sometimes there just isn't time – and going back to basics is sometimes the easiest, quickest and most comfortable option. In this case, the result was easily achieved and with the minimum of effort, signing in, loading and saving.





He's not doing his banking.

We are.



You free up time for what really matters when you let someone else take care of things - especially when you know they're experts. So why not do the same for your banking? From executing simple, day-to-day tasks to providing ongoing financial advice, we can help. Talk to AIB Private Banking today.

Call Patrick Farrell, Head of AIB Private Banking, on 086 023 2868 or visit privatebanking.aib.ie

 AIB PRIVATE BANKING

MOOC examines data protection



MOOC contributors: Daragh O'Brien (CEO, Castlebridge Associates), Claire O'Mahony (Diploma Centre), Jeanne Kelly (partner, Mason Hayes & Curran) and Dr Denis Kelleher (author of *Privacy and Data Protection Law in Ireland*)

The Diploma Centre launches its 2016 MOOC course on 10 May. 'The legal practice and challenge of data protection' course is the latest in the Law Society's MOOC series and illustrates the Society's commitment in embracing technology and providing legal education online.

MOOCs are free online courses open to all and are specifically designed for large numbers of participants. Over 2,600 students from over 30 countries enrolled for last year's MOOC on technology law. These courses feature online recorded and streamed presentations, and provide interactive discussion forums between facilitators and students.

This year's MOOC looks at how data protection laws balance an individual's right to privacy with an organisation's ability to use data efficiently and effectively. The course runs over a five-week period, with material for the weekly modules released every Tuesday in the form of a number of

short video presentations from expert contributors. These are supported by suggested readings, quizzes, online Q&A with experts, and discussion forums.

To sign up, visit <https://mooc.lawsociety.ie>.

Majority of female barristers experience sexism

Some 62% of respondents to a survey of female barristers say that they have experienced direct and/or indirect discrimination and casual sexism.

According to this month's *Bar Review*, "many respondents feel there is a 'culture of silence' and 'underbelly of acceptability' of inappropriate comment and behaviours", including sexual harassment, within the barristers' profession.

Of the main obstacles encountered by respondents in pursuing a particular area of practice, gender bias was frequently cited – including perceived bias among solicitors.

Respondents' comments included:

- "I was once told by a female solicitor that she would not brief a woman, as clients are more impressed by male counsel."
- "Commercial briefs tend to flow from male solicitors to male barristers."
- "Once you take maternity leave, you are written off by many solicitors."

Only 39% of members of the Law Library are women, with junior counsel at 42%, falling to just 16% at senior counsel level. One respondent stated: "Despite it being 2016, it is still very much a male-dominated environment."

The survey results are being considered by the Bar, and a number of measures to better support female members have already been initiated, including a pilot mentoring scheme that is being operated in partnership with the Law Society. Measures to support working mothers are also under discussion, and other targeted initiatives such as the introduction of CPD seminars on the development of 'soft skills' and business skills are also being considered.

David Barniville (chairman of the Bar of Ireland) said: "We are encouraged by the fact that membership of women pursuing careers at the Bar has been steadily increasing in recent years ... However, as in many professions, it is clear that more needs to be done to provide equal opportunities at all levels for female members of the Bar."

Masterclass on assisted decision-making



The Law Society's Mental Health and Capacity Task Force recently joined with SAGE (the support and advocacy service for older people) to jointly host a masterclass on the *Assisted Decision-making (Capacity) Act 2015*. Pictured are Mervyn Taylor (SAGE), Aine Brady (SAGE), Ms Justice Mary Laffoy, Patricia Rickard-Clarke (task force chairperson), Mr Justice Peter Kelly, Mary Condell (SAGE) and Mr Justice Jonathan Baker. The Diploma Centre is offering a Certificate in Decision-Making Capacity and Support as part of its spring programme. For more information, visit www.lawsociety.ie/diplomacentre



Whose copy of the Gazette are you reading?

Why not subscribe?

€60 FOR 10 ISSUES

I would like to subscribe to the *Law Society Gazette*

- I enclose my cheque for €60 (Subscribers in the Republic of Ireland)
- I enclose my cheque for €90 (Overseas subscribers)

Please charge my Access Visa Mastercard Eurocard

Credit card number:

Expiry date: MONTH/YEAR

Name: _____

Address: _____

Telephone: _____

Signature: _____

Please return to *Law Society Gazette*, Blackhall Place, Dublin 7.

Simpson takes bronze at Jessup



Andrea Bowdren, Katie O'Leary, Colette Reid (coach), Emmet Connolly, Sarah Morrissey and Christine Simpson representing Ireland at the Jessup Moot in Washington DC

Ireland was ably represented recently by a team from the Law Society at the Philip C Jessup International Law Moot Court Competition in Washington DC. The team comprised Sarah Morrissey and Emmet Connolly (A&L Goodbody), Andrea Bowdren (Arthur Cox), Christine Simpson (Matheson) and Katie O'Leary (McCann FitzGerald). The team was coached by Colette Reid.

Christine Simpson received an award as the third-best speaker overall in the international rounds, with Sarah Morrissey placing 15th.

This year, the competition centred on a fictional dispute over developing legal issues, including mass surveillance programmes, cyber-attacks, leaked information and eco-terrorism, with the team making written and oral submissions for both parties to the case. Arguments centred on a variety of sources of international law and policy, including case

law from tribunals and courts – both domestic and international.

Last March, the Law Society team triumphed in the national round at UCD against a team from King's Inns, thus progressing to the international rounds that took place in Washington DC from 27 March to 2 April. Those rounds were attended by 132 teams from 86 countries, the highest level of participation in the competition's 57-year history.

The team competed against delegations from China, Russia, Trinidad and Tobago, and Venezuela, appearing before judging panels composed of lawyers, academics and judges from around the world.

Although ultimately bested by a strong side from Venezuela, the Law Society delegation enjoyed two wins before retiring from the competition, and was delighted with Simpson's and Morrissey's rankings.

Finalists announced for Irish Law Awards



The 2016 shortlist for the AIB Private Banking Irish Law Awards has been announced. Now in its fifth year, the awards recognise excellence in Irish law and practice. The judging panel for the awards is chaired by notary public and solicitor Dr Eamonn Hall. The awards will culminate on 6 May with a black-tie gala evening ceremony hosted by Miriam O'Callaghan in the DoubleTree by Hilton in Dublin.

Pictured at the announcement of the finalists for the Irish Law Awards 2016 were Dr Eamonn Hall, Miriam O'Callaghan and Patrick Farrell (head, AIB Private Banking)

NEW
TITLES

ESSENTIAL LAW BOOKS



LIMITATION OF ACTIONS

Second edition
Martin Canny

The new edition provides the practitioner with a comprehensive and definitive analysis of the time limits for civil proceedings and the limitation rules governing causes of action.

ISBN: 9780414056541
€245 / Publishing June 2016



CYBER LAW AND EMPLOYMENT

Pauline Walley and Cliona Kimber

The book examines the transformative effect of the internet and social media on the employment relationship, and how this presents new challenges for lawmakers and the courts alike.

ISBN: 9780414036963
€325 / Published April 2016

PLACE YOUR ORDER TODAY

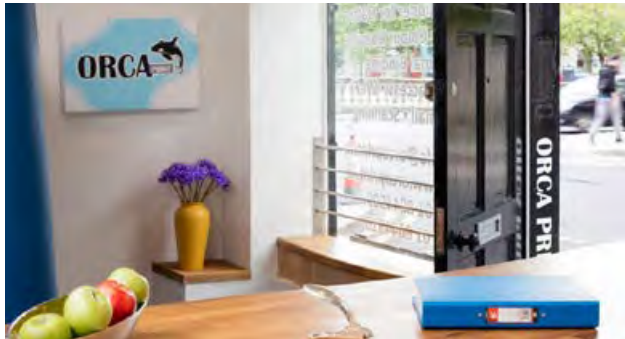
VISIT roundhall.ie
EMAIL TRLUKI.orders@thomsonreuters.com
CALL 1800 937 982 (IRE)
0345 600 9355 (UK)
+44 (0) 203 684 1433 (INT)



THOMSON REUTERS®



We love to swear...
...and stamp, and scan.



Orca Print – a one-stop shop for quick stamping and swearing,
30 seconds from the Four Courts
(next door to the Legal Eagle).

We also bind, copy
and provide a
consultation room.



Tel: 01 8044509. Email: info@orcacprint.ie. 3 Inns Quay,
Chancery Place, Dublin 7. Opening hours: 9-5 Monday
to Friday, or by special arrangement.

www.worthingtonslaw.co.uk

Lexcel
Practice Management Standard
Law Society Accredited

**FOR ALL THOSE
LEGAL HURDLES**



NORTHERN IRELAND SOLICITORS



BELFAST

Cathedral Quarter 24-38 Gordon Street
T: 028 9043 4015 F: 028 9043 4016

NEWTOWNARDS

2 Court Street
T: 028 9181 1538 F: 028 9181 0532

email info@worthingtonslaw.co.uk



**Worthingtons
Solicitors**

gazette
LAW SOCIETY

www.gazette.ie

**BONUS DIGITAL FEATURES WITH
YOUR ONLINE GAZETTE**



- Links to judgments, cases and relevant literature
- Links to additional material
- Links to advertisers' websites
- Seamless navigation throughout

- View on your computer, tablet or smartphone

For your best viewing experience,
download the *Gazette* to your device

**PROPERTY
PREPARED
FOR SALE**



- Complete House Clearance
- Furniture Removal Arranged
- Vacuumed and Cleaned
- Gardens Tidied

Reliable and trustworthy service

Garden and House Services
Santry, Dublin 9



Larry Mitchell
(087) 2827054
(01) 8421924

How Calcutta Run money helps homeless



Housing is the first priority for a homeless person. The support of the Calcutta Run will enable the Peter McVerry Trust to house Dublin's most vulnerable by providing funds to renovate empty units across the city.

By signing up to the Calcutta Run, which takes place on 21 May, participants will be supporting local housing initiatives as well as homeless children living in dire poverty in Calcutta, India. The run has set a target this year of €200,000 with the aim of contributing €100,000 each to the Peter McVerry Trust and GOAL.

To reach this target, the organisers are asking legal practitioners to reach out to family members, fellow lawyers, siblings and friends. Ten people donating €10 each will

ensure that participants achieve a personal target of €100. If you haven't already signed up to take part in the Calcutta Run, you have up to 18 May to do so.

Firms are being encouraged to ensure high attendance and to take advantage of the many fun features of the run that will ensure a great day out for colleagues and family members.

The Finish Line Festival is now an established annual gathering for the profession, with a bar, barbecue, DJ, comedy event, tennis, kids' mini-athletics and bouncy castles all in the mix – all in the heart of Dublin City.

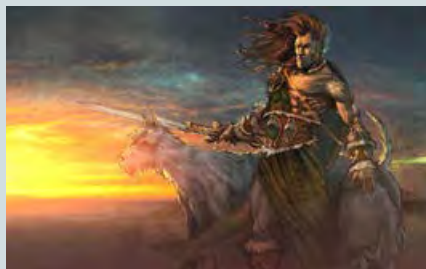
Further information is available at calcuttarun.com or by emailing hilary@calcuttarun.com.

Fionn – now there's a novel idea

The *Gazette* has received a number of queries about the Celtic warrior image that illustrated the *Setanta* story in the April *Gazette* (p29). The image was created by Chris Brosnan, and forms the first of a series of beautifully crafted graphic novels that, for the first time, will feature the legend of one of Ireland's greatest heroes, Fionn MacCumhaill.

The team behind the project wants to help preserve the myths of ancient Ireland and to bring them to a new audience. The first of the books, *The Forging of the Fianna*, will be launched on St Patrick's Day 2017.

Says Canadian-based Chris: "In a market that's been saturated by DC and Marvel characters, such as Batman and Superman, many have become bored by the constant sameness of faces, plot lines and stories. The Scottish heroes, too, have been honored in movies like *Braveheart* and *Highlander*. However, the greatest warrior hero in Irish mythology has been totally overlooked. When you consider that every St Patrick's Day over 100 million people globally celebrate the Irish, you can see that the scope for an Irish hero has a very real place out in the world."



The series of novels, computer games and proposed movies are set to bring a fresh new set of characters to the graphic novel genre: "Fionn offers decent, chivalrous values in leadership – something sorely needed today – along with a glimpse into the pristine, magical world of the Irish Celtic past," Chris says.

The producers are inviting anyone who'd like to get involved in this venture by supporting their vision in any way they can. To find out more, contact Chris Brosnan at: contactbrosnan@gmail.com, visit www.facebook.com/FinnMcCoolTheMovie or check out the 'Finn McCool – Celtic Ireland's Greatest Hero' [Youtube](#) page.



PUBLISHING SUMMER 2016



Irish Income Tax 2016
(formerly Judge Irish Income Tax)
Tom Maguire
ISBN: 9781784514273
Format: Hardback
Price: €225.00
Pub date: May 2016



Irish Family Law Handbook, 5th edition
Deirdre Kennedy, Elizabeth Maguire
ISBN: 9781784515874
Format: Paperback
Price: €175.00
Pub date: May 2016



Murdoch and Hunt's Dictionary of Irish Law, 6th edition
Edited by Dr Brian Hunt
ISBN: 9781780438955
Format: Hardback
Price: €165.00
Pub date: June 2016



Clinical Practice and the Law, 3rd edition
Simon Mills, Andrea Mulligan
ISBN: 9781847669506
Format: Paperback
Price: €85.00
Pub date: July 2016



Employment Law, 2nd edition
Consultant editor, Maeve Regan; General editor: Ailbhe Murphy
ISBN: 9781847663764
Format: Hardback
Price: €245.00
Pub date: July 2016

To place an order contact:

jennifer.simpson@bloomsbury.com
or sales@gill.ie
buy online at
www.bloomsburyprofessional.com
Please quote **GAMAY16**



TITLESOLV TITLE BONDS

PROVIDING SOLUTIONS;
PROPELLING THE
PROPERTY MARKET

For information on how we can assist contact us at:

Carmel Nielsen
+353 (01) 633 8872
+353 (0) 87 299 8088
cnielsen@titlesolv.com
www.titlesolv.com

Address
Titlesolv,
C/O Hannover Re,
4 Custom House Plaza,
IFSC,
Dublin 1

A member of the **hannover re** group

Titlesolv is a trading name of London & European Title Insurance Services Limited (Registered in England & Wales company number 4459633 - VAT No. GB709149918) authorised and regulated by the Financial Conduct Authority and a member of the Hannover Re Group

The practice is medium sized – three partners, three assistant solicitors with a total personnel of fourteen. While it is a general practice there is an emphasis on commercial property, commercial litigation and insurance indemnity litigation.

The current partners wish to develop the practice by increasing its size and introducing additional areas of specialist practice. They also wish to make provision for the retirement of partners in the years to come. These goals may be successfully achieved by the addition of individual Solicitors with an existing client base, or by merger with or acquisition of other firms or a combination of the foregoing.

*Expressions of interest and information should be sent in confidence to
Robert J Kidney & Co, Accountants,
11 Adelaide Road, Dublin 2.*

Long established reputable practice in Dublin 2 invites expressions of interest.

May the force be with you



Garda commissioner Nóirín O'Sullivan was guest speaker at a parchment ceremony on 31 March, 2016. The commissioner and her most senior officers were also guests of the Law Society for dinner afterwards. (Seated, l to r): deputy commissioner John Twomey, Nóirín O'Sullivan, Simon Murphy (president of the Law Society), Mr Justice Patrick McCarthy (parchment ceremony guest speaker), deputy commissioner Dónal O'Cuailín; (standing, l to r): Darach McCarthy and Shalom Binchy (chair and immediate past chair, respectively, of the Society's Criminal Law Committee), Kenneth Ruane, assistant commissioner John O'Mahoney, Kevin O'Higgins (immediate past-president), Mary Keane (deputy director general), Ken Murphy (director general), John Barrett and assistant commissioner Jack Nolan

Charity cycle supports Mustard Seed Communities



PIC: BRIAN MCEVOY

At the launch of the Dublin2Paris charity cycle were Cahir O'Higgins (solicitor), Sean Gallagher, Bobby Kerr, Roz Purcell, Niall O'Farrell and David Sheridan

Mustard Seed Communities is a charity dedicated to caring for disabled and abandoned children in Jamaica, Nicaragua, the Dominican Republic and Zimbabwe.

To raise badly needed funds, the charity is organising a 'Euro

Cycle' from the Aviva Stadium, Dublin, to the Stade de France, arriving on 13 June for pre-match celebrations. There, they will pick up much-sought-after match tickets for Ireland's first game (against Sweden) in the UEFA Euro 2016 tournament.

All proceeds raised through the 'Dublin2Paris' cycle will go directly to Mustard Seed Communities to fund the building and operations of a school at a 'Little Angels' project in Zimbabwe. The charity needs to raise €300,000 to make this happen.

Officially launched at the Aviva Stadium by the FAI's Martin O'Neill and model Roz Purcell, a total of 130 cyclists will take part. For more information and to register, visit www.dublin2paris.com or check out the Twitter handle @MustardSeedIrl.

Annual conference dinner at Fota Island Resort, 15 April



Simon Murphy (Law Society president) with Fiona Ní Cheallaigh, Cillian Motherway and Jennifer Murphy



Noel Lynch (Tralee), Rosemary Horgan (president, District Court) and Carol Anne Coolican (Tralee Law Centre, Co Kerry)



Stephen Gibb, Christine McLintock (president, Law Society of Scotland), Lucas Hooijenga and Lorna Jack (chief executive, Law Society of Scotland)



Patrick Derivan (Derivan Sexton & Co), Valerie Peart (Peart's Solicitors) and Gerard Wade

ALL PICS: JOLEEN CRONNIN



MEDLAW
MedicoLegal Service Providers

- MedLaw is Ireland's biggest medicolegal reporting provider.
- We have the largest panel of Medical Experts nationwide.
- Web-based appointment system with excellent support to ensure timely and efficient delivery of medicolegal reporting.

For immediate assistance with MedicoLegal Reports, contact us
Tel: +353 1 2135621, DX: 211005, email: info@medlaw.ie

www.medlaw.ie



Juli Rea (SLA council member), Paul Egan (Law Society Council member) and Bernadette Cahill (Law Society Council member)



Lucas Hooijenga, Ken Murphy (director general, Law Society of Ireland), Lorna Jack (chief executive, Law Society of Scotland) and Jonathan Smithers (president, Law Society of England and Wales)



Martin and Colette Crotty (MJ Crotty & Son)



Teri Kelly (Law Society), sport stars Valerie Mulcahy and Sonia O'Sullivan, and Attracta O'Regan (Law Society) at the pre-dinner drinks reception on 15 April



Emma Neville (Doyle Solicitors), Kate Ahern (GJ Moloney Solicitors) and Fiona Twomey (Fiona Twomey Solicitors) at the Law Society's annual conference



Simon Murphy (Law Society president), Hilary Larkin and Sean O'More

Southern Law Association annual dinner, 21 February



The Southern Law Association held its annual dinner at the Maryborough Hotel, Cork, on 21 February. A total of 275 SLA members and their guests attended into the wee hours of the morning. SLA president Don Murphy officiated and introduced the guest speaker, Law Society President Simon Murphy – a fellow Corkonian. The meal was followed by a rendition of the notorious ‘topical song’, while entertainment for the evening was provided by Ronnie Costello



Murphy, Murphy and Murphy



Mary Toher, Ann O'Driscoll and Vincent Toher



Jennifer Murphy and Simon Murphy



Mairead Moriarty and Fiona Foley



Simon Murphy and wife Fiona Ní Cheallaigh



Niamh O'Connor and Teresa Murphy



SLA presidents past and present: Judge James O'Donohoe, Jerry Cronin, President Don Murphy, Judge Donagh McDonagh (at his last dinner before his retirement in April) and Fergus Long (partner, Ronan Daly Jermyn)



Mr Justice Frank Clarke, Aine Ryall (UCC), Don Murphy (president, SLA), his wife Salette, and John Guerin (president, Law Society of Northern Ireland)



Juli Rea, Salette Murphy and Kate Ahern



IF LIFE GIVES YOU LEMONS, WE'RE HERE TO HELP

Consult a Colleague in total confidence

Call us on 01 284 8484



All calls to the Consult A Colleague helpline are treated in the strictest confidence - there is no need to give a name or number.

A confidential free service from the DSBA.
www.consultacolleague.ie

viewpoint

CLINICAL NEGLIGENCE LITIGATION IS CHANGING

The *Legal Services Regulation Act* will dramatically change the clinical negligence litigation landscape.

Alison Kelleher examines the significant changes



Alison Kelleher is a solicitor at Comyn Kelleher Tobin, having previously practised at Weightmans LLP, London, in the area of clinical negligence disputes

The *Legal Services Regulation Act 2015* amends the *Civil Liability and Courts Act 2004*, introducing a pre-action protocol for clinical negligence disputes.

These long-awaited changes provide a framework for the recommendations made by the report of the Working Group on Medical Negligence Litigation prepared in March 2012. That report carefully analysed the success of the pre-action protocol operating in England and Wales since 1999 and recommended the introduction of a similar regime in this jurisdiction. Although the provisions of the act have not yet been commenced, they are expected in the coming months.

What's the aim?

The act introduces a code of conduct to ensure that each party to a clinical dispute has sufficient information and understanding of the other's perspective to be able to investigate a claim efficiently and, where appropriate, to resolve it prior to issuing formal proceedings.

The pre-action protocol encourages a 'cards-on-the-table' approach, where formal litigation will be a last – not first – step, where proceedings should not be commenced before information is exchanged and positions are actively explored.

Commentators have described the current regime as "Dickensian" and "not fit for purpose", indicating that these changes are likely to be welcomed by parties to clinical

negligence disputes, as well as our already overstretched court services.

The act clarifies which claims fall into the category of clinical negligence. Section 219 of the act inserts a new section 32A into the *Civil Liability and Courts Act 2004*, describing clinical negligence claims as "anything done or omitted to be done in the provision of a health service by a health service provider in circumstances which could give rise to liability for damages for negligence in respect of personal injury or death".

There is no doubt that the enactment of this legislation will encourage more informed and earlier resolution of clinical negligence claims

Pre-action protocol

The act sets up the framework for the introduction of pre-action protocols by the Minister for Justice. In December 2015, Minister Fitzgerald described the protocol as encouraging full disclosure of all available evidence in advance of formal litigation with a view to early resolution. She stated: "This has come about because we recognise that medical or clinical negligence claims are placing a major burden on

patients who believe they are victims of medical negligence. It also places a major burden on the medical professionals, who must handle such claims almost exclusively within the adversarial context of legal proceedings, with all the attendant shortcomings. It also places a major burden on the courts, which have to hear the claims, some of which are discovered at a late stage to have been unsupported by the necessary evidence, thus leading to delays and inefficiencies. It was against this background that a pre-action protocol was called for in the interests of all parties."

The current clinical negligence litigation regime has been criticised as being costly, inefficient and encumbered with delays. In

contrast, the act refers to the desirability of:

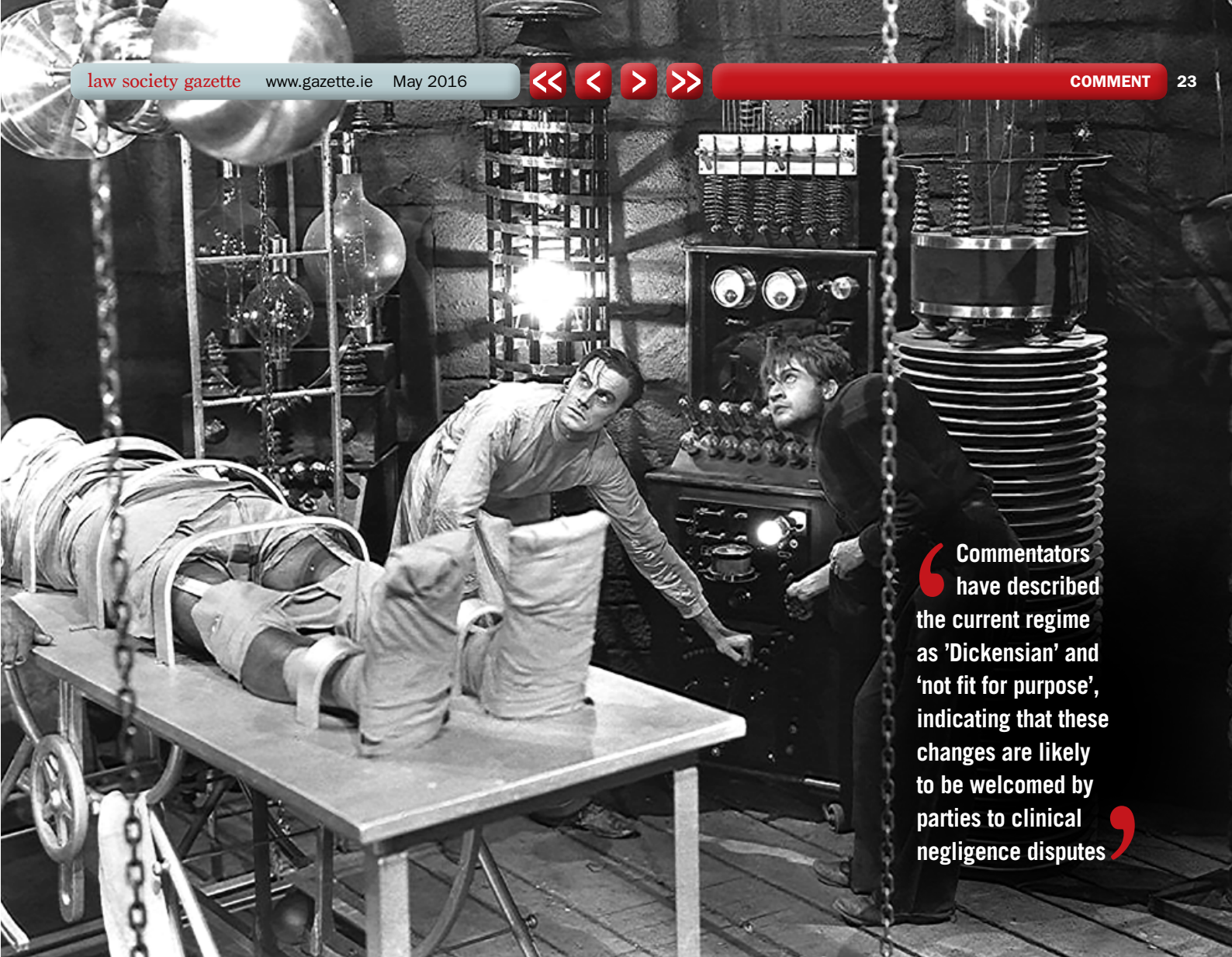
- Encouraging the early resolution of enquiries or allegations relating to possible clinical negligence,
- Promoting timely communication between persons who are enquiring into or making allegations about possible clinical negligence and those whom they consider may be liable in respect of it,
- Reducing the number of cases in which clinical negligence actions are brought,
- Facilitating the early identification of the issues in dispute in clinical negligence actions, and
- Encouraging the early settlement of clinical negligence actions.

In furtherance of those aims, a compulsory pre-action code of conduct or protocol will be introduced by the minister. Although the minister's regulations are awaited, section 32B(6) of the act states that the regulations shall include steps to be completed by both parties before formal litigation can be commenced, including:

- Disclosure of medical records,
- Formal notification of details of allegations of negligence by a plaintiff,
- Serving of a formal response by a defendant to the allegations,
- Disclosure of material relevant to allegations and responses, and
- Agreements to submit issues for resolution otherwise than by a court.

The regulations will provide the form of requests for disclosure or notifications of enquiries and allegations and the form of the acknowledgements of and responses to such notifications.

Importantly, the courts will have significant powers to deal with parties failing to comply with the protocol. The court may, at its discretion:



Dr Frankenstein ended up with a monster bill

Commentators have described the current regime as 'Dickensian' and 'not fit for purpose', indicating that these changes are likely to be welcomed by parties to clinical negligence disputes

- Direct that the litigation shall not proceed any further until the steps have been complied with,
- Order that the defaulting party pay the costs, or part of the costs, of the other party or parties, including, where appropriate, on an indemnity basis,
- Deprive a plaintiff of interest or discount the rate of interest on an award of damages where a plaintiff has not complied with the protocol or rejected an offer to settle made in accordance with the protocol for an amount equal to or greater than that awarded,
- Order a defendant to pay a higher rate of interest on all or part of an award where the defendant has not complied with the protocol or has rejected an offer of settlement made in accordance with the protocol, for an amount equal or less than the amount awarded.

Limitation period increase

The act increases the limitation period from two to three years for clinical negligence action, to allow parties time to comply with the proposed pre-action protocols described above. This change will not affect cases where the cause of action accrued, or the plaintiff became aware of the cause of action, before the commencement of the relevant section.

Apology not an admission

In a welcome development for both patients and clinicians, section 32D of the act states that an apology made in connection with an allegation of clinical negligence shall not constitute an express or implied admission of fault or liability, and is not admissible as evidence of fault or liability of any person in any proceedings

in a clinical negligence action.

In addition, an apology will not invalidate or otherwise affect any insurance coverage, even if the contract of insurance provides otherwise. This amendment is not retrospective, and will only affect apologies made after the act comes into force.

Pre-action offers of settlement

Section 220 of the act extends the operation of section 17 of the *Civil Liability Act* to pre-action offers made in accordance with the pre-action protocol. Previously, a court was not required to take into account the reasonableness, or otherwise, of such pre-action offers. This change has the effect of adding potential cost consequences to a formal offer made prior to issuing a personal injuries summons.

Challenges ahead?

The long-awaited reforms to the clinical negligence landscape bring welcome change to all sides of clinical negligence disputes. There is no doubt that the enactment of this legislation will encourage more informed and earlier resolution of clinical negligence claims.

However, challenges are afoot. Common criticisms across the water are that the potential benefits brought by the introduction of the protocol are offset by the demands of the protocol on parties, which can result in the 'front-loading' of costs, where more work is required at an earlier stage than would otherwise be required.

There will, no doubt, be teething problems once the protocol is introduced, but it is anticipated that the changes, although likely to be onerous on practitioners, will be welcomed by all sides.

news in depth

THIS SPORTING LIFE

The Law Society's annual conference on 'Law in sport – sport in law' was held at Fota Island Resort from 15-16 April. It doesn't get any better than this, writes **Mark McDermott**



Mark McDermott is editor of the Law Society Gazette

David Walsh is a 'words athlete'. If he were a runner, he'd most likely be doing marathons, given the amount of hard graft, sheer doggedness, and patience it took to unmask Lance Armstrong – once the most revered cyclist on the planet. David – chief sports writer with *The Sunday Times* – is utterly engaging when speaking on the subject.

"Why was Lance Armstrong brought down?" he asked attendees at the annual conference. In reply, he referred to one of the oldest themes in Hollywood.

"We've all seen the film where it's a jewel thief or a bank robber or an assassin – and he is brilliant at what he does. He never gets caught. He gets into the bank. He gets into the vault. He keeps doing it and he says that all he wants to do is accumulate enough money so that he can retire and live happily ever after.

"But you know, in all those Hollywood movies, the guy retires, he goes away, he seems to be living happily ever after, when somebody shows up and says:

'Just one more job. Would you come back – would you just do this one?'

"And somehow Lance got it into his head that, three years after retiring, he wanted to come back. And in my view, and I think most people will agree with this, if he didn't make that decision to come back, he never gets caught. When he came back, he subjected himself to a different kind of scrutiny, because he could no longer win, because he was too old and there were younger guys who were going to beat him."

During his investigations, Walsh found out that Armstrong had been working with Michele Ferrari, the doping doctor in Italy. "That was a huge story at the time. And I had no idea that, when the stories were put out there, how little impact they would have," said David.

"I realised that newspaper articles weren't going to do it, so the French

sports journalist Pierre Ballester and I teamed up and decided to write *LA Confidential*, the full story of Lance's doping, which came out in 2004.

"Lance sued us at *The Sunday Times*

because we had written about *LA Confidential*, the book. The case went on for two years. We were forced to settle. Our legal bill was £700,000. We had to pay a further £300,000 towards his legal bill – a million pounds it cost us at *The Sunday Times*, and then they had to publish a pretty grovelling apology: 'We are sorry for ever suggesting that Lance Armstrong took drugs. We know he would never do this'. That's what the libel

laws did to us.

"Lance was officially kicked out of cycling on 22 October 2012 and it's a day that I will always remember ... I felt a strange sense of anti-climax. And I think it was in part because you realise in life that in situations like this, the chase is better than the kill. The hunt is better than the kill. "

Every step toward the goal of justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of dedicated individuals

Speakers on day one of the conference: Edward Evans, Julie O'Mahony, Sonia O'Sullivan, Simon Murphy (Law Society president) and Valerie Mulcahy



Just do it

The theme of the conference ('Law in sport – sport in law') could be seen as somewhat of a niche topic, but everyone agreed that it was one of the most fascinating conferences of recent years.

We were treated to the calibre of speakers like four-time Olympian Sonia O'Sullivan – who was beautifully understated when sharing insights into her stellar running career. There was the sincere passion of ten-time All-Ireland football medallist Valerie Mulcahy, who lifted the lid on the rampant inequality that exists in the women's game in GAA (see panel, opposite).



'Echo, Echo!' Law Society President Simon Murphy holds aloft a copy of the *Evening Echo*, which broke the news of Valerie Mulcahy's retirement from football

Gaelic footballer Valerie Mulcahy spoke about the challenges that she and her lady footballer colleagues have had to overcome down the years. She is adamant that many of the barriers and challenges faced by female players in the 1960s still exist today.

"The most significant barrier to achieving equality is access," she says. "We lack, on the most basic level, access to facilities, equipment, expenses, rewards, supporters, and support for our physical and emotional welfare."

She criticised the GAA's propensity to move important women's matches "at the last minute" for boys' and men's team-training sessions. "It doesn't matter how far in advance a pitch is booked, if the men need it, we are dismissed."

"In 2012, we experienced this on a grand scale, when the men's All-Ireland Hurling Final ended in a draw. The men's association, the GAA, did not wait until the next available weekend to have the replay. Instead it emerged that they had made an agreement prior to the championship with our own association, the LGFA, that, in order to use Croke

Park for the final, we had to forfeit our all-Ireland final date in the event of a men's replay. To no surprise and to little public outcry, our final was moved to the following weekend to facilitate the replay. Our fans lost train tickets, hotel bookings and, for some, the opportunity to see us play. Several of the players had to pay significant costs to change their flights for their end-of-season holiday abroad. We relentlessly tolerate inadequate facilities, we travel to remote pitches with no hot showers, and often share one bathroom among 30 players.

"The Women Gaelic Players' Association has decided that enough is enough, and that it's time that the attention of our male peers in both hurling and football is drawn to these issues. They have begun to voice their support for change by using the hashtag #onourside. Nobody can appreciate more than our male counterparts that playing a non-professional sport at a professional level is difficult, and they recognise we deserve to be treated as equals."

Valerie's speech garnered one of the three standing ovations of the conference.

Judy Khan QC spoke on the current topic of the Hillsborough tragedy. Julie O'Mahony brought us behind the scenes of a day in the life of the Rugby World Cup

legal team, while Edward Evans of Beauchamps shared his tips on practice opportunities for solicitors in the sporting arena.

If anyone considered sport and

the law a 'niche' topic, by the end of the conference they would have come away with a significantly more open mind. Evans addressed the importance of sports in Ireland:



David Walsh



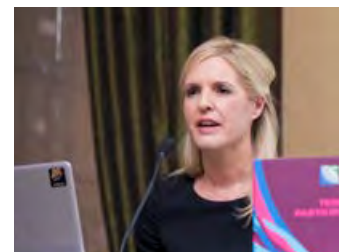
Judy Khan QC



Sonia O'Sullivan



Valerie Mulcahy

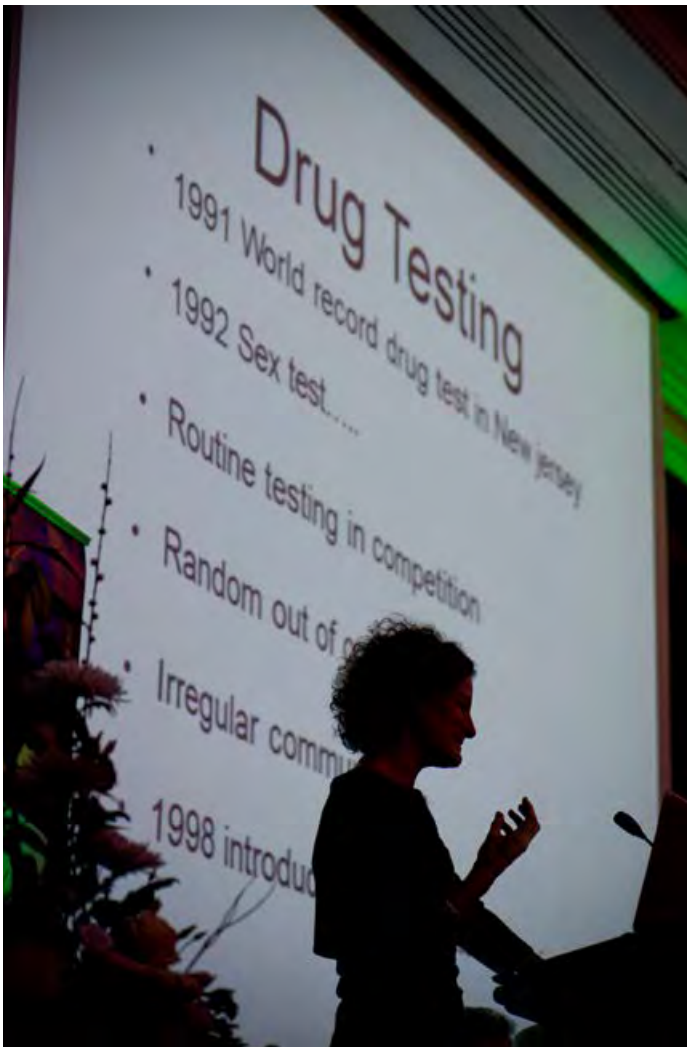


Julie O'Mahony



Edward Evans

ALL PICS: JOEEN CROININ



of the area and you can both assist clubs and benefit from it personally. Most clubs encounter the law in relation to employment, tort and commercial law.

“For instance, I would have helped one of my local clubs, a big junior club, that became a company. The new *Companies Act* meant that they had to take that on board. There are new developments around the corner in relation to Irish gambling and betting laws. Again clubs are running their own draws and lotteries. These are all issues where clubs need legal advice. To me, it’s a good way of engaging. It’s also a great way of socialising and networking.”

Ruck and roll

Julie O’Mahony is senior legal counsel of Rugby World Cup Ltd, a wholly owned subsidiary of World Rugby, headquartered in Dublin. It owns the Rugby World Cup tournament and is tax resident in Ireland “because we enjoy a tax exemption, so that all the Rugby World Cup profits go back into the game for reinvestment globally”.

Julie oversees the drafting and negotiation of commercial contracts, broadcasting rights, sponsorship, licensing, trademarks

and merchandising. The legal department is responsible for devising the brand protection strategy and for overseeing the implementation of dedicated rights protection.

“Our remit is to combat and minimise ambush marketing, guerrilla marketing instances, infringements on its intellectual property, or other unauthorised type of commercial activities that step

on our stakeholders’ toes,” she says.

“The Rugby World Cup was a challenging environment, because we didn’t have any tournament-focused legislation like the Olympics does – so we had to rely on traditional methods. The existing legislation in IP and planning was often ineffective and slow. So we had to put on our thinking caps.

We engaged in very

active monitoring, especially on match day.

“We went out to friendly law firms. They kindly offered lots of interns or associate solicitors who effectively wanted to get to see the matches for free. So Clifford Chance gave us lots of people; they covered all the venues in London and the south of England. A law firm in Wales, Hutchinson Thomas, provided people to us for all the games in Cardiff, while Scottish law firm

“ A million pounds it cost us at The Sunday Times, and then they had to publish a pretty grovelling apology. That’s what the libel laws did to us ”



“At the moment, we have 70-plus national governing bodies that look after sport. Looking at the volunteer rate, 15% of adults volunteered in the last 12 months. That’s the equivalent of 400,000 adults involved in sport, so it has a huge effect on the community. In total, we have 2.5 million participants, 1.7 million adults, 800,000 kids, 30 local sports partnerships and 12,000 sports clubs – so the community of sports in Ireland is a big one. It’s all-pervasive, is very representative of society, and it’s across all social strata.”

Edward encouraged the lawyers present to get involved in the sports clubs in their local communities. “I have benefited hugely in terms of working with our local sports club. You can build up your knowledge



Harper Macleod gave us people who looked after the north of England in games in Newcastle, Leeds and Manchester. These people did a really excellent job. Because they had a level of legal training, they were super – they really ticked lots of boxes for us. They patrolled inside and outside the stadiums looking for ambush-type incidents, such as ambush clothing or leafleting giveaways, and reported these through a central communications system.”

You'll never walk alone

Over the past two years, Judy Khan QC represented a number of families in the recent Hillsborough tragedy inquest. She led a team of five barristers dealing with the pathology and other expert medical evidence for 77 of the 96 deceased Liverpool fans who lost their lives at the football match between Liverpool and Nottingham Forest at Hillsborough Stadium, Sheffield, on 15 April 1989.

It was rather fitting that the first day of the Law Society's conference marked the 27th anniversary of Hillsborough – the worst sporting disaster in British history.

Judy told her audience that she has been repeatedly asked what the latest inquest hoped to achieve, so long after the event. Three questions had to be considered in answering that question. First, how did the disaster happen? Second, what happened in the aftermath? And third, what happened in the original inquest? She brought us through the events in considerable detail, before turning to the issue of what had been accomplished by the new inquest.

“We have achieved, I think, a thorough scrutiny of the facts. At the outset, we hoped to leave no stone unturned in getting to the truth, not only of what happened on that day itself, but in the days, weeks, months and even the years that followed. And these proceedings have taken two years, because we have scrutinised very carefully every aspect of the disaster, from stadium safety, previous fixtures, planning and preparation, the events of the day, and the emergency and

medical response – and even the way in which the statements were gathered, the evidence-gathering process.

“The other most important feature of the inquest has been the holding of witnesses to account. David Duckenfield [the detective superintendent who was the overall match commander on the day] was the most significant part of the inquest. There wasn't a chair to be had in that courtroom when he gave evidence, which he did over the course of some seven days, and he was thoroughly examined on what he had and hadn't done. His order to open the gate and his simultaneous failure to order the closure of the tunnel was the direct cause of the disaster, and he admitted that in evidence. His lie after the event, as I said, marked the beginning of a false narrative about the cause of the disaster. When he gave evidence, Duckenfield apologised to the families for the first time – his apology, by then, 26 years too late. But the fact that he was made to account for his acts and omissions during the course of his evidence was, for many of the families,



the most important part of this process.”

The jury retired to consider their conclusions on 6 April. (The coroner started summing up the case on 25 January.) They returned with their conclusions on 26 April, ruling that the 96 football fans who died were unlawfully killed. Their answers to 14 questions declared that there were errors or omissions by the authorities – but that the football fans themselves were not to blame.

Judy Khan did not have the

benefit of the jury's conclusions when she made her final comments, which are worthy of mention here:

“What we hope to achieve are conclusions that level blame at those who caused or contributed to it. And I end my paper with a quote that I think really encapsulates the position of the families: ‘Every step toward the goal of justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of dedicated individuals’.

“Well those are the families, a quote I aim at them.”



news in depth

KEEPING US IN SUSPENSE

The recent Moriarty judgment on suspended sentences tells us that failing to consult all key players when making fundamental changes to the criminal justice system is ill-advised and likely to lead to problems in the future, writes **Dara Robinson**



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

From the point of view of a criminal practitioner, there is always entertainment to be had in the hysterical newspaper reporting of what appears to be a radical judgment of the High Court. This is particularly so when the judgment can be portrayed – invariably inaccurately – as one that will release a “flood of criminals” onto the streets.

One such judgment was that of Judge Michael Moriarty on 19 April, when he ruled as unconstitutional certain provisions of section 99 of the *Criminal Justice Act 2006*, as amended. The relevant provisions dealt with the activation of suspended sentences by the commission of a further offence, within the period of suspension, by an accused person. Sadly, the Irish Prison Service was unable to enlighten enquirers as to how many people serving sentences would be affected by Judge Moriarty’s ruling. Needless to say, this did not prevent the lurid headlines and ill-informed reporting, and it is fair to say that, as news stories go, the media reporting generated far more heat than light.

Sword of Damocles

So what exactly was it all about?

A suspended sentence – and the term has been around for a very long time – operates as a threat to an offender by ‘encouraging’ good behaviour for a period, usually measured by reference to a period of one to three years. Provided the offender keeps his or her nose clean for the period fixed by the court,

they will not be called upon to serve the sentence of imprisonment. If, however, they come before a court in relation to a new offence committed during the period of suspension, they can be dealt with not only in relation to the new offence, but also by way of ‘breach’ proceedings for the suspended sentence. It is, in theory, a sword of Damocles hanging over the head of the offender.

Before 2006, suspended sentences appear not to have had any statutory basis. The *Criminal Justice Act* of that year, in section 99, purported to set out a detailed statutory framework for the operation of suspended sentences, including, of course, how and when ‘breach’ proceedings should be brought. By the ordinary standards of procedural statutes, this was an incredibly detailed piece of work, with 19 subsections. It purported to cater for most, if not all, factual scenarios that would arise where an offender allegedly breached the terms of a suspended sentence, and the consequences, both legal and procedural, that would follow in that event.

Trouble began almost immediately. One year later, in the *Criminal Justice Act 2007*, significant statutory amendments were made. Section 60 of the 2007 act not only made substantial ‘corrections’ to subsections 9 and 10 of the 2006 act, of which more below, but also introduced, as if the original section 99 were not sufficiently complicated already, two further subsections, 10A and 20! These changes were in effect forced upon the department as, it was becoming clear, certain of the original proposals

as set out in the 2006 act were both unpopular and unworkable.

Over the next couple of years, cases came and went, and compromises were made on all sides to try and make the legislation work fairly. However, further amending legislation – really just tinkering at the fringes – followed in the 2009 *Criminal Justice (Miscellaneous Provisions) Act*. By now, judges at all levels – District Court, Circuit Court, High Court, Court of Appeal and Supreme Court – had expressed, sometimes politely and other times less so, views about the act and the attempts to amend it, in terms that were, broadly, unanimous and disparaging.

Nail in the coffin

And so to 2016. Judge Moriarty’s ruling, which includes extensive quotes from judicial colleagues at all levels, is the last nail in the coffin for section 99. He has deemed the section to be unconstitutional, as subsections 9 and 10, read together, quite clearly operate to mandate a course of action that deprives certain individuals of a previously guaranteed statutory right of appeal. The cases that were the subject of his ruling, six in all, involved accused persons who had been given suspended sentences, suspended in whole or in part, and had allegedly reoffended during the period of suspension. Each had faced a further charge in the District Court, had contested that charge, as was their right, and had been convicted. That conviction, according to a strict interpretation of the statute, was sufficient to trigger, mandatorily, the ‘breach proceedings’. However, what had clearly escaped the attention of the legislators was the fact that the conviction in the District Court gave rise to an absolute right of appeal against conviction, such appeal to be heard by way of a *de novo* hearing in the Circuit Court. Were the statute to be

One might add that consultation with the solicitors and barristers who practise criminal law, players who know the rules of the game most intimately, might also benefit the legislature



applied in the plain terms in which it read, the breach proceedings operated to deprive the accused of that right, leading to the finding of unconstitutionality by Judge Moriarty.

At the time of writing, the State's lawyers have returned to Judge Moriarty to seek 'clarification' as to the extent to which he has deemed the provisions unconstitutional, and

written submissions as to that issue by all parties will be considered prior to final judgment. So, to some extent, uncertainty prevails as to the consequences of the ruling.

Lack of consultation

The fallout is, in truth, fairly limited. The number of offenders affected is uncertain, but likely to be modest. Amending legislation,

subject to the caveat below, should not be beyond the ingenuity of our parliamentary draughtsmen. However, it should be noted that vocal and explicit criticism of the legislators was articulated by the late Judge Adrian Hardiman, to the effect that the mess had, fundamentally, been created as a consequence of the lack of advance consultation

“The fallout is, in truth, fairly limited”

with the judges who were supposed to operate the statute. One might add that consultation with the solicitors and barristers who practise criminal law, players who know the rules of the game most intimately, might also benefit the legislature.

Just as fundamental, however, is the manner in which important criminal statutes come into being and are then amended. If this is seen as a plea for codification, then so be it. As set out above, in order now to try and ascertain the true meaning of (what is left of) section 99, it is necessary to have open in front of the reader not only the original act, but also the amending provisions of 2007 and 2009. This is commonplace in criminal legislation – the *Road Traffic Act 1961*, as frequently and relentlessly amended, is by far the most offensive – but, for example, in a classic of its kind, section 60 of the 2007 act simply purports to amend the original wording of section 99(9) by replacing one word (in mid-phrase): 'before' with the word 'after'! What a difference a word makes, as in this context, it purports to set out the order in which the various courts deal with offenders who breach suspended sentences.

The message from this debacle is clear. Failure to consult with the key players in the criminal justice system, when making fundamental changes to that system, is ill-advised and likely to lead to problems in the future. The judgment of Moriarty J, when reading between the lines, is a clear demonstration that the patience of the courts has run out. Department of Justice, take note.

news in depth

TURNOVER IS NOT PROFIT

In the second report on the Law Society Managing Partner Survey, **David Rowe** and **Donal Maher** review the findings on sole practitioners and two-to-four-solicitor firms



David Rowe is founder of *Outsource*, which provides practice management and financial advice to Irish law firms

Sole practitioners and two-to-four-solicitor firms (many of which will be either sole owner firms or, more typically, a combination of partners and employed solicitors) make up approximately 75% of the firms in the country.

Sole practitioners are experiencing some pressure on the costs of running a practice, but not at the same rate as larger practices. There are marked differences, as would be expected, between Dublin and the regions.

A total of 56% of Dublin firms are reporting an increase in overheads, primarily due to salary pressures and property costs, such as rent, rates and other factors, which together account for two-thirds of most firms' running costs.

Sole practitioners outside of Dublin are reporting some overheads increases, but these are typically in the 2% to 5% bracket – compared with 10% to 15% increases in overheads in Dublin.

Sole practitioners

Despite an overall improvement in fee income for sole practitioners, the results show more volatility than in any other size of firm. Of those surveyed, 45% of respondents reported an increase of more than 10% in turnover (not profit) from the previous year. A further 16% show an

increase of between 1% and 10%, while 19% show no change, and 20% show a decrease in the past 12 months.

The chart below shows that Connacht and Dublin have the highest percentage of firms reporting a 10%-plus increase in turnover in the past 12 months. While there is little doubt that the average sole practitioner has experienced more difficult trading conditions west of the Shannon, and is therefore starting from a lower point, the extent of the recovery is encouraging.

Higher activity is not necessarily translating into improved profits

Of concern must be the fact that, despite the generally positive economic conditions, one-fifth of sole practitioners experienced a decrease

in turnover in 2015. Two-to-four-solicitor firms experienced a similar reduction in turnover (a total of 16%), while the larger firms have been much more resilient in 2015.

The fortunes of the sole practitioner firm are entirely dependent on the owner; therefore, it is to be expected that we are seeing more volatility and less stability in the results. Factors at play may include the stage in the professional life-cycle of a sole practitioner, market changes in the practice areas in which the individual operates, and the level of competition in the locality.

65% of sole practitioners are expecting some growth in turnover in 2016, with 26% of respondents expecting no change, and 9% forecasting a decrease. The pattern across the country shows similar expectations in different geographical regions.

The turmoil in financial markets in early 2016, government uncertainty, a possible Brexit and, coupled with the fall in the volume of residential conveyancing, may pose a threat to this optimism.

Core practice areas

Sole practitioners continue to be highly dependent upon the core practice areas of personal injuries litigation, conveyancing and probate.

Given that residential conveyancing is reported elsewhere as the largest growth area among these three practice areas, and that the majority of practitioners believe they are carrying this service at break-even or a loss, this indicates that sole practitioners are seeing higher activity levels – but that higher activity is not necessarily translating into improved profits.

However, sole practitioners, as a group, see residential conveyancing as 'less unprofitable' than any of the other firm sizes – this is a correct interpretation, as sole practitioners generally work off a lower and more flexible overheads base than larger firms and, therefore, are able to deliver the service at a lower cost and still make a profit at fee levels that larger firms cannot.

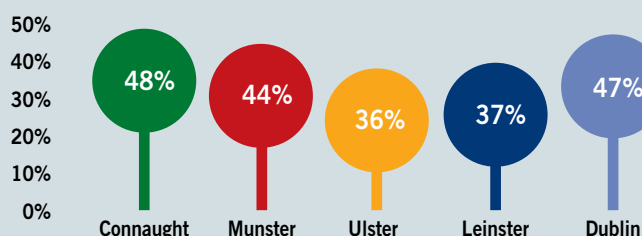
Future shape

One-third of sole practitioners report that it is likely that they will recruit additional fee earners or additional support staff during the coming year. Recent experiences outlined in the previous article (January issue, p22) show that finding staff is increasingly difficult. Sole practitioners appear to be



Donal Maher is a director in *Outsource*

PERCENTAGE OF SOLE PRACTITIONERS WITHIN THE REGIONS THAT EXPERIENCED A 10%-PLUS INCREASE IN TURNOVER (NOT PROFIT) IN 2015



WHAT PERCENTAGE OF RESPONDENTS' TOTAL INCOME IS GENERATED FROM TRADITIONAL PRACTICE AREAS – PI LITIGATION, CONVEYANCING AND PROBATE?



For 11.25% of respondents, up to a quarter of fee income came from traditional practice areas.
For 17.5% of respondents, traditional sources accounted for between a quarter and half of fee income.
For a whopping 38.75% of firms, three-quarters to all of fee income came from traditional sources.

content working on their own, with 80% looking to grow organically. This is an interesting conclusion, particularly given that 80% of sole practitioners also recommend to newly qualified solicitor that they should not consider becoming a sole practitioner as a career choice. Only 3% reported an appetite for merging with another practice. So while the vast majority of sole practitioners will continue as sole practitioners, they do not recommend it as a career path to others.

In summary, the picture for sole practitioners is more positive, but also more mixed than for other groups. While most are experiencing growth, are staffing up and moving forward, we do have a significant minority for whom the picture is not as positive.

Two-to-four-solicitor practices

The typical two-to-four-solicitor firm consists of one or two partners and one-to-two employed solicitors. It is, therefore, a mix of owners and employees.

The results of the survey for this group are similar to those for sole practitioners, except that there has been a lower increase in turnover. Again, this is to be expected, as the sole-practitioner model of practice is more volatile, being

more reliant on one individual.

The turnover increase experienced within this group in the past 12 months is strong, with 40% experiencing a 10%-plus increase.

Expectations for the coming 12 months are also high, with 31% expecting an increase of 10%-plus in turnover, 39% an increase of between 1% and 10%, while 23% anticipate no change, with only 7% forecasting a decrease.

When we look at larger firms (in a future issue), we will see these trends confirmed, with larger firms moving ahead in a stronger fashion and very few firms experiencing a decrease.

High reliance

The two-to-four-solicitor firms show a similar high reliance on the three traditional practice areas of personal injuries litigation, conveyancing and probate – with 50% of two-to-four-solicitor firms reporting that 75%-plus of their fee income falls within these areas.

A high number of sole-practitioner firms are specialist firms, in discrete areas such as employment law, commercial work, criminal law and other niche areas. This explains why two-to-four-solicitor firms have a higher reliance

on traditional areas, as their size allows them to engage in more than just one or two disciplines.

The future

During the slowdown, two-to-four-solicitor firms had to adapt quickly, with forced downsizing to reduce overheads, with most discretionary spending being eliminated or severely curtailed. Such firms are now clearly planning for investment. Increased recruitment, investment in marketing and IT, together with an appetite for mergers, all point to significant reengineering.

Challenges still exist, with firms in this bracket being less accommodating in terms of part-time flexible hours and other benefits compared with larger firms. This is understandable, given the high dependence upon a smaller number of people, but as employment markets turn, employers will be forced to reconsider this position.

The barriers for growth in this sector mirror the market, in that:

- The available work is not sufficiently profitable,
- There is not enough time to create the 'head space' for business development, and
- There is a lack of work in some locations and/or in the practitioners' area of expertise.

The most successful firms of this size are likely to be those that have identified one or two practice areas in which they excel and can gain a reputation as 'go to' firms. The other practice areas act as supports, but are not the main pillars of the practice.

The survey results suggest that the improvement in turnover for two-to-four-solicitor firms is visible, with expectation of further increases in 2016. Overheads are rising, while cash flow is constrained further by necessary investments in the future of the practice. Challenges also exist due to the reliance on core practice areas that could be affected by how the wider economy performs in the coming months.

The overall findings in the survey for sole practitioners and two-to-four-solicitor firms is that they have experienced a reasonable level of growth in turnover in the past 12 months. They expect further growth during the next 12 months, but overheads are rising.

While there has been some welcome improvement in profit levels – often from a very low base – practitioners often feel that they have to run faster to stand still. The bottom line is that improvements in profits have not yet translated into improvements in cash flow.

human rights watch

STATES OF EMERGENCY AND THE ECHR

'The *European Convention on Human Rights* and states of emergency' was the theme of a lecture at Blackhall Place delivered by the former deputy registrar of the European Court of Human Rights. **Michelle Lynch** reports



Michelle Lynch is policy development executive and secretary to the Law Society's Human Rights Committee

The Law Society's Human Rights Committee, in collaboration with the Department of Foreign Affairs and Law Society Professional Training, presented a fascinating and timely lecture by Michael O'Boyle on 15 March 2016 in the President's Hall.

Mr O'Boyle is a leading figure in the field of international human rights protection and was deputy registrar of the European Court of Human Rights from 2006 to 2015. He now acts as a special adviser to the government of Georgia on human rights issues on behalf of the secretary general of the Council of Europe. In his work in the court, he was involved in many of the leading cases concerning derogation under the *European Convention on Human Rights* and terrorism, and the lecture explored some of the implications of such derogations.

Four types

O'Boyle began by remarking that Europe is experiencing four different types of crisis at the moment: "an economic

crisis, an unprecedented movement of refugees from war-torn regions of the middle-east and beyond, the development of armed conflict on European soil and in neighbouring territories, and lastly the rise of extremism and Islamic terrorism".

In particular, he spoke of the recent derogation by France from the ECHR following the attacks on Paris in November 2015, under article 15 of the convention. A number of emergency powers were recently introduced there, including powers of search and seizure without warrant and extensive powers of house arrest.

Article 15 provides that state parties, "in times of war or other public emergency threatening the life of the nation", may derogate from their obligations under the convention "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its

other obligations under international law". It also provides that there can be no derogation from certain rights, such as the right to life (except in the case of lawful acts of war), the prohibition on torture, and the prohibition on slavery and servitude.

Judicial review of emergency action in times of crisis is essential to the maintenance of democracy and the rule of law

National security

The lecture focused on the challenge for the European Court of Human Rights in attempting to reconcile the priority of national security with the protection of human rights. O'Boyle noted

that Ireland itself was no stranger to such experience and referred to the leading authority of *Lawless v Ireland* (judgment of 1 July 1961), which concerned detention without trial, on the interpretation of article 15.

The central thesis of the lecture was that "judicial review of emergency action in times of crisis is essential to the maintenance of democracy and the rule of law". It is not simply a matter for international law to ensure that democracy and the rule of law are upheld, and the role of national judges could not be underestimated as a critical safeguard to ensure that emergency laws were not abused.

Until 2015, there have only been eight derogations and, in this regard, O'Boyle noted that the French derogation did not specify the precise articles of the convention within its notice of derogation. He went on to explore the often elusive meaning of the terms 'emergency that threatens the life of a nation' and 'war' that appear in article 15, and how it has been interpreted by the European Court of Human Rights.



Peter White (assistant legal adviser, Department of Foreign Affairs), Grainne Brophy (chair, Human Rights Committee), Hilikka Becker (Human Rights Committee), Michael O'Boyle (speaker), Law Society President Simon Murphy, Mr Justice John Hedigan (chair), Ken Murphy (director general), and Shane McCarthy (vice-chair, Human Rights Committee)



He said that an emergency situation might be brought about by terrorism or by war, economic recession or natural disaster, but emphasised that such emergencies had to be of a “certain magnitude” to meet the threshold to derogate. Equally, the meaning of ‘war’ was one that had given rise to considerable uncertainty. It is not defined in the convention and, importantly, its existence involves the application of international human rights law. O’Boyle’s own


position is that war could entail both international and non-international conflicts, provided that the threat to the nation was of “sufficient magnitude to warrant derogation”.

Margin of appreciation

He concluded with a consideration of the importance of the role of the margin of appreciation. Under article 15, national authorities are given a wide margin of appreciation in their assessment

of circumstances warranting derogation. This involves a delicate and complex balancing exercise for national governments in ensuring the protection of human rights, while also protecting the security of the state. He stressed that the most “important safeguard against arbitrary behaviour in an emergency lies in the proportionality principle”. This means that the measures taken during the emergency must be proportionate and go no further than “strictly required by the

exigencies of the situation”.

In his closing remarks, O’Boyle acknowledged that the most effective safeguard against the abuse of emergency powers is the ability to challenge the measures in the domestic courts, and he commended France for taking such an approach. 

The full text of the lecture is available under the ‘resources’ tab on the Human Rights Committee’s page on lawsociety.ie.

Nothing but the TRUTH



Colette Reid is course manager in the Law Society's Education Centre. She is writing in a personal capacity

Mr Justice Peter Kelly recently deemed the swearing of an affidavit to be invalid, as the deponent had not sworn on a Bible when taking the oath. **Colette Reid** tells the truth, the whole truth, and nothing but the truth

Swearing or affirming an affidavit is a serious matter. An affidavit is evidence reduced to the written form, the truth of which the deponent must swear to or affirm. The general rule is that evidence must be given on oath or affirmation unless the witness or deponent is a child under the age of 14 or a person with an intellectual disability (section 28, *Children Act 1997*). A deponent who deliberately lies on affidavit is open to a charge of perjury. An affidavit that is invalidly sworn or affirmed is inadmissible in evidence.

Despite the importance that attaches to the affidavit as a vehicle for evidence, Hogan J observed in 2012 that “a certain laxness and complacency has crept into the practice of swearing of affidavits in recent times” (*SA v Refugee Appeal Tribunal and others*).

More recently, the High Court called upon two solicitors to explain the circumstances surrounding the swearing of an affidavit that had been made in support of a bail application. Kelly P found that the swearing of the affidavit was invalid, as the deponent had not been given a Bible to hold when swearing the oath. The solicitor administering the oath explained that they were unable to locate a Bible at the remand centre where the swearing took place. Kelly P was highly critical of the procedure adopted and roundly rejected the suggestion that, as a Bible was unavailable, the deponent should have affirmed rather than sworn the affidavit. While the *Oaths Act 1888* confirms the right to affirm, it does not permit an

affirmation to be used as a simple expedient when the appropriate religious book is not available to facilitate the taking of an oath.

‘ Kelly P had found that the swearing of the affidavit was invalid, as the deponent had not been given a Bible to hold when swearing the oath ’

Sowing wild oaths

Every solicitor with a current practising certificate is vested with the power to administer oaths, affirmations, and declarations in the same manner as a commissioner for oaths. This power is conferred on solicitors by section 72 of the *Solicitors (Amendment) Act 1994*. Reflecting the importance of independence in the exercise of this power, section 72(2) provides that a solicitor must not administer an oath, affirmation or declaration in any proceedings in which they are a solicitor to any of the

at a glance

- The High Court recently called upon two solicitors to explain the circumstances surrounding the swearing of an affidavit that had been made in support of a bail application
- Kelly P found that the swearing of the affidavit was invalid, as the deponent had not been given a Bible to hold when swearing the oath
- The Law Reform Commission observed in 1990 that the number of possible binding forms of the oath is as extensive as the possible permutations of human faith
- Different procedures and forms of oath have been identified as appropriate to various religions



But would an e-book count?

parties or in which they have an interest. A breach of section 72 is misconduct.

In his *Urgent and Important Memorandum to All Practising Solicitors* (22 December 1994), Chief Justice Hamilton stated that this limitation was not confined to litigation, but extended to all matters in respect of which an affidavit might be made, including conveyancing, probate, and commercial work. Furthermore, the definition of 'solicitor' in section 3 of the *Solicitors (Amendment) Act 1994* includes "a firm of solicitors".

Accordingly, a practising solicitor must regard themselves as having an interest in any matter in which their principal, partner, associate, consultant or assistant is engaged as a solicitor or has an interest. Kelly P emphasised that great trust is placed in solicitors as administrators of oaths, and they are required to fulfil this role with integrity and honesty.

Word up

The legislation on oaths and affirmations dates back to the 19th and early 20th century. The *Oaths Act 1909* specifies the manner in which oaths should be taken, and primarily focuses on persons of the Christian or Jewish faiths.

Section 2 provides: "The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words

'I swear by Almighty God that...,' followed by the words of the oath prescribed by law."

The wording for a witness giving oral testimony in court is well-known, "that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".

The accepted wording for affidavits is "that this is my name and handwriting, that I have read the affidavit and that the contents of the affidavit are true".

Section 2(2) provides that this procedure must be followed "without question" unless the deponent voluntarily objects or is physically incapable of complying. Therefore, the onus is placed squarely on the deponent to challenge the standard procedure. In these circumstances, it is all the more important that the deponent's solicitor explains both the gravity of an affidavit and the process of swearing or affirming before meeting with the person who will administer the oath or affirmation.

O ye of little faith

As regards deponents of other faiths, the 1909 act merely states that "the oath shall be administered in any manner which is now lawful." The *Oaths Act 1838*, which is still in force in this jurisdiction, requires the oath to be "administered in such form and with such ceremonies as such person may declare to be binding". Therefore, it is necessary to make this enquiry of the deponent.

As the Law Reform Commission observed in its 1990 report on oaths and affirmations, the number of possible binding forms of the oath is as extensive as the possible permutations of human faith. The 2011 census identified 19 religions professed by the Irish population, with a further category of "other stated religions" accounting for 56,556 people. This category included, amongst other religions, Christian Scientist, Congregationalist, Jedi and Hare Krishna. A further 277,237 described themselves as atheists, agnostics or having no religion.

In *R v Kemble* (1990), Lord Lane observed that the lawfulness of the administration of an oath did not depend upon the intricacies of the deponent's particular religion. Rather, the test is: does the oath appear to the court to be binding on the conscience of the witness and, more importantly, does the witness consider it to be binding upon their conscience.

The *Kemble* case concerned a Muslim witness who swore an oath on the New Testament in the course of a criminal trial. Subsequently, this witness took the oath on an Arabic copy of the

Qur'an in the Court of Appeal. The witness told the Court of Appeal that he considered himself bound as to his conscience by the oath he had taken at the trial, even though it was not on the Qur'an, as he considered the New Testament to be a holy book. The Court of Appeal accepted the witness's evidence. However, *Kemble* is viewed as setting out the minimum requirements of the law.

Different procedures and forms of oath have been identified as appropriate to various religions by the Law Reform Commission. More current guidance can be found in the *Equal Treatment Bench Book 2013*, published by the Judicial College serving the judiciary of England and Wales. However, this is not cast in stone. The practices identified and employed in England and Wales include Muslim deponents swearing on the Qur'an using the words: "I swear by Allah" and Hindu deponents swearing

on the Gita using the words "I swear on the Gita".

However, the LRC observed that many Hindus regard the notion of an oath as alien to their beliefs. The LRC and the Judicial Advisory Board (an earlier incarnation of the Judicial College) advised that a Sikh deponent would swear on an extract from the Guru Granth Sahib using the words: "I swear by Guru Nanak" or "I swear by Waheguru".

However, the Judicial College now advises that the latter form is not recommended, as Sikhs believe in swearing an oath before God. For members of various faiths, swearing an oath may also require certain rituals of purity, such as washing the hands before touching the holy book.

Where holy books are produced for the deponents to swear upon, they must be treated with care and respect and maintained free of writing or labels. Many, such as the Qur'an and the Guru Granth Sahib, may only be handled by a person of the particular faith. They should be stored carefully and ideally wrapped in cloth, which the deponent should remove.

The fact that a deponent took an oath when they, in fact, had no religious belief at the time does not affect the validity of the oath (section 5 of the 1881 act).

Scottish oath cakes

The legislation contains an odd provision that might prove useful where, for instance, a Bible cannot be located. Section 5 of the *Oaths Act 1888* provides that a deponent can choose to swear an oath in the manner and form usually used in Scotland. When swearing an affidavit,

6 The 2011 census identified 19 religions professed by the Irish population, with a further category of 'other stated religions' accounting for 56,556 people

FOCAL POINT

cso census 2011

POPULATION BY RELIGION

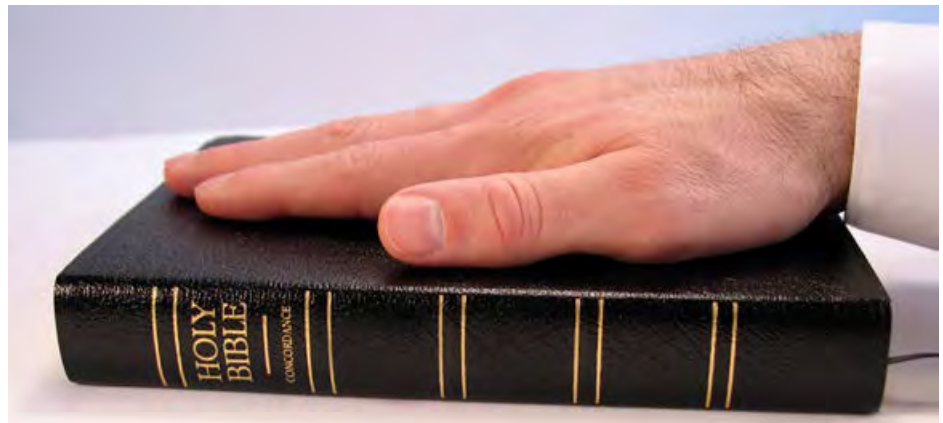
Catholic	3.86 million
No religion, atheists, agnostic	277,237
Church of Ireland/Anglican	129,039
Muslim	49,204
Orthodox Christian	45,223
Presbyterian	24,600
Apostolic and Pentecostal	14,043
Hindu	10,688
Buddhist	8,703
Methodist	6,842
Jehovah's Witness	6,149
Lutheran	5,683
Evangelical	4,188
Baptist	3,531
Jewish	1,984
Pagan, pantheist	1,940
Mormon	1,284
Society of Friends	925
Baha'i	520
Brethren	336
Other stated religion	56,556

the deponent stands with uplifted hand but without a religious text. The traditional words of the oath were: "I swear by almighty God, as I shall answer to God at the great day of judgement, that this is my name and handwriting and that the contents of this, my affidavit, are true, and [if there is an exhibit] there is now shown to me marked (a) the [description of exhibit] referred to therein".

However, the Law Society of Scotland currently recommends the simpler form of: "I swear by almighty God that the contents of this affidavit are true", with adjustments to reflect the deponent's religion, where necessary.

The need for reform


In 1990, the LRC described the forms of oath prescribed by law as "at best embarrassing and at worst offensive to the religious beliefs of the persons to whom they are meant to apply". It recommended that the oath should be abolished and replaced with a solemn statutory affirmation for witnesses, jurors, and for deponents submitting affidavits in all civil and criminal proceedings. It recognised the erosion in modern society of



the underlying rationale of the oath, which is a belief in a supreme being and divine sanction. Furthermore, requiring deponents to reveal their religious beliefs or lack thereof before they can be sworn or affirmed is an invasion of religious privacy and may result in indignity and embarrassment to the deponent.

Consideration might also be given to extending the application of solemn declarations. A declaration made pursuant to the *Statutory Declarations Act 1938* is a

serious and formal matter, even though such a declaration is made without reference to the deponent's religion. While the offence of perjury does not attach to a false declaration, section 6 of the 1938 act (as amended by the *Civil Law (Miscellaneous Provisions) Act 2008*) provides that, where a declarant makes a statement that, to their knowledge, is false or misleading in any material respect, they may be charged with an offence and subject to a fine of up to €3,000 and/ or imprisonment for up to six months.

In the 26 years since the Law Reform Commission issued its report and recommendations, Ireland's demographic and Irish society have continued to evolve, but the law on oaths and affirmations remains firmly embedded in the 19th century. This anachronistic system is  long overdue an overhaul.

FOCAL POINT

affirmative action

Section 1 of the *Oaths Act 1888* provides the legislative basis for an affirmation in lieu of an oath. Every affirmation in writing must commence: "I _ of _ do solemnly and sincerely affirm" and the jurat must also reflect that the deponent has affirmed. However, as Kelly P reiterated, the deponent must first object to being sworn and state that the ground for such objection is that (a) they have no religious belief or (b) that the taking of the oath is contrary to their religious belief.

In *R v Moore* (1892), the court held that, to ensure compliance with the 1881 act, a judge must enquire into the witness' grounds of objection to being sworn before permitting them to take the affirmation in court. The corollary of section 1 is that, where a deponent has a religious belief by which they can swear an oath, an affirmation will not suffice. In *R v Pritam Singh* (1958), a direction was given to the jury to acquit Mr Pritam of perjury in respect of evidence he had given on affirmation. In the initial trial, the magistrate had directed Mr Pritam, a Sikh, to give his evidence on affirmation because it was not practical to administer an oath on the Guru Granth Sahib according to his religion.

A different approach has now been adopted

in England, Wales and Northern Ireland, where the *Oaths Act 1978* (section 5(2) and (3)) provides that a person may be permitted and indeed required to make a solemn affirmation where it is not reasonably practicable without inconvenience or delay to administer an oath in a manner appropriate to the person's religious belief. While expedient, this approach is not without flaw. It contradicts the weight otherwise attributed to the oath and the deponent's religious beliefs.

The need for a deponent to specify why they wish to affirm as required under section of the 1888 is also questionable in light of Ireland's obligations under the *European Convention on Human Rights*, article 9 of which protects the right to privacy of religious convictions. In *Dimitras and others v Greece* (8 January 2013), the European Court of Human Rights held that Greece had violated the article 9 rights of the applicants by requiring them to reveal their religious convictions in order to make a solemn declaration rather than swear an oath on the Bible. The Greek criminal code assumed witnesses, complainants, and suspects were Orthodox Christian for the purposes of swearing an oath, unless they formally stated otherwise.

look it up

Cases:

- *Dimitras and others v Greece* (8 January 2013)
- *R v Kemble* (1990) 91 Cr App R 178
- *R v Moore* (1892) 61 LJMC 80
- *R v Pritam Singh* (1958) 1 All ER 199
- *SA v Refugee Appeal Tribunal and others* [2012] IEHC 8

Legislation:

- *Children Act 1997*
- *Civil Law (Miscellaneous Provisions) Act 2008*
- *Oaths Act 1838*
- *Oaths Act 1888*
- *Oaths Act 1909*
- *Oaths Act 1978 (Britain)*
- *Solicitors (Amendment) Act 1994*
- *Statutory Declarations Act 1938*

Badge of HONOUR



Mark McDermott
is editor of the Law
Society Gazette

Cork county sheriff Sinead McNamara speaks with **Mark McDermott** about her role, the highs and lows of debt collection, enforcing court orders, and her responsibilities as returning officer for three Cork constituencies

Sinead McNamara is a native of West Cork these days, but she remains proud of her ‘city girl’ roots. Born and reared in Cork’s city centre, she says that her role as Cork county sheriff has forced her to learn fast about the ways of the country and rural life.

The youngest of five, Sinead is the only lawyer in her family. It was the influence of English teacher Deirdre Morgan during her Leaving Cert year that encouraged her to try law. “Deirdre was married to David Morgan, who was dean of law at UCC at the time. I was thinking medicine, except my mother told me I wouldn’t have the patience – forgive the pun – to be a doctor, and she was right!”

“I have to say I didn’t love law in UCC, in that it was very ‘academic’. I wasn’t 100% sure that it was for me, but decided I’d try a solicitor’s apprenticeship. I was very lucky that Sean O’Riordan, who is now my partner, gave me the opportunity. The minute I started working in the office, I figured that this is for me.”

How the west was won

Sheriffs must retire once they’ve reached the age of 70, which was what led to the opening for Sinead. She had seen the advertisement for the position, but her first reaction was to recommend it to one of the partners.



at a glance

- Sinead McNamara is Ireland’s only female sheriff, being appointed for Cork County in 2013
- The youngest of five, she is the only lawyer in her family,
- She started her law degree in 1992, graduated in ‘95 and became a solicitor in 1999

“We try not to take the ‘sledgehammer’ approach from the outset – that’s the last resort – but if we have to, we will”

He instead encouraged her to apply. Did the possibility of becoming the first woman sheriff in the country even come into it?

“No, it didn’t. Not at that point. It’s a public position. It’s a well-respected position. It’s a very responsible one, and I felt I had the skill-set to match it. At that point, I was qualified about 14 years. This would be a new challenge – something completely different. Not the debt-collection aspects – I’d done that and was

comfortable with it – but the returning officer role. I had worked on elections in the past, but that was the area of the job that was going to be the newest and most challenging.”

The most recent general election was her first. “It was just such an honour to be involved at that level. The day the writ came in from the Clerk of the Dáil, asking me to conduct an election in the three Cork County constituencies – Cork North-West,

Cork South-West and Cork East – I found that breathtaking! There’s a huge level of responsibility bestowed on you.”

High noon

So what’s it like being shortlisted for the role of sheriff and being called to the interview – how do you prove to the interviewing panel that you’re tougher than an armadillo?

“The interview was funny in lots of ways

FOCAL POINT

the magnificent seven

“Sometimes, the media attention that the first female sheriff gets is slightly irritating, because you think that the day we’re *not* differentiating a role by gender we’ve probably reached equality.”

How does the legal profession score on gender equality? “Certainly in terms of the top positions, you can’t argue with it. There are an awful lot of women sitting as High Court judges and the chief justice herself is female. I think we’re possibly letting ourselves down at partner level in our firms, in that it’s not the most family-friendly of careers.”

“Take litigation, for example: if you’re in court and your case isn’t reached until 3pm and

your childminder is going home at 4pm, it’s not like you can hold your hand up before the judge and say, ‘Listen, I’ll have to go now because I have childminder issues’ – that is not an option.

“How are we going to bring about change? I think it’s incumbent on us in practice to ensure that support is put in place if a solicitor is in court and she or he has to be gone due to family issues. You can’t expect a judge to stop his list because of someone’s childcare arrangements, but I think it’s something we need to look at, as employers, because many offices have lost tremendous talent because staff members have found it hard to juggle family life and career.”

because, while I would have been very used to giving presentations to clients or pitching for business, I hadn’t actually done a professional job interview since my apprenticeship. The interview was on 9 January 2013. That Christmas, I spent every waking moment reading absolutely everything ever written about sheriffs, to the extent that the children were saying, ‘Oh, it’s Christmas – you’re even working at Christmas’, and I was retorting, ‘No, I’m not working – this is for a new job.’

“I knew the role of sheriff inside out; I knew the legislation. But it wasn’t a technical interview at all. I was taken through my CV – very general questions – and it only got specific really in terms of my approach to debt collection and debt enforcement.”

True grit

House repossessions are big news at present. How does she personally deal with the repossession of a home in which a family is still living?

“There is no discretion in my role. If I’m given an order, I have to execute it. So if a repossession order is sent to me, I can’t look at it and say: ‘Oh God, I don’t really want to do this.’ Whether you want to do it or not, you have to, and it would be a rare beast who would approach repossessions with relish. Who wants to be responsible for putting a family out of their home? But the discretion isn’t there. It has to be done. So if the discretion isn’t there, you basically have to make the best of a bad situation and do it with as much dignity and empathy as you possibly can.

“It would be a rare beast who would approach repossessions with relish and rigour. Who wants to be responsible for putting a family out of their home?”

“We put an awful lot of work into repossessions in the office, because I don’t think it’s fair for people to get a letter saying: ‘The house is going to be repossessed. Please clear out your stuff within seven days.’ We try and make contact if we can at all.

“Now, if we get abusive communication coming into us, then I take the view that engagement isn’t really an option. But, in the vast majority of cases, it works very well, in that if we can’t make contact with the person by phone, two people from the office will call out and see what the situation is. If they say that, regardless of the order, they have no notion of moving, then you know what you’re dealing with. But in the vast majority of cases, people will say: ‘Look, I buried my head in the sand. I know the order was made.

When are you going to come?’

“In those situations, we’ll work with people, give them time to find alternative accommodation and, more often than not, they’ll ring and say, ‘Look, we’re going to be out on Wednesday, if you want to come and collect the keys.’ The vast majority of repossessions are done that way.”

And what about those cases where people will say: ‘It’s not a case that we won’t pay; we just can’t pay. We’ve got nowhere to go.’ How do you deal with those?

“They are the ones that take the biggest personal toll on you, especially people who you feel might be making an effort, because bear in mind that when the order comes into me, it’s an order lodged by a solicitor acting for a financial institution. I don’t see the

pleadings. I don’t know the background story. It’s just an order. So the only information I get is what I can glean from the solicitor who lodges, or sometimes from the borrowers themselves. It’s difficult on a personal level to have to eject someone who, through no fault of their own, is trying their best, but it’s just not happening for them.”

Has she suffered any sleepless nights? “You can. You try not to, because if you’re having sleepless nights, you’re not going to be too effective in your role the following day. But there would be cases that would tug at the heartstrings, certainly. You have to keep telling yourself that a judge heard this case. So it’s not my role or function to question it or look behind it – unpalatable as it can sometimes be to execute the order.”

Unforgiven

How would she describe what a sheriff does, in a nutshell? “Basically, it’s debt collection. The bulk of the work is done for Revenue. So Revenue lodges certificates with us against non-compliant taxpayers, and our job is to collect the debt for Revenue. We pursue civil debt as well, so if someone gets an order in one of the civil courts and they can’t recover the debt, then they lodge the order with us and we go and try to collect.”

It’s surprising to hear that she gets personally involved in potentially difficult collections. “If I feel a seizure is going to be difficult, for whatever reason, I will be there. We try not to take the ‘sledgehammer’ approach from the outset – that’s the last resort – but if we have to, we will. We will try to get the debtor to engage with us and see whether we can come to some sort of arrangement. If it comes to it, we will proceed to seizure and will attend at the person’s premises and basically take their goods.”

How does her husband Shane (also a solicitor) respond when she come home and tells him she’s had something thrown in her direction in the course of her duty? “I might choose to be selective in what I tell Shane! You know, there’s no point in him worrying about me going out on a seizure – you just do it. I’m not out there on my own. If I think there’s going to be difficulty, I’ll have plenty of security with me.”

Fistful of dollars

Is she witnessing a larger number of repossessions taking place at present, given the recent media outcry over the actions of certain vulture funds? “No,” is the unexpected response. “I think the amount of orders that are being obtained in the Circuit Courts around the country is not



translating into the level of orders that should be lodged with us.

“I think that banks are getting their orders and, at that point, maybe a debtor will begin

to see the writing’s on the wall, and say ‘I need to talk to them’. If people aren’t engaging, there’s only one route a bank can take, but I think it’s evident that banks are engaging,

even at that late stage, by the fact that the number of orders being lodged with us doesn’t correlate with the numbers of orders being obtained.

“And even when orders are lodged with us, sometimes they are withdrawn. The banks will make contact to say: ‘Look we’ve come to an arrangement with the borrower. We’re withdrawing that order.’ So it’s not even too late when it’s lodged with us.”


So what advice would she give to debtors and mortgage holders who are in trouble? “Engage with your bank. In a lot of repossession cases where I’ve called out to people’s homes, they’ll say: ‘I buried my head in the sand. I never saw this day coming.’

“And you’ll say: ‘Well, you know, this didn’t come out of the blue. You were getting correspondence’. ‘Oh I was, but I just put it in a drawer.’

“And they’ll show you. They’ll open the drawer and you’ll see the unopened letters. They just don’t want to know about it.”

Maverick

Is she ever sorry she took on the role of sheriff? “No,” is her emphatic rejoinder, “because, you know, the focus is generally on the debtors. Here you have the ‘big, bad sheriff’ going out to the poor debtor. For every debtor, there is a creditor who is waiting for their money, is depending on it, has maybe made his own promises on foot of that money coming in – and it hasn’t come.

“I understand that, to a certain extent, there has to be a focus on debtors – but there also has to be a focus on creditors. A lot of creditors were severely burned over the last number of years. You know that by doing your job it has made a tangible difference to someone. I enjoy the thank-you cards I get from people who say, ‘I had that money written off. You have no idea how much it has meant to us’.” 

FOCAL POINT

quick on the draw

The most influential person in your life?

My father. He was the most grounded person. He had such a sense of fairness and fair play and would certainly have instilled in us growing up that ‘there’s no one better than you’.

And in your professional life?

It would have to be Sean O’Riordan, who was initially my master and is now my partner. If he hadn’t given me the apprenticeship, I wouldn’t be here at all possibly.

How do you chill out?

Last night was playing football around the kitchen with the baby and the eight-year-old. It’s great – you turn the key in the door and you’re ‘mum’. They don’t care what kind of a day you’ve had!

Best business lesson learned?

When you can’t control what’s coming in, you have to control what’s going out.

Best advice to fellow sheriffs?

To thine own self be true. I think that once you’re satisfied yourself with the decision you’ve arrived at – and you can justify it without squirming – you can live with your decision.

Favourite alternative job?

A rugby commentator. I’m an avid sports fan. I’ve grown up with rugby. There are six years between myself and my next brother, so literally, in the pram, my mother would have brought me to watch rugby. So it was either get with it or be miserable!

Dublin Dispute Resolution Centre

Ireland’s premier dispute resolution venue

Nine specialised rooms. Nine reasons to book.

Arbitration
Hearings
Mediation

Conference
Launches
Seminar

Consultation
Lectures
Training

OPEN
24/7

Dublin Dispute Resolution Centre 

Contact us for more information: Tel +353 1 817 5277
info@dublinarbitration.com www.dublinarbitration.ie

Way DOWN



Heather Murphy is a solicitor and in-house counsel with the Contracts Office, Trinity Research & Innovation, TCD. This article is written in a personal capacity

While the position of Irish Water – like the substance itself – may be subject to political ebb and flow, Ireland must comply with EU environmental law. Heather Murphy examines the law on water abstraction

It's often been said that Ireland would be a great little country if we could roof it. Certainly, in recent months, storms flooding and flood defences have been the concern. However, a recent report from Irish Water acknowledges that Ireland's bulk water abstraction per inhabitant is the second highest in Europe, and its potable water network has leakage levels of 49%.

According to the Environmental Protection Agency's *Drinking Water Report 2014*, 170,000 households (representing 11% of the Irish population) draw a water supply from their own private well; the remaining 89% are supplied by public supplies (82%) and other public or private group water schemes (7%). There is no comprehensive national register detailing water abstraction for commercial and industrial purposes. The introduction of water charges and water meters has resulted in an upsurge in those seeking an alternative water source.

What is surprising is that Irish law on a landowner's right to abstract water is still derived from Victorian – largely English – case law and, to date, no reforms have been introduced to bring these common law rules and other applicable statutory provisions (see panel) in line with the requirements of the *Water Framework Directive* (WFD). Furthermore, the

statutory provisions in respect of water abstraction for public water supplies are not aligned with the *Planning and Development Acts 2000-2015*.

Down in the river to pray

Adopted in 2000, the WFD is the single most important piece of legislation protecting sustainable water use throughout the EU. Unlike previous legislation, which regulated specific water types/uses, the WFD regulates and manages water in natural hydrological units called 'river basin districts', of which there are eight on the island of Ireland. Specifically, in the context of protecting

at a glance

- Irish law on a landowner's right to abstract water is still derived from Victorian case law
- To date, no reforms have been introduced to bring the common law rules and other applicable statutory provisions into line with the requirements of the *Water Framework Directive*
- Also, the statutory provisions in respect of water abstraction for public water supplies are not aligned with the *Planning and Development Acts*

“ These cases were decided at a time when groundwater was poorly understood and difficult to ascertain. The science has moved on; the law must too ”

both the quality and quantity of water, article 11(3)(e) of the directive requires controls over the abstraction of surface and groundwater and the introduction of a system of prior authorisation for water abstraction and impoundment. This is the minimum requirement (termed a 'basic measure') to be complied with under the WFD. Abstractions with no significant impact may be exempted from these controls. Article 11(4) of the directive provides that, if basic measures are insufficient to meet the WFD's good status objectives, then supplementary measures may be needed.

The most recent assessment of Ireland's implementation of the WFD reported that pressures from water abstraction were significant in 9% of surface water bodies across all river basin districts – rising to 54% for surface water bodies in the Eastern River Basin District due to population densities. For groundwater, abstraction pressure was significant in two river basin districts, but only 0.4% of groundwater bodies nationally. The report acknowledges that supplementary measures are needed to address surface water abstraction in seven river basin districts and two for groundwater.

Although there are a number of disparate regulations applicable to water abstraction, Irish law does not currently

meet the requirements of the WFD in respect of having a comprehensive system of prior authorisation and control of water abstraction. In its most recent review of the implementation of the WFD, the European Commission recommended that Ireland undertake a complete review of the management of water abstractions, better characterise the effects arising from abstraction, and address the existing gaps in the legislative framework. Failure to do so could result in infringement actions and fines against Ireland.

When the levee breaks

Despite the public controversy over the establishment of Irish Water, disputes regarding private landowners' rights to abstract water are few and far between, and the Irish case law dried up (if you will excuse the pun) in the early 20th century.

At common law, a landowner's rights to use water flowing in known defined channels above or below land are legally characterised as natural rights, which exist automatically (although they may also be acquired by way of easement).

Riparian owners have the right to use flowing waters for 'ordinary purposes' linked to the riparian tenement, such as domestic water supply or watering cattle. Case law provides that, in exercising an 'ordinary use', a riparian owner may exhaust the supply. However, where a landowner takes a water supply for

an 'extraordinary use', the water must be restored to the water course in undiminished quantity and quality. Use in excess of this may be acquired as an easement. Exercise of these common law rights can be limited by servitude, statute, and other liability considerations.

The leading case is *McCarty v Londonderry and Lough Swilly Railway Company Limited* (1904). The railway company claimed a right to abstract water from a stream, which bordered a plot of the railway company's land, and use it in their steam engines

along the entirety of the rail network. The Court of Appeal ruled that this did not amount to an 'ordinary use', as it was unconnected with the railway company's riparian tenement and thus not within their natural rights as a riparian owner.

Although the common law, as between riparian owners, places some controls on water abstraction in defined channels (both above and below ground) and seeks to balance competing riparian owners' rights, it does not fulfil the requirements of the WFD. What's more, the common law approach treats surface water and percolating groundwater entirely independently.

Dirty water

Groundwater is water below ground that, like surface water, is continuously moving downhill under the influence of gravity to the sea. No riparian rights are deemed to exist in respect of water percolating underground in unknown channels; instead, a landowner is deemed to have a common law right to abstract as much percolating groundwater as they so wish, even if it deprives others of it (*George Chasemore v Henry Richards* [1859] and *Black v Ballymena Town Commissioners* [1886]). The rationale behind subjecting surface and groundwater – which we now understand are hydrologically inextricably linked – to entirely separate legal rules has been subject to much academic reflection.

At common law, a landowner's rights to use water flowing in known defined channels above or below land are legally characterised as natural rights, which exist automatically (although they may also be acquired by way of easement)

FOCAL POINT

water abstraction – key legislation

Planning and Development Acts 2000-2015

Carrying out works in order to provide a domestic water supply or an approved group water scheme does not require planning permission. This exemption does not apply where a Special Amenity Area Order is in effect or where such works are de-exempted through an existing planning permission(s).

Planning and Development Regulations 2001-2015

Local Government (Water Pollution) Acts 1977-2007

Water services authorities are required to establish and maintain a register of water abstractions in their functional areas, with the exception of abstractions that do not exceed 25 cubic metres in 24 hours.

Local Government (Water Pollution) Regulations 1978 (SI 08/1978)

Drilling guidance

There are currently no statutory regulations in respect of well-water drilling. The Institute of Geologists of Ireland and Environmental Protection Agency have developed good practice guides for well owners, drillers, public authorities and other interested parties.

Irish Water

The *Water Services (No 2) Act 2013* provides for the transfer of the majority of water service functions from the 34 water services authorities (local authorities) to Irish Water. The transfer became effective on 1 January 2014 pursuant to SI 576 of 2013.

The scholarly view is that these cases were decided at a time when groundwater was poorly understood and difficult to ascertain. Partly for this reason, and also due to the role of water in the industrialisation of Victorian society, the common law developed a distinction between a property owner's natural rights to use water flowing in defined known channels, and their limited rights in respect of groundwater percolating in unknown channels. The science has moved on: the law must too.

Public image limited

The *Water Supplies Act 1942* (as amended) is the principal piece of legislation governing the abstraction of water for public water supplies. A local authority (in its capacity as a water services authority) wishing to abstract water for a public water supply must develop and publish a proposal in respect of the abstraction. Certain persons aggrieved by the proposal have a right of objection. There is also provision for the payment of compensation to those caused damage by the taking of the water supply. If no objection is made, the proposal is deemed agreed. Where objection(s) are made and not withdrawn, the matter must be referred to An Bord Pleanála for a provisional water abstraction order. The board has power to refuse, grant, or alter the terms of the order. Those who objected to the original proposal have an automatic right of petition to the Circuit Court in respect of the board's provisional order.

Essentially, the 1942 act confers on water services authorities powers akin to compulsory acquisition, in the sense that the granting of a water abstraction order by the board grants a right to take water from a specified source in a specified manner. The right of petition to the Circuit Court is not a judicial review, but a statutory right of appeal. The lack of alignment of the 1942 act with the *Planning Acts* generally and in terms of compliance with the requirement for environmental impact assessment (EIA) and appropriate assessment (AA) under the *EIA Directive* and the *Habitats Directive* has been highlighted by recent case law and in a [submission made by the board](#) to the Department of the Environment in 2014.

Troubled waters

The recent Circuit Court case of *Danny O'Connor & Others v Kerry County Council and An Bord Pleanála* involved a provisional water abstraction order from the Sheen River to supply Kenmare. The plaintiff riparian owners argued, among other things, that the entire development should have been subject to EIA and AA. The order was quashed



by the Circuit Court on the basis that the proposed abstraction had not been subject to AA (the court held on the facts that the *EIA Directive* did not apply). It should be noted that, although local authority development is exempted development and does not require planning permission, [section 175 and 177AE](#) of the *Planning Acts* impose an obligation to carry out an EIA and AA, if required.

The board's 2014 submission to the department noted that, in light of the requirement under section 175 and 177AE for a local authority to carry out an EIA and AA in respect of development underlying any proposed water abstraction, it seemed contrary to the thrust and coherence of the consenting process for an additional and parallel EIA and AA to be conducted for the water abstraction itself pursuant to the 1942 act. In order to clarify this, the board recommended the definition of 'development' under section 3 of the *Planning Act* be amended to include water abstraction and the implications of this be teased out. The board also suggested, in light of the transfer of functions to Irish Water, that it be clarified whether Irish Water would be in the position of a local authority (and subject to section 175 and 177AE) or a normal private applicant. Finally, the board recommended its decision pursuant to the 1942 act be subject to review by way of judicial review in the normal way rather than by petition to the Circuit Court.

Deeper on down

Ireland's [most recent submission](#) to the European Commission states that the Irish legal framework on water abstraction will be addressed as part of the *Water Quality Framework Bill*. The heads of the bill are currently under preparation, and it is expected that the bill will be enacted in 2017.

Potentially, Ireland could adopt a system similar to that in Northern Ireland, Scotland, England and Wales, where a risk-based approach applies – namely, certain low-volume abstractions are deemed permitted, whereas a licensing regime applies to higher rates of abstraction.

Such an approach and the alignment of the 1942 act with the *Planning Acts* would be welcome, as it would contribute to the sustainable management of one of Ireland's most precious natural resources in the interest of users and the environment generally.

look it up

Cases:

- *Black v Ballymena Town Commissioners* [1886] 17 LR Ir 459
- *Danny O'Connor & Others v Kerry County Council and An Bord Pleanála* (South Western Circuit, 24 February 2014)
- *George Chasemore v Henry Richards* [1859] 7 HCL 349
- *McCartney v Londonderry and Lough Swilly Railway Company Limited* [1904] AC 301

Legislation:

- *EIA Directive* (2011/92/EU)
- *Habitats Directive* (92/43/EEC)
- *Planning and Development Acts 2000-2015*
- *Water Framework Directive* (2000/60/EC)
- *Water Supplies Act 1942*

Literature:

Assessment of Member States' progress in the implementation of Programmes of Measures during the first planning cycle of the Water Framework Directive – Ireland

Generation GAME



Samantha Geraghty is a partner in P O'Connor & Son, Swinford, Co Mayo. She practises in the areas of property and banking law

Section 61(7) of the *Registration of Title Act 1964* dispenses with the need to raise representation to the estate of a deceased registered owner. It allows a person, entitled in succession, to become registered as the owner of registered land. **Samantha Geraghty cuts the red tape**

An application pursuant to section 61(7) of the *Registration of Title Act 1964* is a very useful device that is especially helpful in complex probate transactions. Traditionally, this type of application was made by a handful of practices around the country but, in more recent times, the application has become more widely used, given the considerable savings in terms of time, costs and administration.

In the course of administration of estates, it is not uncommon to encounter a situation where, having dealt with the estate of the deceased person, it becomes necessary to extract further grants of representation in order to complete your client's application to be registered as owner of their property. The extraction of grants of representation for and by persons who are not directly your clients can prove difficult and time consuming, and often requires the cooperation of third parties and relatives who are not always willing to facilitate your client. In addition, your client can be faced with the expense and difficulty of extracting representation to an estate where he/she may neither be the executor/administrator or the beneficiary.

Section 61(7) states: "Where, on the application of any person claiming to be registered as owner of registered land in succession to a deceased full owner of such land, the court is satisfied that (a) at least six years have elapsed since the death of the deceased full owner, and (b) that the personal representatives of such owner are dead or out of the jurisdiction, the court may, if it thinks fit, notwithstanding anything in the *Administration of Estates Act 1959* or this act, dispense the applicant from the necessity of raising representation to the deceased full owner or of giving notice to his personal representatives and may order that the applicant be registered as owner of the land."



at a glance

- Many titles have not been updated, despite several deaths and changes of ownership over a long number of years. Section 61(7) reduces the work and time involved in rectifying such titles
- The application is based on succession. It does not apply to an adverse possession situation
- If granted, an order pursuant to section 61(7) will be registered by the PRA much quicker than a section 49 or similar application with few, if any, queries arising



“ If the application is successful, the county registrar or judge will grant appropriate orders dispensing with the requirement to extract one or more grants of representation and directing the Registrar of Titles to register the applicant as full registered owner of the property ”

The essential components of the application are:

- Unlike an adverse possession application pursuant to section 49 of the *Registration of Title Act 1964*, this application is based on ‘succession’, not possession. The applicant must prove a chain of succession from the deceased registered owner to him/herself.
- The deceased registered owner must be dead for more than six years.
- The ‘personal representative’ must be dead or out of the jurisdiction.

‘Personal representative’ is defined by the *Registration of Title Act 1964* as being “the executor, original or by representation, or the administrator of a deceased person”.

‘Administrator’ is defined by the *Succession Act 1965* as “a person to whom administration is granted”.

In order to satisfy this condition, you must have a ‘personal representative’, that is:

- An executor appointed under a will in respect of which probate has or has not been granted, or

- A grant of administration appointing an administrator.

It is important to note that you cannot proceed with the application in a case where you have an intestate registered owner and no subsequent grants of representation, as in that situation you do not have a ‘personal representative’ within the meaning of the act, being either an administrator appointed by a grant of administration or an executor appointed by will.

A section 61(7) application typically arises where the registered owner of the folio is long-since deceased and where the successors in title have gone into possession of the property without extracting a grant of representation to the estate of the deceased registered owner or bringing the folio up to date. If this has happened two or three times on the same property, you can find yourself dealing with a probate transaction that proves to be very slow and difficult to deal with, especially where executors have died without dealing with registrations or have intermeddled in the estate.

The application is made in situations where, at the very least, it is necessary to extract a *de bonis non* grant. You must have a situation whereby one estate has been intermeddled with and is partly unadministered (that is, the personal representative is deceased or out of the jurisdiction). Usually, the applicant will seek an order dispensing with the necessity of extracting two or more grants

of representation or just one grant if the extraction of that grant would be complicated by some factor.

Procedure and proofs

The application is made by notice of motion and supporting affidavit, which is lodged with the Land Registry's court registrar in the case of proceedings in the High Court or with the county registrar in the case of proceedings in the Circuit Court. The supporting affidavit will typically set out the sequence of events from the death of the deceased registered owner up to and including the right of the applicant to become registered as owner "in succession" to the deceased registered owner. A well-drafted

grounding affidavit will deal with each person on the chain of succession, from the registered owner down to the applicant (dealing also with spouses, issue, and so on) and should exhibit:

You cannot proceed with the application in a case where you have an intestate registered owner and no subsequent grants of representation as in that situation you do not have a 'personal representative'

- The folio or folios for the lands that are the subject of the application,
- The death certificate of the deceased registered owner and details of whether or not he or she died testate or intestate,
- Death certificates for all persons mentioned in the chain of succession and details of whether or not they died testate or intestate and whether representation was raised to their estates,
- All or any grants of representation granted in respect of persons in the chain of succession or wills made,
- Certificate of rateable valuation,
- Disclaimers or deeds of release executed by other beneficiaries of the deceased registered owners where applicable.

It can often be the case that death certificates cannot be found in respect of persons long deceased or who have left the jurisdiction and, in those instances, the best evidence rule will apply. Courts have been known to accept memorial cards, photographs of tombstones, and church certificates as evidence of death.

PRAI

If granted, an application for registration is made to the PRA as follows:

- Application for registration on form 17,
- Official copy of the court order (as per PRA rule 95),
- PRA fees.

If a subdivision of a folio is required, a map marked appropriately for land registry purposes must also be lodged and applicable fees for subdivision.

Interestingly, section 62 of the *Capital Acquisitions Tax Consolidation Act 2003* does not appear to apply to an application for registration on foot of section 61(7), and therefore the PRA does not call for a certificate of clearance from CAT to be produced, as it does in the case of a section 49 application.

However, due regard should be had to the provisions of the 2003 act as they would apply in the normal way to an inheritance situation.

Jurisdiction

The county registrar now has jurisdiction to deal with an application made pursuant to section 61(7) of the *Registration of Title Act 1964* at the motions court, although in the past there was a tendency by some county registrars to transfer these applications into the judge's list. Where the rateable valuation of the property exceeds

FOCAL POINT

example

The registered owner of folio 12345 Co Mayo is Granny Bloggs. She dies a widow on an unknown date, leaving her son, Daddy Bloggs, surviving her. Daddy Bloggs dies intestate in 1973, leaving his widow and six children surviving him. Mammy Bloggs dies testate in 1995, but probate to her estate was never extracted. Under her will, she appointed Child A as her executor and she bequeathed the property to child E and child F. She was survived by her six children. Three of the children survived Mammy Bloggs, but have since died, including her executor. Three of the children are still alive. One vacated the property 20 years ago and has made no claim against the estate. The remaining two brothers, the beneficiaries, remained in occupation of the property and farmed the land.

An application pursuant to section 61(7) in this situation would allow the two brothers to be registered as owners of the property without the need to administer the following estates:

- Granny Bloggs (the registered owner),
- Daddy Bloggs,
- Mammy's Bloggs will.

In light of the fact that Mammy Bloggs made a will (even though her estate has not been administered), you have a 'personal representative' within the meaning of the act, and that personal representative is "dead or out of the jurisdiction". If Mammy Bloggs had died intestate, it would be necessary to extract a grant to her estate in order to fulfil the 'personal representative' criteria.

The application can also be brought in circumstances where more than six years and less than 12 years have passed since the death of a registered owner and where the personal representative has died. The application in this situation can be used in lieu of an application for a *de bonis non* grant.

If an inhibition is entered on a folio against all dealings "except in the administration of the estate of the former deceased registered owner", an order of the court pursuant to section 61(7) can be obtained to deal with the registration.

€253.95, an application should be made to the High Court. Readers are referred to the recent *Finnegan* decision (2015 IEHC 304, currently under appeal) in relation to rateable valuations and the question of applicable jurisdictions.

When to use this application?

While the application can technically succeed where a dispensation from extracting only one grant of representation is required, judges and county registrars have displayed a certain reluctance to grant the application unless the process of extracting the requisite grant is complicated by some factor or unless further grants of representation would be necessary. Therefore, if your rectification requires you to extract one grant of representation *de bonis non*, you will be well advised to extract that grant in the normal way rather than having your client incur the expense of this court application. However, if two or more grants of representation are required, this application may well prove to be a very

expeditious way of resolving matters.


If the application is successful, the county registrar or judge will grant appropriate orders dispensing with the requirement to extract one or more grants of representation and directing the Registrar of Titles to register the applicant as full registered owner of the property. The order is then lodged in the Land Registry with the appropriate fees and, as is common with most court orders, the registration usually completes in a timely manner.

Succession v possession

While it is the case that a section 49 application based on adverse possession is often made in circumstances where a section 61(7) application is appropriate, the converse is not true. One cannot succeed in a section 61(7) application where one is in possession of lands but where one cannot show a chain of succession.

The dispensation from extracting the grant(s) of representation applies only to the registered land, the subject of the application,

and all other assets of the deceased registered owner must be dealt with in the normal way.

Although this remedy has been available to practitioners for decades, its advantages in terms of time, administration, and cost savings have been underestimated. This provision should be considered by probate practitioners in many situations that arise on a regular basis. 

look it up

Cases:

- *Bank of Ireland v Finnegan* [2015] IEHC 304
- *Moloney v Moloney* (1894) 58 ILTR 81

Legislation:

- *Capital Acquisitions Tax Consolidation Act 2003*, section 62
- *Registration of Title Act 1964*
- *Succession Act 1965*



SPANISH LEGAL SERVICES



www.spanishlegalservices.ie

Tel: 353 1 9015771 • Mob: 353 8777 08777

Boys will be BOYS



*Seán Conway,
Sam Hayes,
Oscar Little,
Seán McGrath,
Mimi Pataki and
Lucy Sherry (all
Form 5 students
of history at
King's Hospital)
were assisted by
their teacher
Ray McIlreavy
in producing this
article*

In April 1916, the elegant building at Blackhall Place was a school, and home to curious boys who peered out of the windows to see the conflict unfolding. Current students at the King's Hospital School, now at Palmerstown, tell the tale

The Easter Rising represents the starting point of modern Ireland's revolutionary period. But outside of the much-publicised and much-revisited events of the Rising, there are many tales of local interest that render the whole episode more relevant. For example, what was happening around the now Law Society HQ during the week of the Rising itself? In 1669, "the Hospital and Free School of King Charles II, Dublin" (usually abbreviated as the King's Hospital) was founded at Blackhall Place. A secondary school for boys, it was completely Protestant. It was quite a small school and had around 120 students attending at the time of the Easter Rising. The school contributed a large number of young men to the British war effort during the First World War. The staff, the governors and the vast majority of pupils would have been pro-British in outlook.

The headmaster at the time of the Rising was TP Richards, a man who was very popular with the students. He was in Bray on Monday 24 April and was unable to return to the school that day due to the outbreak of the Rising.

The Rising

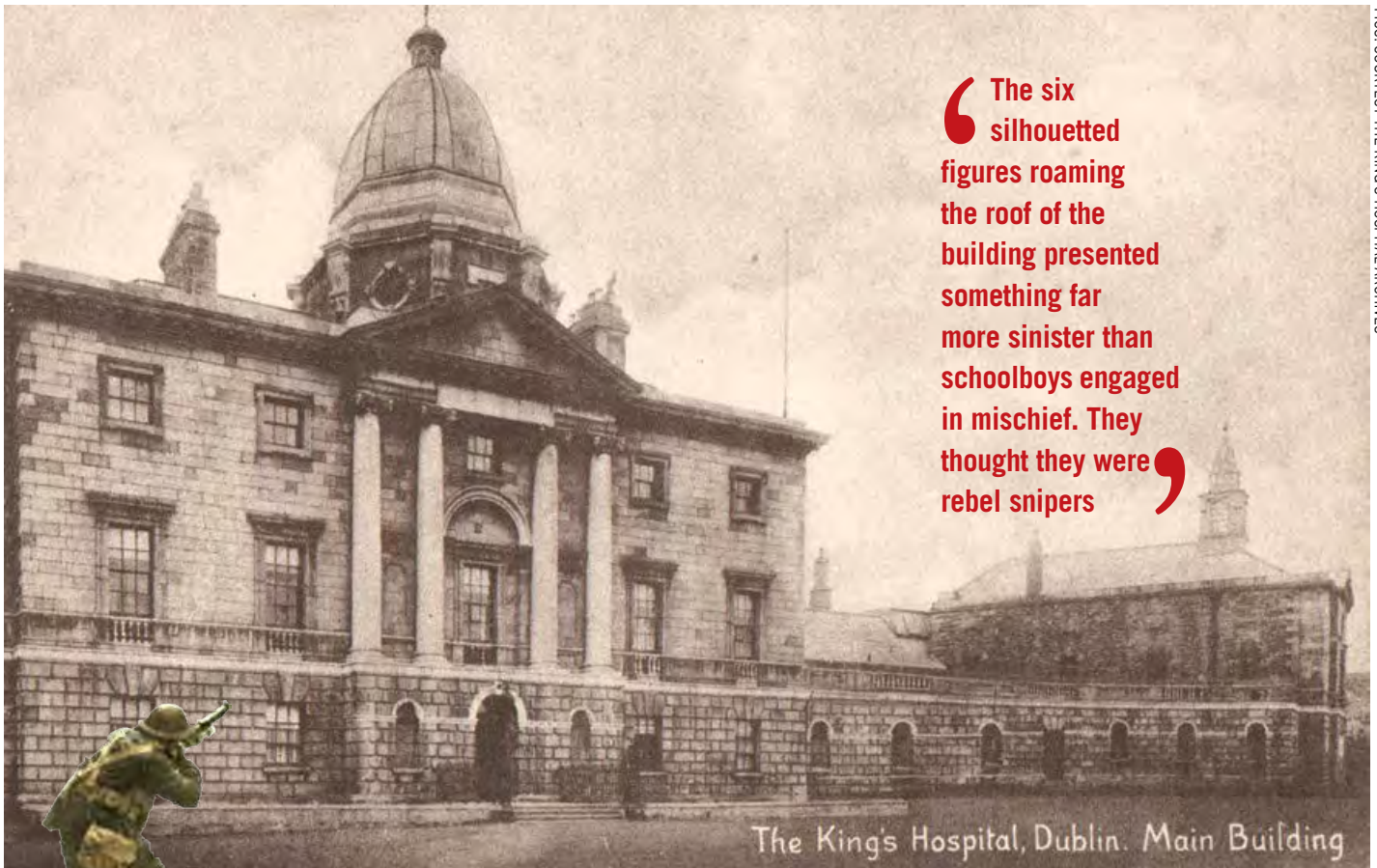
On Monday 24 April, the guns started firing in Dublin city, one day before the students were due back from their Easter holidays. Six boys had remained in the school during the holidays, probably because they lived too far away and travel home was expensive or due to being quarantined because of illness. These six boys

were almost to cause what could have been a major disaster. That Monday night, upon hearing the guns in the city centre, the six boys (whose names history does not record) climbed through the attic of the school and onto the roof around the rim of the green cupola. The excitement of the action in the city was too much of an attraction for the boys but, for the soldiers of the nearby barracks, the six silhouetted figures roaming the roof of the building presented something far more sinister than schoolboys engaged in mischief. They thought they were rebel snipers.

Soldiers on patrol in Wood Lane spotted the boys on the roof and prepared to open fire. Luckily, one of the officers knew the school and ran up the short lane to investigate. Hammering on the doors of the school in the middle of the night, he demanded he be allowed to enter. Mrs Richards, the headmaster's wife, had to deal with the soldiers at gunpoint. That the boys were where they shouldn't be came as no surprise to her and, apologising

at a glance

- Blackhall Place had an eventful Easter Week 1916
- Pupils at the King's Hospital school came close to being shot as snipers
- There were rumours of possible German spies infiltrating the school staff
- A rebel disguised himself as a pupil to get through to the city centre



‘ The six silhouetted figures roaming the roof of the building presented something far more sinister than schoolboys engaged in mischief. They thought they were rebel snipers ’

PICS: COURTESY THE KING'S HOSPITAL ARCHIVES



Boys of the King's Hospital in their school uniform

profusely, she volunteered to deal with the troublesome boys herself. History (again) does not record what form that ‘dealing’ took.

During the Rising, security was extremely tight. One needed very good reason to be in the city centre. One of the insurgents, Charlie Lyons, needed to get into the city centre but, because he was a young man, he would not have been allowed in for fear that he was a rebel. He needed a good excuse to get into the city, and he found it at the King's Hospital. He nonchalantly came into the school and stole one of the school blazers. This gave him the excuse he needed to enter the city centre undetected and unquestioned (Bureau of Military History, document no WS 259).

Staff changes

Due to so many men being away at the war, the recruitment of quality teachers was difficult. One teacher who was taken on at the time was a Lutheran clergyman who was a French master, Dr Pechall. He was quite a curious character in that, after the Rising had concluded, he disappeared. According to JB



Classroom at Blackhall Place

Neligan, “the general feeling was that there was something shady about him” (King’s Hospital archives, MS 1008/9). It was later discovered that he had been interned by the authorities as a foreign national from an enemy state.

In September 1915, the school employed a new teacher, a Mr Rudall, as a French teacher. The pupils quickly gave him the nickname ‘Rudolf’. This quiet teacher was thought by the pupils to have been a German agent, possibly even engaging with Irish rebels in the months leading up to Easter 1916. Shortly before the Rising, he had shown his class a collection of postage stamps that had been printed by Irish Republicans. According to another pupil, RF Hammond, he would also go on to show them a copy of the Proclamation, which had been read from the front of the GPO on Easter Monday (King’s Hospital archives, MS 1007/2). The fact that the declaration itself referred to “our gallant allies in Europe” prompted the school’s board of governors to dismiss the new teacher.

“The prize piece of jetsam thrown up by the war was one Mr Rudolf [Rudall], if that was his name. He was a tall, flamboyant creature of about 35, who would have been a bit like Bernard Shaw if he had a beard. He was fair haired with a large drooping moustache. We were convinced that there was something very queer about him; he might have been a German agent. The

suspicion that he was mixed up in the 1916 Rising was strengthened when he produced and displayed to his class a complete sheet of Irish Republic postage stamps, which the insurgents had had printed” (JB Neligan, King’s Hospital archives, MS 1008/9).

“ We were convinced that there was something very queer about him; he might have been a German agent ”

Rebel activity near the school

Being so near the Royal Barracks, there was a possibility that rebel forces would try to commandeer the school. The military had wanted to place a guard at the school to prevent any rebel takeover, but Mr Richards wouldn’t allow it. He said that the only time that he would permit a military guard in the school would be when martial

law declared that he must. Easter Week presented just such a situation, and 30 British soldiers were posted in the northern wing of the school, a temporary measure until the Rising ended. The King’s Hospital was not the only school that was occupied at the time: the High School on Harcourt Street was used by the British military as a temporary hospital while the crisis unfolded.

There had been a meeting of the First Battalion of the Irish Volunteers in Columcille Hall on Blackhall Street, in quite close proximity to the school. One of the Volunteers, Seamus Doyle, recalls that on Easter Sunday, prior to parading at Parnell Square, “we were to mobilise at Blackhall Place at 3pm, bring 24 hours’ rations, uniform, equipment and all available ammunition” (Bureau of Military History, document no WS 166). Another Volunteer, George O’Flanagan, having paraded with his company on Easter Sunday, went to a party in Irishtown. On his way home early the next morning, he met his brother who told him “get home quick, get ready, the time has come, meet in Blackhall Place before 12 o’clock”.

When the Volunteers mobilised at the hall, Edward Daly (according to O’Flanagan) told them: “Now, boys, the time has come, which you are all wishing for, when you have the chance for striking a blow for Irish freedom” (Bureau of Military History, document no WS 131).

In the barracks next door, a group of 37 officers and 430 men of the Tenth Battalion, Royal Dublin Fusiliers, were training. When rifle shots were heard from the city around noon, a bugle alarm call was sounded and the soldiers gathered in the barracks square. From there, a contingent

FOCAL POINT

the hospital and the barracks

The playing fields of the school were bordered by the back walls of the Royal Barracks (now Collins Barracks). Inevitably, from various disciplines, balls found their way into the grounds of the barracks. With a helping hand from a few friends, the boys could climb up the wall, using the chips taken out over time as steps, up and over into the barracks to retrieve their lost ball. On a few occasions, the boys sent to retrieve the balls would have gone on a little exploration through the grounds of the barracks, some even getting warning shouts from soldiers patrolling the grounds.


Digging deep into our school’s archives from the time of the Rising, we came across the recollections of one JB Neligan, going into the details of what the boys used to get up to during their free time at the school: “For some purpose, the head caused to be built a structure known as ‘the Chalet’ – this was a press box. From its roof, which was accessible, a friendly overhanging branch of a tree in the barracks continued over the wall. There was one good reason for crossing the wall, the retrieval of valuable handballs” (King’s Hospital archives, MS 1008/9).



The King's Hospital senior cricket team, 1917, featuring JB Neligan (back row, right) and RF Hammond (front row, centre)

The Easter Rising was the beginning of an era of revolution in Ireland. It heralded a new age of Irish Republicanism. Blackhall Place has its own history of Easter Week. From students coming close to being shot as snipers, to possible German spies infiltrating the school staff, to a rebel disguising himself as a student, the school experienced an eventful Rising.

Indeed, in fear of further rebel activity in the weeks after the Rising, the headmaster advised the governors that “steps should be taken to protect our buildings during the [summer] vacation” (King’s Hospital archives, MS 31).

This archival material enables the present school community and the Law Society to have a better appreciation of  the current commemorations.

marched along Ellis Quay and Usher’s Quay towards Dublin Castle.

During the course of their advance towards the Four Courts, Daly’s battalion set up fortified positions on North Brunswick Street, North King Street, the [Mendicity Institution](#) (Usher’s Island), and a number of

bridges spanning the Liffey. On Wednesday 26 April, they successfully seized the Four Courts, where they would continue to fight for the remainder of the Rising. Edward Daly was captured after the Rising and was one of the 14 men executed at Kilmainham Gaol for their involvement.

look it up

- www.kingshospital.ie
- www.bureauofmilitaryhistory.ie
- www.dublin-fusiliers.com/battalions/10-batt/campaigns/1916-10th-easter.html
- <http://irishmedals.org/the-four-courts-reilly-s-fort.html>

CALCUTTA RUN 2016
THE LEGAL FUNDRAISER



Get Fit and raise funds for Peter McVerry Trust and GOAL



SATURDAY 21 MAY

BLACKHALL PLACE 5KM + 10KM RUN/WALK

CYCLISTS ALSO WELCOME: CHECK OUT OUR WEBSITE FOR MORE INFORMATION

100% participants' funds to:

Connect:

Sponsored by:



BBQ, Music, Comedy, Tennis, Kids Athletics and Family Fun at the Finish Line Festival

www.calcuttarun.com



THE HONORABLE
SOCIETY OF KING'S INNS



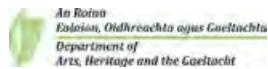
Ar mhaith leat seirbhísí dlí a thairiscint as Gaeilge? Ard-Diplóma sa Dlí-Chleachtadh trí Ghaeilge (Óstaí an Rí)

Reáchtálfaidh Óstaí an Rí cúrsa Ard-Diplóma sa Dlí-Chleachtadh trí Ghaeilge idir Deireadh Fómhair 2016 agus Aibreán 2016 a chumasóidh cleachtóirí dlí le feidhmiú trí Ghaeilge.

Cuimseofar cúrsaí sibhialta agus coiriúla, dréachtú, abhcóideacht, comhchomhairle agus idirbheartaíocht. Tá an cúrsa seo ar oscailt d'abhcóidí agus d'aturnaetha a bhfuil líofacht Ghaeilge acu.

Ó tharla go mbeifear ag cur deireadh leis an maolú ar stádas na Gaeilge san AE idir seo agus deireadh na bliana 2021, beidh gá le habhcóidí agus le haturnaetha ag baile agus ar leibhéal an AE atá inniúil ar chleachtadh trí Ghaeilge.

Cuireann an Roinn Ealaíon Oidhreachta agus Gaeltachta tacaíocht ar fáil don chúrsa seo.



Tuilleadh eolais agus foirmeacha iarratais: www.kingsinns.ie
daithi.maccarthaigh@kingsinns.ie 087 2368364



CONSULT A COLLEAGUE

The **Consult a Colleague helpline** is available to assist every member of the profession with any problem, whether personal or professional.

Call the helpline
01 284 8484

www.consultacolleague.ie

This service is completely confidential and totally independent of the Law Society

DIPLOMA CENTRE

Leading the way in continuing professional
legal education



SPRING 2016 PROGRAMME	DATE	FEE
Diploma in Environmental and Planning Law	Friday 8 April	€2,400
Diploma in Legal Decision-Making Skills	Thursday 26 May	€2,400
Certificate in Legal Practice Development	Friday 20 May	€1,300
Certificate in Company Secretarial Law & Practice	Tuesday 4 October	€1,400
Massive Open Online Course (MOOC) in Data Protection	Tuesday 10 May	Free
Diploma in Law	Friday 9 September	€4,400

CONTACT DETAILS

E: diplomateam@lawsociety.ie T: 01 672 4802 W: www.lawsociety.ie/diplomacentre

Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change. Some of these courses may be iPad courses in which case there will be a higher fee payable to include the device. Contact the Diploma Centre or check our website for up-to-date fees and dates.

JOAN M SMITH

1921 –2016

Joan M Smith (née Macaulay), a doyen of the legal profession in Cavan, passed to her eternal reward on 13 January at our Lady of Lourdes Hospital, Drogheda. As a solicitor who qualified in 1943, Joan Smith, together with her late husband Alfred Myles Smith, established the practice that was to bear his name.

Joan was born in Carrick-on-Shannon and lived for a period of time in Listowel, Co Kerry, where her uncle was a partner in the firm of Marshall & MacAulay, a firm that still carries the name. Joan herself was apprenticed to Arthur Cox and, after qualification, worked initially with Gerard Sweetman in GD Fottrell in Dublin and with Philip Smith in Louis CP Smith and Co, before Joan and her late husband established the firm of Alfred Myles Smith & Company in Cavan town. The practice grew to be a thriving firm over several years, with Joan presiding as managing partner. Myles was probably the best-briefed solicitor practising in the courts in Cavan. The practice grew and ultimately acquired the practice of the late Patrick Cusack and, thereafter, also practised in Ballyjamesduff as Cusack Smith & Company.

Joan Smith was a formidable and exacting opponent and the quality, extent and detail of the briefs furnished to counsel are still noted. Indeed, she had an uncanny ability to recognise potential in junior counsel and had a loyal dependency on several counsel who themselves rose to prominence in their profession, several of whom went on to serve in judicial office, including the Supreme Court.



Joan's ability as a conveyancing solicitor, in both registered and unregistered title, was unparalleled. She had scant regard for sloppy conveyancing practices and was forensic in her examination of titles presented. Joan provided valuable legal advice to one of the first developers in Cavan and to several generations of the cooperative movement, and was unsurpassed in her knowledge of probate. Myles Smith was a founding member of the NFA (now the IFA) and, for all her long working life, Joan rendered ceaseless invaluable advice and support to the farming community. She was very closely aligned with, and acted for, Killeshandra Co-op, latterly known as Lakelands.

Devoted to her husband Myles, she was left a widow in January 1976 and thereafter immersed herself in her practice, which at one stage comprised practices in Cavan town, Ballyjamesduff and Clones. In the early 1980s, with a view towards retirement, Joan accepted the position of district judge, was sworn in, and within five weeks realised that the bench was not for her (presumably because of the lack of challenge to any title in the District Court). She returned to her practice, where she continued until a few years short of her death.

She was particularly proud of her ancestry, her grandfather being a founder member of Garryowen RFC (and that club's first international player, an international selector for

26 years, and still the IRFU's youngest president). She was particularly proud of her husband's ancestry, which included the venerable Louis CP Smith, several members of the medical and legal professions, and the high sheriff for the county of Cavan in 1911, as well as several justices of the peace. To honour and preserve Myles's legacy, she devotedly maintained the grounds to the family home at Kevit Castle, and together they rebuilt the family home in the mid '50s in what has to have been a bold and adventurous design for the time.

Outside of her practice, Joan was known to host dinner parties, very often attended by eminent counsel and judges. As hostess, she was meticulous in ensuring that no one guest monopolised the conversation and that no guest felt excluded.

In addition to running the practice, she also managed and ran a dairy farm until the late '80s and, subsequently, a dry cattle farm. It is a cliché to say that we shall never see her likes again. Considering all that she was required to manage, one can only now understand why she lived her life at such a hectic pace.

In a moving tribute recently in Cavan Circuit Court, it was mooted that she must have been one of the longest-serving solicitors in the Republic and, almost certainly, the longest-serving female solicitor.

Joan is survived by her son Jeff, daughter-in-law Mary, grandson Myles, two solicitor granddaughters Zoe and Margaret, and four great-grandchildren.

council reports

4 March and 8 April 2016

Legal Services Regulation Act

Paul Keane reported that, in the absence of a government, there had been no developments in relation to the establishment of the Legal Services Regulatory Authority. In terms of the Society's preparatory work, he noted that a researcher had been engaged to prepare template documentation under the new legal costs provisions. A summary of the act was being prepared, and Law Society Professional Training was considering a seminar on legal costs.

A briefing on the act had been given to the presidents and secretaries of bar associations on 8 March, and the act was a recurring topic on the agenda for all bar association meetings and cluster events. The DSBA and the Law Society had held a successful half-day seminar on the act, and articles by the director of regulation had been published in the March and April issues of the *Gazette*.

Setanta case

Stuart Gilhooly reported on the judgment of the Court of Appeal in the *Setanta* case, which had upheld the decision in the High Court confirming the MIBI's liability for

outstanding claims arising under Setanta policies. It was agreed that the Society should issue an *eBulletin* to the profession outlining the background to the proceedings, the import of the judgment, and the likely next steps. At the April meeting, Mr Gilhooly reported that the MIBI had made an application for leave to appeal to the Supreme Court.

The president recorded the appreciation of the Council to John P Shaw, Stuart Gilhooly, and the director general, who had recognised the importance of the issues as they had arisen and had advised on how the Society should respond. He also recorded the gratitude of the Council for the enormous amount of work undertaken by Colette Reid (secretary to the Litigation Committee), the Society's solicitors Beauchamps, and its counsel Brian Murray SC and Francis Kieran BL.

Managing partner survey

David Rowe of Outsource made a presentation to the Council on the results of the survey of managing partners conducted in late 2015. The president reminded the Council that the survey had been conducted under recommendation 15

of the *Future of the Law Society Task Force Report*, under the heading 'legal market analysis', in order to provide a benchmark against which to analyse changes in the legal marketplace and to better inform the profession and the Society in terms of strategic planning.

Mr Rowe outlined the response rate, geographical spread, methodology and timelines behind the survey, as well as the key findings, key challenges and principal barriers to growth. The Council noted that a number of articles would be published in the *Gazette* to communicate the results to the profession.


Seanad nomination

The Council noted that the Society had the power to nominate a candidate for election to Seanad Éireann on the Cultural and Educational Panel. At its meeting on 4 March 2016, the Council approved a proposed process and criteria for selection and agreed to delegate the decision in relation to the Society's nominee to the Coordination Committee. At its meeting on 8 April 2016, the Council noted with approval the selection of solicitor Deirdre Burke as the Society's nominee.

CCBE

Past-president James MacGuill attended the meeting on 4 March 2016 and briefed the Council on current issues being considered by the CCBE, including (a) a push by national governments to monitor lawyer/client communications (the CCBE had joined with the Dutch Bar in a referral to the European Court of Justice), (b) assistance to the Law Society in preparation for the FATF evaluation of Ireland, and (c) a drive by the EU Commission to establish an Office of European Public Prosecutor.

The swearing of oaths

The Council was briefed on a recent situation where the President of the High Court had called upon two solicitors to explain the circumstances surrounding the swearing of an affidavit that had been made in support of a bail application. The president had found that the swearing of the affidavit was invalid, as the deponent had not been given a Bible to hold. It was agreed that the powers and procedures for the taking of oaths should be reiterated to the profession (see  p34 of this *Gazette*).

2nd Edition
Chartered Tax Library
Capital Gains Tax
A Practitioner's Guide
Finance Act 2015
Mark Doyle

Chartered Accountants Ireland

Capital Gains Tax

A Practitioner's Guide

2nd Edition

by Mark Doyle

€80.00 plus €5 p&p

Written by a Chartered Accountant and Chartered Tax Adviser, this is the authoritative text on capital gains tax in Ireland. It examines in detail capital gains tax legislation, Irish and UK case law and Revenue practice.

Offering guidance on practical difficulties encountered in everyday practice the text contains numerous worked examples. It also describes steps that may be taken to enhance the tax efficiency of a given situation.

This new 2nd edition is right up-to-date and covers all changes made in capital gains tax legislation up to and including Finance Act 2015.

OUTLINE OF THE BOOK

1. Introduction to Capital Gains Tax
2. The Rules of Computation
3. Reliefs and Exemptions
4. Treatment of Shares and Similar Assets
5. Debts; Options and Forfeited Deposits
6. Companies' Chargeable Gains
7. Taxation of Trustees and Fiduciaries
8. Anti-avoidance
9. Leasehold Interests
10. Double Taxation Relief
11. The Administration and Collection of Capital Gains Tax

ORDER ONLINE:

www.charteredaccountants.ie/shop/books

To enquire further or order over the phone with a credit/debit card, please contact:

TELEPHONE: +353 1 637 7204

E-MAIL: publishing@charteredaccountants.ie



12 March – 11 April 2016

For all legislation, see the Library catalogue on lawsociety.ie, as well as oireachtas.ie and irishstatutebook.ie

SELECTED STATUTORY INSTRUMENTS***Residential Tenancies (Amendment) Act 2015 (Commencement of Certain Provisions) Order 2016*****Number:** SI 119/2016

Appoints 1 March 2016 as the date on which specified provisions of the *Residential Tenancies (Amendment) Act 2015* come into effect. These include provisions for a more streamlined mediation service to provide for faster and more efficient resolution of disputes, the separation of the quasi-judicial and governance powers of the board of the PRTB, and changes to the registration procedures. Among other things, the order also provides for the repeal of section 126 of the *Residential Tenancies Act 2004*.
Commencement: 29/2/2016

District Court (Solicitors' Costs) Rules 2016**Number:** SI 123/2016

Amend the *District Court Rules* by the substitution of table 3 in the schedule of costs annexed to the *District Court Rules 1997*.
Commencement: 3/3/2016

Rules of the Superior Courts (Appeals from the Circuit Court) 2016**Number:** SI 124/2016

Amend order 61, rule 4 of the *Rules of the Superior Courts* to require lodgment of a single book of appeal prior to the commencement of the hearing.
Commencement: 3/3/2016

Companies Act 2014 (Professional Indemnity Insurance) (Liquidators) Regulations 2016**Number:** SI 127/2016

Prescribe the amount and terms of professional indemnity insurance required to be held by a liquidator of a company.
Commencement: 1/6/2016

European Union (Dublin System) (Amendment) Regulations 2016**Number:** SI 140/2016

Amend the *European Union (Dublin System) Regulations 2014*. Allow for a person who has entered into a contract for services with the Minister for Justice and Equality to assist the Refugee Applications Commissioner in the processing of *Dublin III* cases, reduce the time period for making an appeal, provide for the withdrawal and deemed withdrawal of *Dublin III* appeals, and address a number of matters relating to the detention of transferrable applicants.
Commencement: 9/3/2016

European Union (Consumer Mortgage Credit Agreements) Regulations 2016**Number:** SI 142/2016

Transpose into domestic law the provisions of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property. Amend Directives 2008/48/EC and 2013/36/EU and Regulation 1093/2010 (the *Mortgage Credit Directive*).
Commencement: 21/3/2016

Companies Act 2014 (Section 839) Regulations 2016**Number:** SI 147/2016

Prescribe certain enactments for the purposes of automatic disqualification on conviction of certain indictable offences pursuant to section 839(1)(a) of the *Companies Act 2014*.
Commencement: 23/3/2016


**IRISH
PROBATE
GENEALOGY
PARTNERS**

- ✓ Identifying rightful heirs
- ✓ Providing detailed research reports supported by documents
- ✓ Title research

Over 60 years combined experience

For assistance with probate and title cases, contact us

Web: www.probategenealogy.ie **Tel:** +353 1 6710338 **Email:** info@probategenealogy.ie

LAW SOCIETY PROFESSIONAL TRAINING



Centre of Excellence for
Professional Education and Training

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

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
12 May	Professional wellbeing for a successful practice: we will explore the latest psychology and dynamics of client-solicitor communication	€150	€176	5 M & PD Skills (by Group Study)
12 & 13 May	ESSENTIAL SOLICITOR UPDATE 2016 PARTS I & II in partnership with Leitrim, Longford, Roscommon, Sligo and Midlands Bar Associations – Landmark Hotel, Carrick-on-Shannon, Co Leitrim	DAY 1 – €75 DAY 2 – €105 – Hot lunch and networking drinks included in price ATTENDANCE ON DAY 1 & 2 – €160		DAY 1 – 1 Regulatory Matters – (including financial compliance) & 1 General & 2 M & PD Skills (by Group Study) DAY 2 – 2 Regulatory Matters (including anti-money laundering compliance) & 2 General & 2 M & PD Skills (by Group Study)
19 May	TACTICAL NEGOTIATION SKILLS	€150	€176	3 M & PD Skills (by Group Study)
26 May	ENERGY LAW SEMINAR: EU ENERGY UNION – IRELAND'S ROLE in partnership with the EU and International Affairs Committee	€105		2 General (by Group Study)
17 June	ESSENTIAL SOLICITOR UPDATE 2016 Shannon Suite, Strand Hotel, Limerick – in partnership with Clare and Limerick Bar Associations	€105 Hot lunch and networking drinks included in price		2 Regulatory Matters (including anti-money laundering & financial compliance) & 2 General & 2 M & PD Skills (by Group Study)
22 & 23 June	NORTH WEST GENERAL PRACTICE UPDATE 2016 PARTS I & II – Solis Lough Eske Castle Hotel, Donegal – in partnership with Donegal and Inishowen Bar Associations	DAY 1 – €75 DAY 2 – €105 – Hot lunch and networking drinks included in price ATTENDANCE ON DAY 1 & 2 – €160		DAY 1 – 1 Regulatory Matters – (including anti-money laundering compliance) & 2 General & 1 M & PD Skills (by Group Study) DAY 2 – 2 Regulatory Matters (including financial compliance) & 3 General & 1 M & PD Skills (by Group Study)
22 Sept	PROBATE AND TAX UPDATE in partnership with the Probate, Administration & Trusts Committee and the Taxation Committee	€150	€176	3.5 General (by Group Study)
20 Oct	ANNUAL PROPERTY LAW CONFERENCE in partnership with the Conveyancing Committee	€150	€176	3.5 General (by Group Study)
27 Oct	DELEGATION AND PERFORMANCE MANAGEMENT	€150	€176	7.5 M & PD Skills (by Group Study)
WILLS, PROBATE, ESTATES AND TAX MASTERCLASS CPD Hours Per Module: 10 General (by Group Study) Fee: €850/€750* (Skillnet members*) <i>Delegates are required to attend both modules</i>		Dates and modules: 10 & 11 June – Module 1: Wills, Trusts, Probate & Estates 24 & 25 June – Module 2: Taxation Issues		
THE FUNDAMENTALS OF COMMERCIAL CONTRACTS Course fee includes: iPad Mini & Interactive eBook on Commercial Contracts CPD Hours per Module: 10 Hours including 3 M & PD Skills (by group study) Fee: €1,100/€1,000* <i>Attendance on both modules is required</i> <i>Please note: Access to an iPad is essential for participation in this programme</i>		Dates and modules: 16 & 17 September – Module 1: Negotiating and Drafting Commercial Contracts 7 & 8 October – Module 2: Analysis of Key Commercial Contracts		
THE FUNDAMENTALS OF DISTRICT COURT CIVIL PROCEDURE, DRAFTING & ADVOCACY SKILLS (Focus on General Tort & Personal Injuries Litigation) CPD Hours Per Module: 10 CPD hours including 3 M & PD Skills (by Group Study) Fee: €850/€750* <i>Attendance on both modules is required</i>		Dates and modules: 30 September & 1 October – Module 1: The Fundamentals of PI Litigation; District Court Civil Procedure and Drafting Skills 14 & 15 October – Module 2 – Preparing for Trial and Court Room Advocacy		
LAW SOCIETY SKILLNET CPD CERTIFICATE IN PROFESSIONAL EDUCATION CPD Hours Per Module: Full General and M & PD Skills CPD requirement for 2016 (by group study) including 5 hours M & PD Skills (by eLearning) Fee: €1,450/€1,250* (iPad mini included in fee)* (Skillnet members*) <i>Delegates are required to attend all modules.</i> <i>Please note: Access to an iPad is essential for participation in this programme.</i>		Dates and modules: 30 September & 1 October & 14 October Theory and knowledge; Educational technology; Skills and Practice; Professional Self.		

For full details on all of these events visit webpage www.lawsociety.ie/Lspt or contact a member of the Law Society Professional Training team on

P: 01 881 5727 E: Lspt@lawsociety.ie F: 01 672 4890

*Applicable to Law Society Skillnet members

Solicitors Disciplinary Tribunal

Reports of the outcomes of Solicitors Disciplinary Tribunal inquiries are published by the Law Society of Ireland as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*

In the matter of Owen Swaine, a solicitor of Swaine & Co, 14 Father Griffin Road, Galway, and in the matter of the *Solicitors Acts 1954-2011* [9836/DT41/13] Named client (applicant) Owen Swaine (respondent solicitor)

On 13 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaints as set out in the affidavit of the applicant:

- 1) Not providing a complete file to the applicant's new solicitors in accordance with an order of the High Court,
- 2) Not replying to correspondence from the applicant's new solicitors.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €3,000 to the compensation fund in respect of each complaint,
- 3) Pay 60% of the applicant's costs of this hearing and of any person appearing before the tribunal, as taxed by a taxing master of the High Court in default of agreement and the tribunal certified for counsel.

In the matter of J Finbarr O'Gorman, a solicitor previously practising as Finbarr O'Gorman, Solicitors, Mayfield House, Hollyfort Road, Gorey, Co Wexford, and in the matter of the *Solicitors Acts 1954-2011* [7672/DT49/13]

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

On 19 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to comply with an undertaking dated 5 July 2007 furnished to Ulster Bank Ireland Limited (formerly First Active Plc) in respect of named borrowers and property at Gorey, Co Wexford, in a timely manner,
- 2) Failed to attend the meeting of the Complaints and Client Relations Committee on 13 March 2012 and 2 May 2012, despite being required to do so.

The tribunal ordered that the respondent solicitor do stand censured.

The respondent solicitor had previously been struck from the Roll of Solicitors on 9 February 2015 in High Court proceedings 2014 no 115SA.

In the matter of Niall G O'Brien, a solicitor practising as Niall O'Brien & Company, Solicitors, Chapel Hill, Lucan, Co Dublin, and in the matter of the *Solicitors Acts 1954-2011* [6355/DT88/15]

Law Society of Ireland (applicant) Niall G O'Brien (respondent solicitor)

On 9 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

- 1) Failed to comply with three undertakings furnished to Bank of Ireland Mortgages in respect of his named client and borrower and property at Co Monaghan, dated 26 February 2004, 18 April 2005, and 23 February 2006 in a timely manner or at all,
- 2) Failed to respond to correspondence from the Society dated 23 January 2014, 3 April 2014, 7 May 2014, and 20 June 2014 in a timely manner, within the time provided, or at all.

The tribunal ordered that the respondent solicitor:

- 1) Do stand advised,
- 2) Pay a sum of €1,000 as a contribution towards the whole of the costs of the Society.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin & Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the *Solicitors Acts 1954-2011* [4043/DT132/14]

Law Society of Ireland (applicant) William Colin Martin (respondent solicitor)

On 16 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral to the tribunal, he had failed to comply with an undertaking furnished to the complainants on 11 September 2008, in respect of his named client and borrower and property in Co Cork, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a contribution of €500 towards the whole of the costs of the Law Society in respect of this case and cases 4043/DT133/14 and 4043/DT134/14.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin & Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the *Solicitors Acts 1954-2011* [4043/DT133/14]

Law Society of Ireland (applicant) William Colin Martin (respondent solicitor)

On 16 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he, up to the date of referral to the tribunal:

- 1) Failed to comply with an undertaking dated 21 September

2007, furnished to Bank of Ireland Mortgages on behalf of his named clients and borrowers and property at City West Dublin in a timely manner or at all,

- 2) Failed to comply with an undertaking dated 21 September 2007, furnished to Bank of Ireland Mortgages in respect of his named clients and borrowers and property at Artane, Dublin 5, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a contribution of €500 towards the whole of the costs of the Law Society of Ireland in respect of the proceedings herein and in record no 4043/DT132/14 and record no 4043/DT134/14.

In the matter of William Colin Martin, a solicitor previously practising as Colin Martin & Company, Solicitors, 14 South Bank, Crosses Green, Cork, and in the matter of the *Solicitors Acts 1954-2011* [4043/DT134/14].

Law Society of Ireland (applicant) William Colin Martin (respondent solicitor)

On 16 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral to the tribunal, he failed to comply with an undertaking furnished on 27 September 2006 to EBS in respect of property at Ballincollig, Co Cork, on behalf of his named clients and borrowers, in a timely manner or at all.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €500 towards the costs of the Law Society of Ireland in respect of the proceedings herein and record no 4043/DT132/14 and record no 4043/DT133/14.

TACKLING 'MARRIAGES OF CONVENIENCE'

The *Civil Registration (Amendment) Act 2014* was introduced to amend the *Civil Registration Act 2004* to target what they perceived as an increase in 'sham marriages' by 'foreign nationals' for the purpose of securing immigration advantage within the State. It came into effect on 18 August 2015.

The amendment act introduced several new definitions:

- 'Foreign national' means a person who is neither an Irish citizen nor a citizen of an EU member state,
- 'Immigration advantage' means a determination in a person's favour by or on behalf of the Minister for Justice of any question relating to the grant of a visa to, or the entry into, presence in or removal from the State of a foreign national or any determination of a right to enter or reside in the State pursuant to the *European Communities (Aliens) Regulations 1977* (SI 393 of 1977), the *European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997* (SI 57 of 1997), or the *European Communities (Free Movement of Persons) (No 2) Regulations 2006* (SI 656 of 2006),
- 'Marriage of convenience' means a marriage where at least one of the parties to the marriage (a) at the time of entry into the marriage is a foreign national, and (b) enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage.

The amendment act introduced several changes to the principal act that now give the civil registration authorities the power to investigate and block a marriage if they suspect that the marriage is not

genuine. Essentially, this involved the introduction of a mechanism into the civil registration process to prevent so-called 'marriages of convenience'.

Extra hurdle

Where one party to a proposed marriage is a 'foreign national' and where they are now notifying the authorities in relation to their upcoming nuptials, they are now being met with an extra hurdle in addition to previous requirements.

Section 46 of the principal act, as amended (dealing with the notification requirement), now obliges a 'foreign national' to provide details of their immigration status, together with information set out in section 58 (see below). The civil registration authorities in all cases involving the marriage of a 'foreign national' are now inviting both parties to an interview for the purpose of reviewing such documentation and satisfying the authorities that the proposed marriage is genuine and is not solely for the purpose of securing an immigration advantage for one of the parties. This additional new layer in the process appears to have brought about additional delays, and this has been commented upon in the national press.

The principal act, at section 58(4A), sets out the criteria that are to be considered in deciding whether the marriage may solely for the purpose of securing an immigration advantage:

- If the parties to the intended marriage speak a common language,
- The period prior to the relevant notification of the intended marriage under this part during which the parties to the intended marriage are known to each other,
- The number and frequency of meetings of the parties to the intended marriage prior to the notification of the intended marriage under this part,
- If the parties to the intended marriage have lived together in the past or if they currently live together,
- The extent to which each party to the intended marriage is familiar with the personal details of the other party,
- The extent to which each party to the intended marriage intends to continue an existing commitment to mutual emotional and financial support of the other party to the intended marriage,
- The immigration status of one or each of the parties to the intended marriage who is a foreign national,
- Other than in a case where money is paid as a dowry as appropriate to the culture of one or each party to the intended marriage, if money was paid as an inducement for the marriage,
- If the one or each of the parties to the intended marriage has previously been the subject of an objection,
- Any other information regarding the intended marriage that gives reasonable grounds for considering the marriage to be a marriage of convenience.

In circumstances where an opinion is formed and the decision is taken that there is an impediment to the intended marriage, the same provisions apply in relation to appeal, and so on, as to the other grounds for objection and refusal set out in section 58.

Immigration advantage

A 'marriage of convenience' is to be considered as such only in circumstances where it can be established that it is being entered into solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage.

How will the authorities deal with cases where securing an immigration advantage is clearly one of the reasons why the parties wish to be married, but where there are also other valid reasons for the marriage? There does not appear to be clarity as to what other purposes might be considered, and it raises the very philosophical and potentially constitutional question as to what (if any) is the purpose of marriage? Should this be an objective or subjective standard? How are these to be assessed by the authorities?

There has been very little reporting in relation to the matter. The *Annual Report of the Registrar General* for 2015 may shed further light in due course. An Garda Síochána released a press release on 25 November 2015 (www.garda.ie/Controller.aspx?Page=16224) following on from 'Operation Vantage', which received considerable media attention at the time. According to the gardaí, as part of that operation, there were 55 formal objections to pending marriages made, and 22

How will the authorities deal with cases where securing an immigration advantage is clearly one of the reasons why the parties wish to be married, but where there are also other valid reasons for the marriage?



Green card hurdles

people were arrested and charged for various offences under section 69(3) of the principal act (provision of false information to the registrar) and section 29 of the *Criminal Justice (Theft and Fraud Offences) Act 2001* (custody or control of a false instrument). A further 30 marriages between EU/non-EU nationals had not proceeded, as both parties failed to show following enquires being made.

Time will tell in relation to the operation of the new provisions and how they are working in practice. The question remains as to whether the right balance is being struck in relation to the effective prevention of abuse of the immigration system and the exploitation and the trafficking of vulnerable individuals, as against the additional impingements and delays to legitimate applicants and their rights.

Ross McMahon is a solicitor with David F McMahon & Co.

Recent developments in European law

LITIGATION

Case C-223/14, *Tecom Mican SL*, 11 November 2015

The dispute concerned an agency agreement between a German and a Spanish company. The Spanish company asked a Spanish judicial officer, through the competent German authority, to serve a letter of demand on the German company through the competent German authority. The letter sought payment of a goodwill indemnity and of unpaid commission or, alternatively, disclosure of the principal's accounts. The same demand had already been made in a previous letter of demand certified for official purposes by a Spanish notary. The judicial officer refused to grant the application on the basis that no legal proceedings had been brought requiring the judicial assistance sought to be granted. The Spanish company then brought proceedings in Spain for a review of that refusal. The Spanish court referred

some questions to the CJEU regarding both the meaning of 'extrajudicial document' and the rules governing the service of such a document from one member state to another.

The CJEU held that the concept of an 'extrajudicial document' must be treated as an autonomous concept of EU law. It must be given a broad definition and cannot be limited to documents that are connected to legal proceedings alone. The concept may include documents drawn up by notaries.


The court looked to the preparatory work leading to the adoption of the regulation to determine what other documents this applies to. It concluded that the concept of an 'extrajudicial document' within the meaning of article 16 of the *Service Regulation* includes "both documents drawn up or certified by a public authority or official and also private documents of which the formal transmission to an addressee residing

abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law".

The court then considered whether, under the regulation, service of an extrajudicial document can be effected under its rules even where an earlier service has been effected through another means of transmission. Article 1(1) of the regulation makes clear that the regulation is applicable "where an extrajudicial document has to be transmitted from one member state to another for service there". This means that the regulation provides for only two situations in which the service of a document falls outside its scope: where the permanent or habitual residence of the addressee is unknown, and where that person has appointed an authorised representative in the member state of the forum. Thus, in the current case, the cross-border service of an extrajudicial document under the *Service*

Regulation remains possible.

The regulation does not establish a hierarchy between the various methods of transmission that it puts into place. The court held that service of an extrajudicial document pursuant to one of the means laid down by the regulation remains valid, even where an earlier transmission of the document was done by another means.

On 1 October 2015, the *Hague Convention on Choice of Court Agreements* entered into force in the EU (except for Denmark). The convention sets out international rules on choice of court agreements between parties to international commercial contracts. The core provisions are that a court chosen by the parties must, in principle, hear the case; any other court before which proceedings are brought must refuse to hear them; and that the judgment given by the chosen court should be recognised and enforced in other contracting states. 



STAGE IN PARIS 2016

OCTOBER–NOVEMBER 2016



The Paris Bar organises every year an International Stage in Paris and invites a limited number of lawyers from each jurisdiction to participate. The stage is a fantastic opportunity for lawyers to discover and practice French law in the heart of Paris.

The stage takes place during the months of October and November and entails: one month attending classes at the l'Ecole de Formation du Barreau and one month of work experience in a law firm in Paris. The programme also includes a visit to Brussels to know the European Institutions.

The Irish participant will be selected by the EU & International Affairs Committee of the Law Society of Ireland.

Candidates must:

- Be qualified in Ireland and registered in the Law Society.
- Have a good knowledge of French.
- Be under 40 years old.
- Have insurance cover (for accidents and damages).

Tuition is fully covered by the Paris Bar; candidates must be willing to cover other expenses (travel, accommodation, meals)

If you are interested, please email Eva Massa (e.massa@lawsociety.ie) with your CV and a letter explaining your interest in the stage (both documents in French and English)

DEADLINE FOR APPLICATIONS: Friday, 13 May 2016.

¹The EU & IA Committee will sponsor the participant with €2,000; applications for a grant can be made to the French Embassy in Dublin.

WILLS

Brosnan, Timothy (deceased), late of Knockanimirish, Headford, Killarney, Co Kerry, who died on 30 March 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Eoin Brosnan, Niall Brosnan & Co, Solicitors, 5 St Anthony's Place, College Street, Killarney, Co Kerry; DX 51007 Killarney; tel: 064 663 2505, email: info@brosnanandco.ie

Carroll, Thomas (deceased), late of 86 Ratoath Avenue, Finglas West, Dublin 11. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Paul O'Sullivan, Kevin O'Donovan & Partners, Solicitors, The Old Market House, Upper Main Street, Bantry, Co Cork; tel: 027 51440, email: odonk@securemail.ie

Cashman, Marie (also known as Máire Ní Chiosain) (deceased), late of 362 Griffith Avenue, Dublin 9, who died on 18 March 2016. Would any person having knowledge of the whereabouts of any will made by the said deceased, and/or title deeds to the above property, please contact Geraghty & Co, Solicitors, 1 Rosemary Avenue, Eyre Square, Galway; tel: 091 565 258, fax: 091 569 777, email: donal@geraghty.ie

RATES**professional notice rates****RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:**

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for June 2016 *Gazette*: 16 May. For further information, contact the *Gazette* office on tel: 01 672 4828.

No recruitment advertisements will be published that include references to years of post-qualification experience (PQE). The *Gazette* Editorial Board has taken this decision based on legal advice, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

Conroy, Michael (deceased), late of Trumera, Mountrath, Co Laois. Would any person holding or having the knowledge of a will made by the above-named deceased, who died on or about 6 March 2015, please contact Messrs James E Cahill & Company, Solicitors, Market Square, Abbeyleix, Co Laois; tel: 057 873 1246, email: donaldwunne@securemail.ie

Farrell, Laurence Mary Dermot (deceased), late of 15 Allenton Lawns, Ballycragh, Tallaght, Dublin 24, who died on 30 June 2009. Would any person having knowledge of the whereabouts of the original last will and testament of the above-named deceased, dated 27 February 2009, please

contact Colm O'Cochlain, Colm O'Cochlain & Co, First Active House, Old Blessington Road, Tallaght, Dublin 24; DX 104017 Tallaght; tel 01 459 0684, email: colm@ocochlain.ie

Hayes, Damien (deceased), late of 38 Rialto Court, Rialto, Dublin 8, who died on 31 December 2015. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors of 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967, email: info@johnstonsolicitors.ie

Higgins, Mary Elizabeth (deceased), late of 10 Monastery Grove, Enniskerry, Co Wicklow,

and formerly of Grove Cottage, Kilmolin, Enniskerry, Co Wicklow, who died on 20 March 2016. Would any person having knowledge of any will executed by the above-named deceased please contact Home and Farm Conveyancing, Solicitors, Market Square, Manorhamilton, Co Leitrim, tel: 071 985 5302, email: titles@irishconveyancing.com

Kafe, James (deceased), late of 22 The Avenue, Highlands, Drogheda, Co Louth. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Kellie Nolan, O'Leary Maher, Solicitors, 191 Howth Road, Killester, Dublin 3; tel: 01 833

MISSING HEIRS, WILLS, DOCUMENTS & ASSETS FOUND WORLDWIDE

Now in Ireland

FREEPHONE 1800 210210
(Ireland Only)

international probate genealogists

www.findersinternational.ie

Finders with insurance by AVIVA



Free 'Heir Hunters' App now available





professional notices

1900, email: kellie@olearymaher.ie

Kennedy, Philomena (deceased), late of 66 Gledswood Park, Clonskeagh, Dublin 14. Would any person having knowledge of the whereabouts of any wills executed by the above-named deceased please contact Yvonne McGuirk, Solicitors, Main Street, Celbridge, Co Kildare; tel: 01 627 2900, email: yvonnemcguirk@eircom.net

Maxwell, Mervyn (deceased), late of Killinane, Dunlavin, Co Wicklow, who died on 27 February 2016. Would any person holding or having knowledge of the whereabouts of any will made by the above-named deceased please contact Audrey Goode, Byrne & O'Sullivan, Solicitors, Windsor Lodge, Edenderry, Co Offaly; tel: 046 973 1522, email: audrey.goode@byrneosullivan.ie

Nolan, Eileen Ellen Bernadette (deceased), late of 127 Hazelmere, Blessington Road, Naas, Co Kildare, who died on 4 February 2016. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Aisling O'Hanlon, William Fleming & Partners, Solicitors, Belmont House, Kilkenny Road, Carlow; tel: 059 914 6620, fax: 059 914 6632, email: office@aoh.ie

Payne, Gerard (deceased), late of 18 Keane Street, Killalee, Co Limerick, who died on 16 January 2015. Would any person having knowledge of the whereabouts of any will made or purported to be made by the above-named deceased, or if any firm is holding same, please contact John Cooke, solicitor, Hospital, Co Limerick; DX 157 003 Hospital; tel: 061 383 388

Ryan, Joan (deceased), late of Danesfort Road, Bennettsbridge, in the county of Kilkenny, who died on 6 August 1999 at St Columba's Hospital, Thomastown, in the county of Kilkenny. Would any

person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elizabeth Walsh, Harte Solicitors, 39 Parliament Street, Kilkenny; tel: 056 772 1091 or email: info@hartesolicitors.ie

Ryan, Martin (deceased), late of Danesfort Road, Bennettsbridge, in the county of Kilkenny, who died on 7 July 1998 at St Columba's Hospital, Thomastown, in the county of Kilkenny. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elizabeth Walsh, Harte Solicitors, 39 Parliament Street, Kilkenny; tel: 056 772 1091 or email: info@hartesolicitors.ie

Wootton Veronica (otherwise Vera) (deceased), late of 'Mariem-Ana', Portmanna, Clonee, Co Meath, and Knightsbridge Nursing Home, Longwood Road, Trim, Co Meath, who died on 4 January 2016. Would any person holding or having any knowledge of the whereabouts of any will made by the above-named deceased please contact John Kelly, Ken Smyth & Co, Solicitors, Suite One, Merion House, 1-3 Lower Fitzwilliam Street, Dublin 2; tel: 01 642 5670, fax: 01 642 5665, email: johnkelly@kensmythandco.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises comprised in folio 3927L Co Waterford, situated at Exchange Street, Waterford: an application by W Gerard O'Hare Take notice that any person having any interest in the freehold estate of the following property: the premises comprised in folio 3927L Co Waterford, situated at Exchange Street, Waterford, held under indenture of lease dated 15 June 1833 between William Hughes of the one part and Joseph Dunn Lapham of the other part for a term of 190

years from 25 March 1833.

Take notice that W Gerard O'Hare (the applicant) intends to submit an application to the county registrar for the city of Waterford for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 6 May 2016

Signed: Frank Murphy (solicitor for the applicant), Priory House, 19 Priory Office Park, Stillorgan, Blackrock, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by The Gourmet Shop Limited

Any person having any interest in the fee simple estate or any intermediate interest in all that and those the hereditaments and premises known as 48 Highfield Road, Rathgar, in the city of Dublin, held under lease made on 7 March 1971 between John Conroy of the one part and Alfred Howard and William Howard of the other part for a term of 189 years from 1 May 1871 at a rent of £47 per annum.

Take notice that The Gourmet Shop Limited, being the person entitled to the lessee's interest under the said lease, intends to apply to the Dublin county registrar at Áras Uí Dhálaigh, Inns Quay,

Dublin 7, for the acquisition of the fee simple and/or any intermediate interest in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the said property is called upon to furnish evidence of their title thereto to the undermentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, The Gourmet Shop Limited intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown and unascertained.

Date: 6 May 2016

Signed: O'Connor Solicitors (solicitors for the applicant), 8 Clare Street, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Michael Conway: premises known as the Lough Pharmacy, Togher Shopping Centre, Togher Road, Cork

Take notice that any person having an interest in the freehold estate of

**Dr Charles Dupont FRCPI,
Consultant Dermatologist,
available to do legal reports
Email: cdupont@eircom.net
Tel: 01 2692017**

**Is your client
interested in selling
or buying a
7-day liquor licence?**

**If so, contact Liquor
Licence Transfers**

**Contact
0404 42832**

the property specified hereunder or in any intermediate leasehold interest therein should give notice to the undersigned solicitors within 21 days of this notice. The premises concerned are all that and those part of the lands of Ardmaning Beg in the barony and in the county borough of Cork, with the buildings thereon now called as known as the Lough Pharmacy, Togher Shopping Centre, Togher Road, Cork, held together with other premises (together known as Togher Shopping Centre) under an indenture of lease made on 28 October 1929 between Dame Annie Clarke Travers, Agnes Isabela Clarke Travers, Christian Izod Alexander, Mordaunt Thomas Leslie Travers and Evelyn Margaret Stuart of the one part and Cornelius Carey of the other part for the term of 99 years from 29 September 1932, subject to the yearly rent of £36.

Take notice that the above-named applicant intends to apply to the county registrar for the county borough of Cork for the acquisition of the freehold interest and all intermediate interests in the above-mentioned premises, and any party asserting that they hold an interest superior to the applicant therein is called upon to furnish evidence of title to the same to the under-mentioned solicitors within 21 days of the date hereof.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the

end of 21 days from the date of this notice and will apply to the said county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to such superior interest, including the freehold reversion, in the aforementioned premises are unknown or unascertained.

Date: 6 May 2016

Signed: CF O'Connell & Company (solicitors for the applicant), 55 Grand Parade, Cork

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Sanctuary Landscaping Limited

Take notice that any person having a freehold interest or any intermediate interest in all that the premises comprised at entry no 1, part 1, of folio 10116L Co Kildare, situate at St Patrick's Terrace, Newbridge Road, Naas, Co Kildare, in the barony of Naas North, in the electoral division of Naas Urban, held under an indenture of lease dated 10 November 1936 and made between Eustace L Mansfield of the one part and Michael Fogarty of the other part for the term of 99 years from 29 September 1936, subject to the yearly rent of £5.9.6d thereby reserved unto the covenants and the conditions on the part of the lessee therein contained.

Take notice that Sanctuary Landscape Limited, being the party currently entitled to the lessees' inter-

est in the 1936 lease, intends to apply to the county registrar for the county of Kildare for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice. In default of any such notice being received, the said Sanctuary Landscape Limited intends to proceed with an application before the county registrar of Kildare at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid are unknown and unascertained.

Date: 6 May 2016

Signed: Reidy Stafford (solicitors for the applicant), Market Square, Kilkullen, Co Kildare; ref: SP

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the land and premises known as no 29 Charleville Road, Phibsboro, Dublin 7: an application by Sylvarna Limited

Take notice that any person having an interest in the freehold estate or any superior or intermediate interest in the property known as no 29 Charleville Road, North Circular Road, in the parish of Grangegorman, barony of Coolock and city of Dublin, being the land demised by a lease dated 16 April 1894 made between William Ellis of the one part and Alice Rendell of the other part for the term of 148 years and six months from the date of the lease, subject to the yearly rent of £7.7s (€9.33), should give notice of their interest to the undersigned solicitors.

Take notice that the applicant, Sylvarna Limited, intends to apply to the county registrar for the county of the city of Dublin on

19 July 2016 in Court 35, Áras Uí Dhálaigh, Four Courts, Dublin 7, and any subsequent date as the court may determine, for the acquisition of the freehold and all intermediate interest in the said property, and any party asserting that they hold an interest therein is called upon to furnish evidence of their title to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice of interest being received, Sylvarna Limited intends to proceed with the application before the county registrar on the aforementioned date and will apply to the county registrar for the county of the city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interests in the said property are unknown or unascertained.

Date: 6 May 2016

Signed: EP Daly & Co (solicitors for the applicants), 23/24 Lower Dorset Street, Dublin 1

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 6 Kelly's Avenue, Dun Laoghaire, Co Dublin

Take notice any person having any interest in the freehold estate or any superior interest in the following property: the premises known as 6 Kelly's Avenue, Dun Laoghaire, Co Dublin, held under indenture of lease dated 7 March 1947 and made between Edward Charles Smyth of the one part and William Furlong and Nicholas Furlong of the other part for a term of 140 years from 1 February 1947.

Take notice that Mary Delehanty intends to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforesaid

MA in Irish Language and European Law





Are You a Lawyer with Good Irish?

New regulations mean increasing demand for lawyers who are qualified to work through Irish, both in Europe and in Ireland.

Be ready for jobs in this area with UCC's new MA in Irish Language and European Law!

More information: www.ucc.ie/en/ckd49 or email Prof. Pádraig Ó Macháin (p.omachain@ucc.ie)






professional notices

property to the below named within 21 days from the date of this notice.

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

Date: 6 May 2016

Signed: Philip M Joyce & Co (solicitors for the applicants), Bailey Street, Kiltenaule, Thurles, Co Tipperary

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Terence Kennedy and Rosemary Kennedy and in the matter of property situate at 2 Frankfort Castle, Dundrum, Dublin 14, in the city of Dublin

Take notice any person having an interest in the freehold estate of the following property: all that and those part of the premises demised by a lease dated 29 August 1929 between Michael Doyle of the one part and Angela Shortt of the other part and being part of the premises known as Frankfort Castle, being part of the lands of Shanahy, otherwise Churchtown, in the half barony of Rathdown and county of Dublin, more particularly demised by an indenture of lease made on 29 August 1929, and made between Michael Doyle of the one part and Angela Shortt of the other part and therein described as all that and those that part of the lands with the dwellinghouse, offices and building thereon, being portion of all that and those the lands with the dwellinghouse, offices and buildings thereon, formerly called and known by the name of 'Frankfort Lodge', but now called and known by the name of 'Frankfort Castle', being part and parcel of the townland of

Shanahy, otherwise Churchtown, situate, lying and being in the half barony of Rathdown and county of Dublin and measuring from front to rear on the north side 397 feet, ten inches; from front to rear on the south side, 399 feet; in width in the front, 74 feet and four inches; and in width in the rear, 71 feet one-and-a-half inches, which said hereby demised premises are more particularly delineated and described on the map hereon endorsed and thereon coloured red, together with the right of way from the roadway over the avenue on the said map coloured green, to hold the same unto the lessee from 29 August 1929 for the term of 500 years, yielding and paying therefor during the said term of yearly rent or sum of Stg£15 by equal half yearly payments to the lessor on 1 December and 1 June in every year without any deduction, and to the covenants on the lessee part and conditions therein contained.

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

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

Date: 6 May 2016

Signed: Richard Dennehy (solicitor for the applicant), 189a Botanic Road, Glasnevin, Dublin 9

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 30 Lower O'Connell Street, Dublin, Ireland: an application by Aviva Life & Pensions UK Limited

Any person having a freehold estate or any intermediate interest in all that and those 30 Lower O'Connell Street, Dublin 1, Ireland, being currently held by Aviva Life & Pensions UK Limited under an indenture of lease dated 15 November 1944 between Terrance Marsh Jackson, Dennis Richard Martin Jackson, Florence Marsh Potts and Frances West Feiley of the one part and Matthew Joseph McCabe of the other part, and the subject of a superior indenture of lease dated 26 March 1763 between Eusebius Loe of the one part and Henry Deering of the other part, and of a superior tenancy of unknown terms between Charles Caldwell of the one part and Eusebius Loe of the other part.

Take notice that Aviva Life & Pensions UK Limited, as lessee under the said lease, intends to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

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

Date: 6 May 2016

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

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of 43 Drumcondra Road, in the parish of St George and city of Dublin – applicant: Layden Properties Drumcondra Limited

Take notice that any person having any interest in the freehold estate or any intermediate estate of the following property: all that and those the dwellinghouse, shop and premises known as 43 Drumcondra Road, situate in the parish of St George and city of Dublin, held under an indenture of lease dated 2 April 1928 made between Daniel Daly of the one part and Margaret Allen of the other part for a term of 192 years from 29 September 1882, subject to the yearly rent of £5 therein reserved and the covenants and condition on the part of the lessee therein contained, and under an indenture of lease dated 11 October 1882 between Francis Butterly of the one part and James Martin of the other part – take notice that the applicant intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 6 May 2016

Signed: Anne Marie Maher, DFMG Solicitors (solicitors for the applicant), Embassy House, Ballsbridge, Dublin 4

ita erat quando hic advendi

Court bombshell goes down a blast

Three people were injured in an explosion in a Pakistani court after the judge asked a police officer to explain how a hand grenade works.

Instead of describing how the weapon works, the constable produced a grenade and pulled out the pin, resulting in a “loud explosion”, *The Irish Times* reports.

Constable Liaquat Ali was injured by the blast moments after he assured the judge that the piece of evidence had been disarmed. Court assistant Shoab Ahmed was also hurt by shrapnel wounds to his hand and head, while the judge fell off his chair, witnesses said.



Sniffer dogs get sniffy about drugs

A report into Manchester Airport security has revealed that sniffer dogs found no heroin or cocaine in the six months to June 2015 – but were quick to sniff out sausages and cheese in luggage, reports *The Guardian*.

The airport, Britain’s third largest, has six detector dogs and

new kennels, which cost Stg£1.25 million. One dog made “accurate detections” – but most were of cheese or sausages, which the report said was a poor return on the annual cost of running the canine team.

To give the dogs their due, they helped seize more than

46,000 cigarettes, 60kg of tobacco, 181kg of illegal meat, and £28,000 in cash. The dogs successfully detected illegal drugs on three occasions, finding small amounts of class B substances. They also found tablets of human growth hormone, Viagra, and Bromazepam.



Plane stupid!

A man on a China Southern flight shocked airline crew and fellow passengers by opening a plane’s emergency exit door – “to get some fresh air” – while it was taxiing for take-off, *The Independent* reports.

The unnamed man, who was sitting towards the back of the plane, opened the door of flight CZ3693 at Chengdu Shuangliu International Airport in southwest China’s Sichuan province. He told cabin crew that he needed to “get some fresh air before the plane took off”, adding that the aircraft was too warm. An airport

spokesman said that, after the door was opened, airport staff closed it from the outside and re-examined the plane before take-off.

Under China’s laws, any individual who causes deliberate destruction that endangers flight safety, or causes serious consequences, can be held criminally liable. Earlier this year a tourist was escorted from a Jet Airways flight in Mumbai by security officials after allegedly opening an emergency exit door “just for fun”, seconds after landing.


Memory man solves his own cold case – 30 years later

A Canadian man solved his own cold case by remembering his identity, 30 years after he disappeared, *The Guelph Mercury* reports. Edgar Latulip, who has the cognitive abilities of a child, was 21 when he vanished in

September 1986 from a group home in Kitchener, Ontario. His mother, Sylvia Wilson, last saw her son after he had been hospitalised following a failed suicide attempt. She suspected foul play, thinking that he might have

been abused because of his mental disability, or accidentally killed and his body hidden.

Edgar’s case got a big break last January after the missing man told a social worker in St Catharines

– 80 miles away from where he had disappeared – that he had remembered his name, from which it was discovered that he was a missing person. A DNA test confirmed his identity. 



LONDON



Our Magic Circle, U.S and International law firm clients are seeking ambitious Irish solicitors for opportunities within their London offices. We are currently recruiting for roles within most practice areas including:

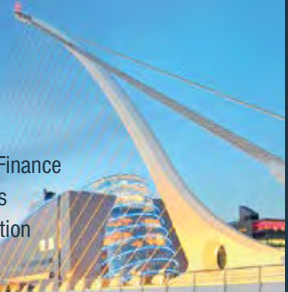
- Banking & Finance
- Corporate & Funds
- Litigation & Dispute Resolution
- Tax
- Pensions

DUBLIN • LONDON

We work closely with our Irish clients and are recruiting for positions in the following practice areas:

DUBLIN

- Employment
- Banking & Asset Finance
- Corporate & Funds
- Commercial Litigation



OUR GLOBAL CLIENT BASE ENABLES US TO SOURCE OUTSTANDING LEGAL OPPORTUNITIES FOR IRISH SOLICITORS. WE ARE RECRUITING FOR ASSOCIATE ROLES IN THE FOLLOWING JURISDICTIONS:

CAYMAN/BVI • DUBAI • HONG KONG • JERSEY



ROGERS' bespoke, attentive and professional careers service enables Irish solicitors to maximise their market potential. Whether actively seeking a new position or not, we are always happy to offer advice to you. Contact Greg Rogers LL.B, Solicitor on +353 (1) 2091917 or by email to grogers@rogers-recruitment.com www.rogers-recruitment.com



Legal & Regulatory Counsel

We are looking for a lawyer who will be heavily involved in the regulatory issues relating to Paddy Power Betfair's business. A key focus for the chosen candidate will be regulatory advice in relation to Paddy Power Betfair's retail business. Candidates shall be expected to demonstrate experience in the following areas:

- Handling legal/regulatory matters and dealing with regulators either in-house or in private practice;
- Evidence of some experience of advising in relation to regulated industries (e.g gambling, telecoms, utilities);
- Litigation experience would be useful (but not essential);
- As part of the role will also relate to international legal and regulatory matters, experience of dealing with cross-border legal issues will be an advantage;
- Some experience of dealing with industry compliance matters.

The Candidate

The successful candidate should have at least 2+ years post qualification experience in a regulatory role, but we're not obsessed by PQE. What's more important is that you have trained at a highly regarded law firm, ideally with experience of an in-house secondment. Our chosen candidate will be a great communicator and have the ability to balance the commercial demands of the business against legal risk. Fluency in another European language would be an advantage but not essential. The role will be based in Dublin but regular travel to London and other international destinations will be required.

Contact: Interested parties contact Ken Carney at kcarney@paddypowerbetfair.com.

READ THIS!

I am recently retired and concerned at the prospect of "having nothing to do".

I qualified as a solicitor and spent some years in private practice before taking up a position in business where I spent the last 30 years.

I'm now looking for a position to keep my brain ticking over, three to four days a week, and would welcome the chance

to pass on my skills and experience.

I'm not looking to be the next managing partner and certainly don't want to be paid as such.

If you think there might be a position in your firm which might suit, please contact **box 01/04/16**, briefly outlining your interest in our getting together.

Please also leave your name and contact telephone number.

the world is your oyster



For legal recruitment advertising in the Gazette

Contact **Seán Ó hÓisín**
Tel: 01 8375018
Mobile: 086 8117116

Email: sean@lawsociety.ie



Keane M^cDonald
executive legal recruitment

Keane McDonald is an executive search firm focusing on legal appointments. We specialise in the recruitment of high calibre legal professionals. Applicants are assured the utmost confidentiality and discretion when working with us.

Opportunities

Medical Negligence Solicitor, Dublin

Our Client, a leading law firm, has a vacancy for a Medical Negligence Solicitor. The successful applicant will have solid experience in the field of Healthcare Law. The work will involve managing contentious matters and providing healthcare advice. Strong defence experience from a respected law firm in Ireland or the UK is essential.

Banking Solicitors, Dublin

Our Client, a highly respected Irish firm, has a number of vacancies for top calibre experienced Banking Solicitors to join their growing finance team. Successful applicants will have experience in advising on corporate banking transactions to include secured and unsecured lending, acquisition finance, syndicated lending and debt restructuring. These opportunities will suit ambitious lawyers seeking to fast track their career.

Corporate Lawyers, Dublin

Our Client, a leading law firm, is seeking top calibre Corporate Lawyers from recently qualified level upwards. You will have the opportunity to work on cutting edge projects in a dynamic and driven environment. Excellent transactional, drafting and communication skills are essential. Top 20 law firm background is preferred.

Commercial Real Estate Solicitors, Dublin

Our Client's property department is at the forefront of commercial property law in Ireland. The firm is currently recruiting for a number of experienced Solicitors. The successful applicants will advise on every aspect of commercial property law, in particular on land acquisitions, property developments and tax based property acquisitions. Excellent drafting & negotiation skills are essential as is property experience from a large, medium or boutique Commercial Property firm.

Funds Lawyers, Dublin

We have a number of vacancies for Funds Lawyers with the leading firms in the field. The successful applicants will have solid experience in the investment funds industry and knowledge of UCITS, Non-UCITS & Hedge fund products as well as a clear understanding of the AIFMD regulatory framework. Leading Irish or International firm experience is preferred.

Aviation Finance Lawyers, Dublin

Our Client, a leading asset finance practice, has a number of vacancies for experienced lawyers at all levels. The team works with a variety of clients including financial institutions, export credit agencies, lessors, leasing companies, manufacturers and operators in the negotiation and preparation of documents for the financing, sale, purchase and leasing of aircraft. Junior Solicitors keen to move into this field must have a banking or corporate transactions background.

Lawyers, Australia

We have a number of exciting roles in Australia. Please email Yvonne Kelly at ykelly@keanemcdonald.com for further details.

**To apply for any of the above vacancies,
please contact Carrie Richmond in strict confidence on +353 1 6401988.
Alternatively please email your CV to crichmond@keanemcdonald.com
For a comprehensive list of our vacancies visit
www.keanemcdonald.com**

*Fitzwilliam Business Centre
77 Sir John Rogerson's Quay
Dublin 2*

Tel: +353 1 6401988

*Web: www.keanemcdonald.com
Email: info@keanemcdonald.com*

Successful Cork practice is currently seeking a Private Client Solicitor to manage a broad client portfolio.



Solicitor - Cork

Private Client

Salary circa €80,000

The position offers an excellent opportunity for a talented solicitor to further her/his career in the Tax & Estate Planning area. This is an attractive position offering lifestyle and work/life balance whilst working in a prestigious firm and premises with modern systems etc. The candidate will have the ambition to manage and the capacity to undertake a level of business development.

The successful applicant, who will have experience and competence in the area of Capital Taxes, will be expected to implement a range of transactions for a wide variety of clients to include Voluntary Transfers, Tax Planning, Drafting Wills, Estate Planning, Law of Succession, Probate and the Administration of Estates.

This is an excellent permanent role for an enthusiastic solicitor looking to advance their career within an established and successful practice. There is a strong element of progression available within this role.

Requirements

- Confidence in one's own ability with the capacity to advise and the authority to lead.
- Qualified Solicitor or Barrister with at least six years' experience
- She/he will ideally have AITI, STEP qualification or alternatively proven experience in CGT, CAT, Wills and Probate field.
- Empathy with clients essential and also the interest to develop new client relationships.
- Candidates will have a strong legal background and have previously worked in this field within a leading practice.
- Strong research and drafting skills.
- Ability to act without supervision.

If you are interested in this rewarding role send your CV in strict confidence to pmccarthy@lincoln.ie or speak about the role confidentially to Patricia McCarthy / John Macklin on 01-661 0444.



We have significant new opportunities for practitioners across both practice and in-house from Newly Qualified to Partner level. Please visit our website for a full list of opportunities available.

COMMERCIAL BANKING LAWYERS

We are currently looking for Commercial Banking Solicitors with the ability to perfect securities over unencumbered assets and a quick thinking know how in bank lending and security. Exposure to loan documentation, drafting transactions, reviewing documentation, workout agreements, litigation, and strong transactional work desired.

PROPERTY LAWYER

Our client is seeking to hire into their Tier one property department. Work will include the acquisition and disposal of all types of interests in real estate; commercial leases; secured lending and property investment; advising liquidators, receivers, examiners; NAMA work; planning disputes; property litigation.

FUNDS LAWYER

Our client, a Leading Commercial Firm in Dublin are currently looking to add experienced Funds Solicitors to join their firm up to Associate Level. These additional hires are due to growth within the firm. Excellent terms and career progression for suitable candidates.

COMMERCIAL LITIGATION LAWYER

One of Ireland's leading commercial law firms, are currently looking to recruit a Commercial Litigation Lawyer to join their market leading team. The role will include advising Irish and International corporate groups on a wide range of commercial matters, concentrating in the subjects of financial services litigation, shareholder disputes, professional negligence claims, competition and regulatory disputes.

For an exploratory conversation on any of the above opportunities, please contact in confidence John Macklin of Lincoln Recruitment.



John Macklin
LL.B, LL.M, MBA, Attorney-at-law
Director Legal Division
jmacklin@lincoln.ie

5 Fitzwilliam Square, Dublin 2 | 01 661 0444

Like us,
You are ambitious.

You know exactly where you want to go, and we can help you get there.

Like you,
We are collegiate.

We share your legal experience, enthusiasm and expertise.



Lincoln
Recruitment
Specialists

Our experience meets your expertise



MAPLES

Professional Support Lawyer (PSL) Opportunities

Maples and Calder is a full service leading international law firm, advising financial, institutional, business and private clients on the laws of Ireland, the Cayman Islands and the British Virgin Islands.

This year the Maples group in Ireland, Maples and Calder and its affiliated company Maples FS, celebrates its ten-year anniversary. Since our establishment in Ireland, we have built a strong market position as a full service Irish law practice. We combine an extensive knowledge and experience of Irish law with the in-depth strength of a global law firm to deliver the highest quality legal advice.

The wider Maples group comprises more than 1,300 staff globally, almost 350 of whom are based in Dublin. MaplesFS, provides specialised fiduciary, accounting and administration services to corporate, finance and investment fund entities.

To support the ongoing growth of the firm and our position as one of Ireland's leading law firms we are seeking to hire a number of additional Professional Support Lawyers ("PSL").

The Roles

The PSL roles will support the following Irish law practice groups, Investment Funds, Finance, Litigation, Corporate, Commercial Property and Tax. These positions will be based in the Dublin law office and will be part of a team that supports over 230 staff. The PSL roles will be responsible for the management of Know-How, continuing professional development, and precedents in one or more of our areas of specialisation. The PSL will also work closely with the Firm's partners in the delivery of relevant projects. These are permanent roles and the key responsibilities will include, but are not limited to:

- Applying the understanding of market practice in developing precedents, client briefings, presentations and working practices for fee earners.
- Providing support to fee earners in researching points of law and keeping them abreast of new developments.
- Ensuring Know-How is current, readily available and accessible to fee earning staff.
- Contributing to training sessions aimed at briefing fee earners on changes to law, practice and precedents.
- Liaising with fee earners, and contributing as and when required to the production and/or proof-reading of articles, briefings, newsletters or other materials for circulation to clients.
- Actively participating in new starter, trainee, and intern inductions, providing an overview of the PSL role and functions.

The Applicants

These roles represent a great opportunity for qualified solicitors or barristers to work within a rapidly growing firm that is

committed to excellence in every aspect of its performance. These roles also represent an excellent opportunity to develop and grow as a PSL in a leading law firm.

The successful candidates will be self-starters who have the ability to work independently as well as part of a team. Being flexible, highly organised and having strong attention to detail are also key requirements. Full details are as follows:

- At least 3 years' post qualification experience gained within a top tier law firm or in a commercial/property practice at the Bar.
- Previous PSL experience preferred.
- Strong academic background.
- Sound knowledge of Irish law in the relevant practice areas.
- Excellent analytical and research skills.
- Excellent communication skills, both written and verbal.
- Strong drafting skills coupled with attention to detail.
- Excellent organisational and time management skills.

The Benefits

There is a competitive salary and benefits package on offer for each of these roles.

Application Details

Qualified applicants should send a brief letter of application and an up to date copy of their CV to careers@maplesandcalder.com.

The closing date for applications is Friday, 20 May 2016.

maplesandcalder.com



TIME TO MOVE?

Corporate Partner

Competing successfully against Big 6 firms for high profile mandates, this leading commercial law firm seeks to appoint an ambitious partner for its growing corporate M&A group. Although advantageous, client portability is not a prerequisite. Basic salary will be at the upper end of the Irish market and the successful candidate will have a clear path to equity. Suitable candidates will currently be operating at partner level in a large commercial firm in Dublin or London.

Funds Associate

This leading Big 6 Irish law firm seeks to appoint a talented associate to its highly regarded funds department. The team, which has seen double digit year on year revenue growth, advises major institutional investors on a broad range of UCITS and alternative products as well as fund regulatory matters. Suitable candidates will have gained a minimum of 2 years' Irish funds experience with a Big 6, mid-tier or international firm in Dublin, London or offshore.

Aviation Finance Associate

The aviation finance group of this Big 6 firm has garnered international plaudits for its market leading team which acts both as lead counsel on domestic deals and Irish counsel in complex cross border aviation financings. Due to steady workflows, the firm seeks to hire a talented junior to mid-level associate. Suitable candidates will have gained a minimum of 2 years' aviation finance experience with a Big 6, mid-tier or international firm in Dublin or with a City of London firm.

Newly Qualified Positions

The leading commercial law firms in Dublin across the Big 6, Top 10 and international arena are currently recruiting at newly qualified solicitor level across a range of departments. At present, there are opportunities in General Banking, Aviation/ Asset Finance, Debt Capital Markets, Corporate M&A, Real Estate, Funds, Tax, Medical Negligence, Construction and Pensions. Basic salaries currently paid by the Big 6 Irish law firms for Newly Qualified Solicitors range from €58,000 to €63,000. Several of the Top 10 law firms pay in line with the top paying Big 6 firms. Offshore firms typically pay ten percent above the top domestic rate. Benefits generally include bonus, pension and health insurance.

Regulatory Partner

This top ten firm has successfully grown its banking department over the last 3 years and now seeks to appoint a partner to spearhead the development of a financial services regulatory law unit. A newly created role within the firm, the appointee will be expected to leverage established client relationships. Suitable candidates will currently be operating at a senior level in private practice or in-house with a financial institution in Dublin or London.

M&A Associate

The corporate M&A department of this Big 6 firm enjoys an unrivalled position in the Irish market and has acted on the majority of the headline domestic and global deals in Ireland over the last five years. With busy workflow, the firm seeks to hire a talented junior to mid-level associate to join their team. Suitable candidates will have gained a minimum of 2 years' corporate M&A experience with a Big 6, mid-tier or international firm in Dublin or with a City of London firm.

Construction Associate

This award winning Big 6 law firm seeks to appoint an ambitious associate to the non-contentious team within its high profile construction group. The group works with a broad range of clients locally and internationally including financial institutions, contractors, designers, developers, corporates, government and local authorities. Suitable candidates will have gained 3-5 years' relevant experience with a large commercial firm in Dublin, Cork or the UK market.



For an exploratory conversation about career opportunities, please submit your CV to bryan.durkan@hrmrecruit.com or contact me by phone on +353 1 632 1852. All discussions and applications are strictly confidential.



www.benasso.com



Recognising talent's one thing...
finding the truly successful
fit is another

Talk to the Irish Legal Recruitment Specialists

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

Commercial Litigation – Associate to Senior Associate

Our client is a highly successful mid-tier practice seeking to recruit a solicitor with strong exposure to Circuit and High Court litigation. You will have worked with a well-respected firm and be keen to deal with high calibre clients and challenging cases.

Intellectual Property Specialist – Associate to Senior Associate

An excellent opportunity has arisen for a specialist intellectual property practitioner to join a leading Irish law firm. You will have experience of acting for a blue chip client base dealing with complex matters. You will also be a team player with strong technical skills. This represents a significant opportunity for career advancement for the right candidate.

In House – Commercial/Regulatory/Compliance – Assistant to Associate

Our client is a leading energy supplier seeking a commercially astute lawyer to join its existing team. The successful candidate will have good experience in drafting and negotiating commercial agreements. He/she will also be confident at advising on a range of regulatory/compliance issues across a wide variety of sectors.

In House Legal Counsel (Commercial Lawyer/Contract Manager) – Associate to Senior Associate

Our client is a leading engineering and technology services company with an enviable track record in providing innovative solutions to, inter alia, the energy sector. The Legal Counsel/Contract Manager duties will include but are not limited to, supporting the sales teams, reviewing customer terms and conditions, advising on risk profiles prior to submission of tenders, drafting terms and conditions and negotiating with customers.

Litigation/Defence Personal Injury – Associate

Our Client, an Insurance and Risk law firm, is seeking to recruit a Litigation/Personal Injury Solicitor to assist in dealing with all aspects of personal injury litigation including defending catastrophic injury cases, fraudulent claims and disease cases.

Projects/Construction – Partner

Our Client is a full-service international law firm seeking to recruit a Projects/Construction Partner to assist in the expansion of its Dublin office. You will possess strong technical drafting skills and the ability to deliver a well-focused client service, giving clear, timely and practical legal advice coupled with the pre-requisite enthusiasm for and experience in, business development.

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

**Benson
& Associates**
Legal Recruitment Specialists