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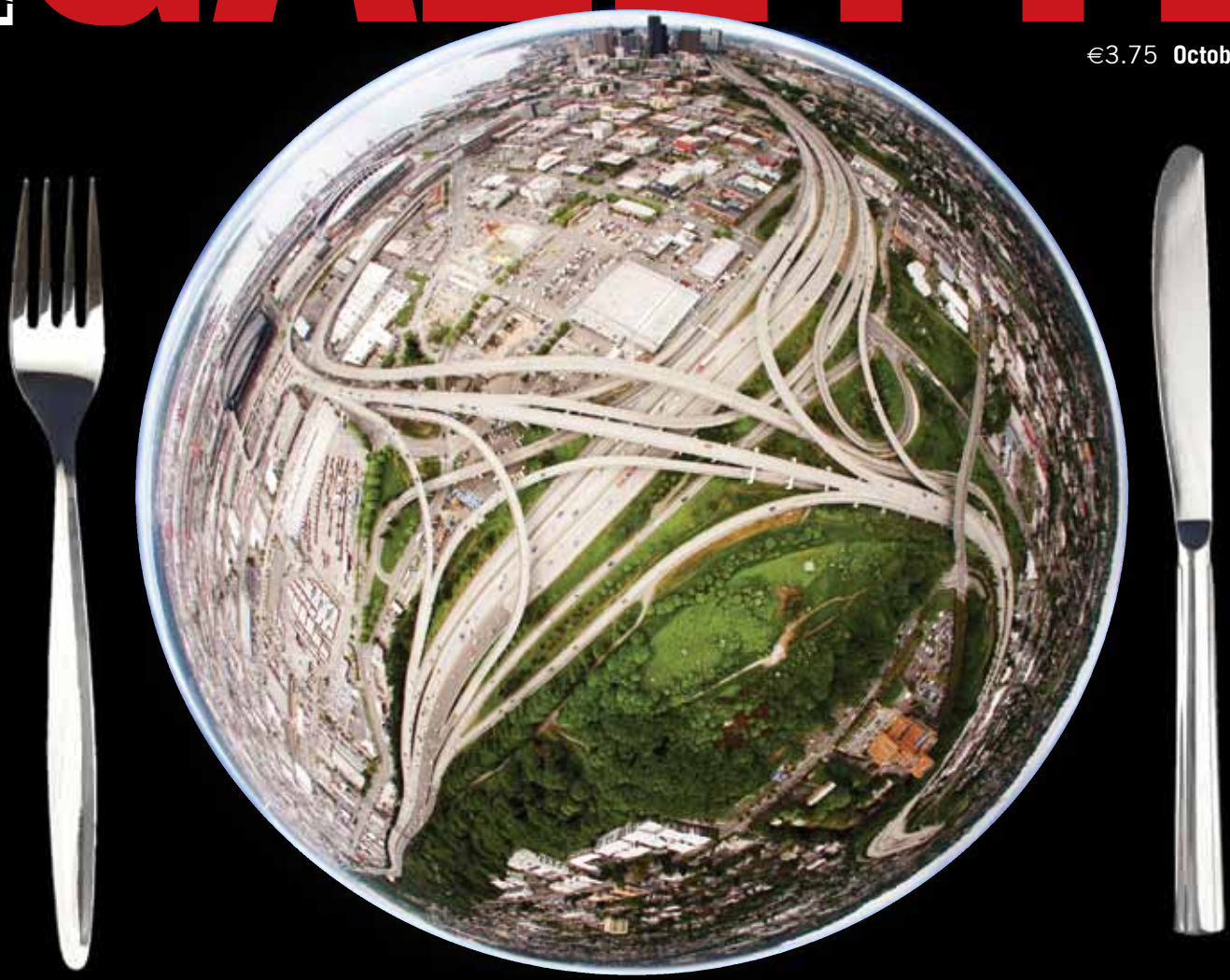
Spelling out the ABCs of redundancy for employers and workers

Great white hope
The new 'white-collar crime act' is a welcome step in the right direction

LAW SOCIETY GAZETTE

€3.75 October 2011



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ADAPTING TO CHANGE

Charles Darwin said: "It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change."

As I write this message a few days before the publication of the *Legal Services Bill*, I believe we will have to remember the words of Darwin in the weeks, months and years ahead.

A recent survey of the profession by the DSBA reveals the following:

1) Conveyancing remains the main area of expertise for the profession for as many as 83% of those surveyed,
2) Approximately two-thirds of solicitors have taken pay cuts,
3) Nearly 40% of firms have made staff redundant,
4) Debt collection is the area showing the largest increase in work,
5) More than half of small firms (one to two fee earners) are pessimistic about the future, and
6) Solicitors are looking at some quality standard and social-media marketing as a way of increasing business.

While there is little that we can do to change the economy, clearly we must support each other and adapt as best we can to a changing and hostile environment. I believe the profession should be to the fore in the development of mediation.

In this regard, I would like the Law Society to produce a public list of approved mediators, which has been requested by members of the judiciary. I would also like the Society to prepare rules for mediators, similar to the rules for arbitrators recently produced. I am also hopeful the Society will have an active input into the *Mediation and Conciliation Bill*, which is promised next year.

Cost-cutting programme

In addition, in response to the DSBA survey, there were some demands that the Law Society would review costs in the Society. In this regard, I am pleased to report that the Society has undertaken a very stringent cost-cutting programme over the last three years, resulting in savings to date of the order of €10 million. These savings continue to accrue to the benefit of the Society. However, it is only fair to observe that some of these savings come at great human cost in the form of redundancies. Such action is never easy to take, but, regrettably, it has been necessary to do so, and I would like to take this opportunity to extend my sympathies to all those who have been adversely affected by these measures.

The *Legal Services Bill* will primarily deal with litigation costs and the regulation of both branches of the profession. It is ironic, however, that at a time when there has never been greater competition between firms in quoting lower fees for new business, legal costs will be more regulated. In the event, it appears likely that one of the main measures of litigation fees in the bill will be hourly rates, and that, to me, is not unreasonable – provided it does not encourage inefficiency – and that, at the same time, the bill allows flexibility to reward work commensurate with responsibility.

As Carol Coulter has reported in *The Irish Times* recently: "The courts need to be examined to ensure they are working to maximum efficiency, reducing the need for adjournments. This means looking at the hours they work and providing for active case management so that lawyers meet deadlines in providing documents and preparing the case for hearing." She also encouraged mediation and other forms of alternative dispute resolution.

"Any measures that greatly weaken the independence of the legal profession are an attack on democracy itself"

Regulation of the profession

The *Legal Services Bill* will also make major recommendations regarding the regulation of the profession. Some members have indicated that the Society, in regulating its own members, has created a degree of disconnect between the Society and its members. It is my hope that consideration of the bill by the profession – whatever it may contain – will help to create a unity of purpose within the profession and strengthen the bond between members and the Society. However, if an outside body is appointed to participate in any regulation of the profession, it is essential that the Law Society plays a role in this body, because of the huge expertise the Society has in this area. It is also imperative, if the Society has to make a financial contribution to this body, that it has a major role in assessing the correct cost structure of such a body.

There will be a special Council meeting on 7 October next to consider the Society's response to the bill. The minister, Alan Shatter, has promised to meet with the Society to hear detailed comments on the bill around the middle of October. I would welcome the comments of any member on the bill after it is published.

In relation to PII, I am pleased that the 'common proposal form' is now available on the Society's website, and I earnestly hope that the renewal process will be easier this year.

The Chinese symbol for 'crisis' is composed of two characters: one representing danger, and the other opportunity. Our opportunity at this challenging time is to remind Minister Alan Shatter that it is in the public interest to have a strong, vibrant and independent legal profession and Law Society. Any measures that greatly weaken the independence of the legal profession are an attack on democracy itself.

John Costello
President

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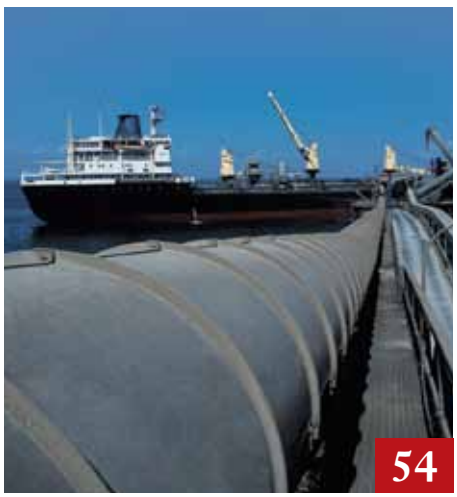

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You can also check out:

- Current news
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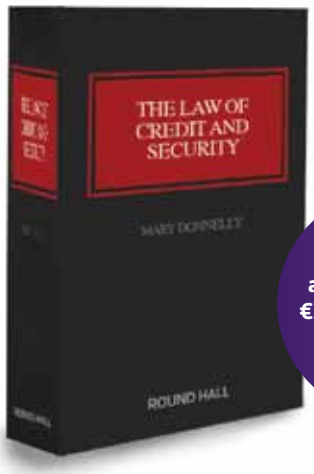

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MARY DONNELLY

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Publishing: October 2011
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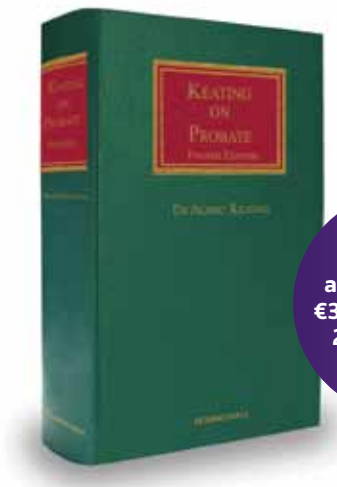

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ROUND HALL

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New managing partner

Arthur Cox has announced Brian O'Gorman (42) as the firm's next managing partner. With effect from 1 November, Brian will succeed Pádraig Ó Ríordáin, who will resume full-time client work, having completed his two terms at the helm. Brian is a corporate partner at the law firm and is a member of its management committee. A graduate of Trinity College, he joined the firm in 1999, having trained and worked at a London law firm, where he became a partner a year later.

In News this month...

Walkers runs 'A day in the life of Dublin' art competition

Rasher will judge 'A day in the life of Dublin' art competition

Global law firm Walkers, which has offices in Dublin, has organised an art competition, open to second-level students in Dublin city and county.

Titled 'A day in the life of Dublin', students are invited to submit their impressions of what Dublin means to them. The closing date is 12 October. The judging panel consists of Rasher, one of Ireland's best-known contemporary artists, Dublin artist Frances Coughlan, and Walkers Ireland managing partner Vicki Hazelden.

Generous cash prizes worth a total of €14,000 are on offer to the winning schools in two categories – for students 'up to Junior Cert level', and 'up to Leaving Cert'. The winning entries will hang permanently in Walkers' Dublin office.

The competition is part of the Walkers Corporate and Social Responsibility programme, which supports charitable causes and local initiatives in the communities in which it is based.

Two firms win Lexcel award

Lexcel, the law management standard of the Law Society of England and Wales, has announced that two Dublin law firms have recently secured the accolade. The first was O'Rourke Reid in Mount Street Crescent, followed by Dillon Solicitors in Rathfarnham. Both firms underwent a rigorous assessment procedure in order to secure the recognised standard.

Lexcel is now planning a series of events in Ireland later in the year to help more firms understand the benefits of the award. The quality standard requires law firms and in-house legal departments to prove best practice in how they operate, via document reviews, interviews and file checks. Principal at Dillon Solicitors, Brendan Dillon, commented: "The Lexcel process is challenging but extremely rewarding. We are confident that we have procedures relating to client care, risk, organisation and the charging of fees that are compliant with best practice."

A new version of the standard, to be called Lexcel v5, will be launched internationally in late October.

Staff from Dillon Solicitors

London autumn ball

The Irish Solicitors' Bar Association, London, will hold its 22nd annual charity ball in Claridge's on Friday 11 November 2011, in aid of Barretstown, the children's charity.

The evening will consist of champagne reception, three-course dinner with coffee and *petits fours*, dancing, charity auction and midnight raffle. Tickets cost Stg £175 each or Stg £1,750 for a table of ten. A reduced-price ticket of £130 for early, non-corporate bookings received before 15 October is also available.

For further information and all queries, contact: Cliona O'Tuama (president, Irish Solicitors' Bar Association), tel: 0044 (0)20 7583 5131, email: info@clionaotuama.com.

Third international win for McCann Fitzgerald

John Cronin and Susan O'Connell

McCann FitzGerald has collected its third international award in four months, this time at the *Euromoney* Legal Media Group – European Women in Business Law awards. Susan O'Connell, partner in personal estate and tax planning, was named 'Best in Trust & Estates', seen here with McCann FitzGerald chairman, John Cronin.

Law Society of Ireland

Diploma Programme Autumn 2011

Legal Education for the Real World

We're ready for Autumn. Are you?

Get ready for Autumn and sign up to one of our diploma courses. The choice and range of courses on offer has never been wider, and includes three new courses, namely a Diploma in In-House Practice and a Diploma in European Union Law and a Certificate in Commercial Contracts.

All diploma courses are now webcast online.

The full Autumn 2011 Programme is as follows:

Diploma Courses	Start Date
Diploma in Commercial Litigation	Wednesday 05 October 2011
Diploma in Finance Law	Thursday 06 October 2011
Diploma in Corporate Law & Governance	Monday 10 October 2011
Diploma in In-House Practice (New)	Tuesday 11 October 2011
Diploma in Family Law	Wednesday 19 October 2011
Diploma in European Union Law (New)	Saturday 22 October 2011
Diploma in Trust & Estate Planning (STEP)	Saturday 12 November 2011

Certificate Courses	Start Date
Certificate in Trust & Estate Planning (STEP) (New)	Saturday 10 September 2011
Certificate in Employment Law Advocacy & Skills (New)	Saturday 24 September 2011
Certificate in Capacity, Mental Health & the Law	Tuesday 27 September 2011
Certificate in Commercial Contracts – *iPad Mobile Learning Pilot Project**	Saturday 05 November 2011
Certificate in Criminal Litigation	Saturday 19 November 2011

Legal Language Courses	Start Date
Certificate in Legal German	Tuesday 20 September 2011
Diploma in Legal French	Wednesday 12 October 2011

The diploma fee is €2,400/€2,150 and the fee for certificates is €1,160.
* €1,480 - Fee includes free iPad 2.
A 20% discount applies to applications received from unemployed solicitors.

Early booking is advised as places on some courses are limited.

Full details of the above courses are available on the web **www.lawsociety.ie/diplomas** or by contacting a member of the Diploma Team at **diplomateam@lawsociety.ie** or **Tel. 01 672 4802.**

QR code link to website

Get your pension in place before October tax deadline

The deadline for final tax payment for the 2010 tax year under the self-assessment system is fast approaching. The final payment is due on or before 31 October. However, those filing their returns online will have an extension to the middle of November.

You can reduce your liability by making a contribution to a personal pension arrangement before the applicable deadline. The Revenue Commissioners will allow you to make contributions up to a maximum of 40% of your income, with an income cap of €115,000 for 2010.

The percentage limits that you can contribute for tax relief purposes are as follows:

Up to age 30	15%
From 30 to 39	20%
From 40 to 49	25%
From 50 to 54	30%
From 55 to 59	35%
Age 60 and over	40%

The Law Society Retirement Trust Scheme is an ideal vehicle for making this contribution. It offers a range of different funds to take account of individual appetites for risk, from cash to equity funds.

The scheme is administered by Mercer, and the investment management is undertaken by managers who are global leaders in their sectors, many of whom are not generally available in the pension market here in Ireland.

Should you wish to discuss this matter, contact Tom Kennedy of Mercer on 01 411 8480, or 087 250 1181, or email tom.kennedy@mercer.com.

New tablet-based course

PIC: LENSMEN PHOTOGRAPHIC AGENCY

Launching the Diploma Programme's new course were *(l to r)*: Rory O'Boyle, diploma coordinator; Felim O'Caoimh, partner, McDowell Purcell; Freda Grealy, diploma manager, Law Society of Ireland; Peter O'Neill, senior associate, Mason, Hayes & Curran; Stuart Grimes from CompuB; Garret Flynn BL; Noel Hayes from CompuB and Mark Rasdale, partner, A&L Goodbody

This autumn, the Law Society's Diploma Programme is piloting a Certificate in Commercial Contracts, utilising the advantages of one of the latest tablet devices. All participants will receive an iPad to take home with them. Numbers are limited to 24 participants.

The introductory session will demonstrate the educational and time-management advantages of tablets, enabling those on the course to access material anytime, any place. This 'blended-learning' course will contain a mixture of on-site and online sessions, with an emphasis on hands-on and experiential learning. Course materials and webcast lectures will be released online to participants' tablets. In addition, students will get to grips with dealing online with documents and will engage in professional transactions. Online participation, via tablet, will be an integral part of this course.

This pilot project begins on Saturday 5 November, and will cost €1,480 (including 3G-enabled iPad). The course will appeal both to new and seasoned practitioners seeking to hone their commercial and technological skills.

For further information, contact Freda Grealy (diploma manager) at f.grealy@lawsociety.ie, or tel: 01 672 4802.

Helping me, helping you – Society support services

Four separate sources of help for those dealing with professional or personal issues are available to the solicitors' profession, *writes support services executive Louise Campbell.*

LawCare

Since 1 January 2008, the Law Society has funded the provision of LawCare in Ireland. LawCare offers a free and completely confidential advisory service for lawyers, trainee lawyers, their immediate families and their staff to help deal with health issues and related emotional problems such as stress, depression, drug and/or alcohol dependency, eating disorders, bullying, bereavement and gambling, among others.

LawCare offers its service through a freephone helpline (1800 991 801), which operates 365 days a year, Monday to Friday, 9am to 7.30pm and weekends/British public holidays from 10am to 4pm. LawCare can also be contacted by email: help@lawcare.ie.

More information about LawCare, including a range of free information materials, is available on their website, www.lawcare.ie.

'Consult a Colleague' helpline

The 'Consult a Colleague' helpline is available to confidentially assist every member of the profession, nationwide, with any problem – whether personal or professional – free of charge. While the Law Society provides funding for the service, it is operated completely independently by the Dublin Solicitors' Bar Association.

Those calling the helpline (01 284 8484) will hear a recorded message, giving the contact details of the solicitor volunteers on call that week. The volunteers are all solicitors of considerable experience. Callers can remain anonymous throughout.

Panel to Assist Solicitors in Difficulty with the Law Society

If you have been notified of a complaint made against you to the Law Society or the Solicitors' Disciplinary Tribunal, or of other difficulties relating to your practice, you may wish to contact one of the solicitors on the 'Panel to Assist Solicitors in Difficulty with the Law Society', which will give you the assistance required to ensure that an appropriate initial response is sent.

The list of panel members is available in the *Law Directory*, on the members' area of the Society's website (www.lawsociety.ie) in the Guidance and Ethics Committee's section, or on request from Anne Collins, Law Society of Ireland, Blackhall Place, Dublin 7; tel: 01 879 8720, email: a.collins@lawsociety.ie.

Solicitors' Benevolent Association

The Solicitors' Benevolent Association is a voluntary charitable body that assists members, former members of the solicitors' profession in Ireland, their wives, husbands, widows, widowers, families and immediate dependents who are in need.

The service has available the part-time services of a professional social worker who, in appropriate cases, can advise on State entitlements, including sickness benefit, and who can deal with specific problems.

For information on the assistance provided by the association, how to make an application for assistance, and for the necessary application forms, contact Geraldine Pearse, Solicitors' Benevolent Association Secretary, 73 Park Avenue, Dublin 4; tel: 01 283 9528.

AIB's finance offer geared to members

Members who wish to apply for funding for payment of preliminary tax, pension contributions, professional indemnity insurance and practising certificate(s) could consider the short-term finance products offered by Allied Irish Banks plc.

Known as 'insurance premium finance and prompt pay finance', these will enable members or their firms to spread the cost of any large annual payment(s) over a term of up to 11 months, thereby improving business cash flow.

Repayments vary, depending on the amount borrowed (see panel).

If a member wishes to obtain details of cost of credit, monthly repayment and APR for any particular amount, they can do so before submitting a finance application by contacting AIB's Customer Services Centre on 1890 47 47 47.

If you are an AIB customer already and wish to apply for finance, you should contact the relationship manager at your AIB branch. If you are not an AIB customer and you wish to apply for finance, contact your nearest AIB branch and make an application through a relationship manager.

AIB is one option available to members; however, each member should shop around to obtain the best finance available for his/her own individual circumstances. Any member who would like to obtain independent financial guidance on alternatives can contact Liz McGrath (financial advisor), tel: 087 131 6906.

The Law Society of Ireland is not an agent, broker or financial institution and cannot accept any responsibility whatsoever for any financial decisions made on foot of this article.

REPAYMENT EXAMPLES*

Loan amount	APR	Term in months	Monthly repayment	Total cost of credit
€10,000	13.6%	11	€961.93	€644.72
€20,000	11.18%	11	€1,909	€1,062.49
€30,000	9.86%	11	€2,849.84	€1,411.73
€50,000	8.56%	11	€4,729.33	€2,086.12

**Above rates are correct as at 19 September 2011, but rates/repayments can vary. The total cost of credit includes a documentation fee of €63.49, payable with the first monthly instalment. Minimum finance is €5,000.*

The future of legal services


Richard Susskind

The Institute of Legal Accountants of Ireland (ILAI) held its annual conference, titled 'The future of legal services' at the Law Society on 9 September, *writes Paul O'Connell (PJ O'Driscoll & Sons, Solicitors, South Mall, Cork)*. Speakers included Prof Richard Susskind, economist Jim Power, Ian O'Flaherty of Saurian Litigation Support Limited (Ireland) and Ivan Gomez of Microsoft Ireland.

Jim Power spoke about the Irish economy and how its financial system is currently going through a period of unprecedented flux and change. Jim predicted that, when normality returns, the Irish economic and financial landscape will look very different. Business levels will be lower than in the past, regulation will be intense, and transparency and accountability will dominate the landscape.

Ivan Gomez of Microsoft Ireland is currently the senior director for online services in Microsoft's European Operations Centre. Ivan discussed cloud computing, Microsoft's latest offerings and the benefits and challenges of the cloud. Microsoft has almost 5,000 cloud customers in Ireland at present. Questions from the floor focused on confidentiality, data protection and reliability.

The keynote speaker was Richard Susskind, who spoke about:

- The drivers of change in the legal sector – the demand for 'more for less',
- The shift toward the commoditisation of legal service,
- The growing impact of information technology, and
- The liberalisation of the legal market.

He argued that one key to the future is to decompose legal work into its constituent parts and to source each part in the most efficient way. He also spoke about the growing impact of legal process outsourcing, the use of agency lawyers, the role of paralegals, and the systematisation of routine and repetitive legal work. For lawyers who are willing to adapt, he claimed that the future holds exciting new professional and commercial opportunities.

The final speaker of the day was Ian O'Flaherty of Saurian Litigation Support Limited (Ireland). Ian was born and raised in Dublin and currently lives in Miami, Florida, with his wife and three children. Ian presented on the hot topic of practising law with an iPad (see page 38).

His presentation was an overview of business and productivity apps in use by lawyers. He covered apps for legal research, remote access, document reviewing, editing and presentations. He demonstrated his own app *TrialPad*, which he successfully designed, developed and brought to market. It's currently available for purchase from the Apple store (for approximately €65). He is working currently on another app that is due for release in November 2011.

For further details on the conference, visit: www.ilai.ie.

OUTLAWS

Life outside legal practice

DONNA McCARTHY
Wealth management

As relationship manager with Royal Bank Canada Wealth Management, Donna McCarthy is based in the Cayman Islands and provides integrated wealth management services to high and ultra-high net-worth individuals – with specific expertise in trusts and fiduciary services.

Clients include Asian shipping families, Russian oil magnates, owners of global consumer product companies and international property developers.

Donna trained in a general practice in Skibbereen and qualified in 2008. However, while doing her PPC, she also completed a Diploma in Trust and Estate Planning with the Society and STEP Ireland.

The diploma provided early full membership of STEP, which was of huge benefit in seeking an internationally focused job after qualifying.

Donna has enjoyed a number of quick promotions in the last three years and has gained wide expertise in the administration of offshore trusts and companies. Her work involves frequent travel to Canada, the US and Europe.

GERARD MAGUIRE
64 Wine

Few shops get as many glowing reviews as 64 Wine in Glasthule, beside Dun Laoghaire in Co Dublin. Wine is displayed in the front section, there is an artisan food section in the middle, and a café and fine wine cellar at the back.

The owner is solicitor Gerard Maguire, who is living the mantra 'do something you love and you will never have to work a day in your life'. Gerard, a long-time lover of wine, had a health scare several years ago.

As he waited for the results of medical tests, he promised himself to work at something he really loved, if the news was good. The news proved positive and 64 Wine was born.

As well as running his wine business, Gerard is also studying to become a Master of Wine and is now more than half-way through the seven-year course.

CAROL-ANNE BERGIN
Ryanair

Carol-Anne did her traineeship in a general practice in Leitrim. On qualification in 2008, she joined a small Dublin practice and began a Diploma in Commercial Litigation at the Law Society's Education Centre in her spare time.

In September 2009, she joined Ryanair and, since then, has co-ordinated wide-ranging litigation work there. Disgruntled passengers and other parties sue the airline in jurisdictions across Europe, and defending these actions is all managed in Dublin.

Carol-Anne works directly with lawyers in over 15 European countries, instructing them on individual cases. She also attends any court hearings considered particularly important.

The year 2010 was especially challenging due to the volcanic ash crisis. This was quickly followed by mass general and air-traffic-control strikes in Spain and France.

Before year-end, Ireland and much of Europe experienced the worst weather conditions in decades. These problems all dramatically added to Carol-Anne's workload, but, as they say, variety is the spice of life!

Society hits back at NCC's 'flawed and unreliable' claims

The Law Society has lashed out at renewed claims made in the media by the chairman of the National Competitiveness Council that legal costs in Ireland remain uncompetitive.

Director general Ken Murphy said that the Society had already demonstrated there was no proper evidential basis for such claims, which he described as "flawed and unreliable".

The council's report, entitled *Costs of Doing Business in Ireland 2011*, cited Central Statistics Office (CSO) data, which appeared to suggest that legal services prices have risen by 12% since 2006, and World Bank figures suggesting that legal costs in Ireland were higher than in many other countries.

Statistically insignificant

Murphy, who has been in contact with the CSO in relation to this data, points out that it was based on responses from a "paltry and statistically insignificant" 18 legal firms out of a total of 2,220 solicitors' practices in the State. Such a small sample size – coupled with the fact that two of the survey's five questions related to very minor work areas such as 'patent work' and 'notarial work' – was a "completely inadequate basis for conclusions", he said.

"Buried in footnotes in the report are highly significant qualifications about the reliability of the research on legal costs," Murphy continued. "As the World Bank was quoted as saying in relation to the same research last year, 'It is difficult to accurately compare legal costs across countries due to differences in national legal systems'."

In fact, according to Murphy, "Comparing legal costs in common law systems and in civil law systems is comparing apples with oranges. The level of work required to be done by lawyers varies greatly in the legal processes of different jurisdictions."

Director general Ken Murphy: "Legal fees have been falling very substantially"

Plummeting legal fees

According to the director general, the only close comparator, in terms of legal system for Ireland in Europe, is Britain. Although the table on page 73 of the report does show the total costs of contract enforcement in Ireland to be slightly higher than in Britain, it should be noted that the element recorded for 'attorney fees' is higher in Britain than in Ireland. This is what would be expected by anyone with experience of litigating, or of legal advice or transaction work generally, in both Dublin and London. The Society's own experience is that the cost of litigating in London is significantly higher than here.

In fact, Murphy concluded in his response to the Competitiveness Council, which was published on the business page of *The Irish Times*: "This is a market where people cannot overcharge. Legal fees have been falling very substantially in response to tendering and intense downward pressure from clients."

Conference puts new *Companies Bill* in the spotlight

The Registrar of Companies, Helen Dixon, explained at a recent conference held in Dublin Castle how the Companies Registration Office (CRO) intends to implement the four conversion options for existing private companies after enactment of the recently published *Companies Bill*, *writes David Mangan (Mason, Hayes & Curran)*. The CRO will provide companies with a series of online options for filing new-form company constitutions and taking the other steps necessary to convert into one of the new company types.

The conference, which is the first organised by the newly established Irish Corporate Law Forum, gathered 12 experts to present their views on the *Companies Bill* and its implications for private companies. The first group of parts of the new bill was published by the Department of Jobs, Enterprise and Innovation on 30 May 2011. These parts correspond to 'Pillar A' of the *General Scheme*, published by the Company Law Review Group in 2007. They set out the full company law rulebook for the new-form Company Limited by Shares (CLS).

At the recent conference at Dublin Castle were *(l to r)*: Declan Murphy BL, Paul Egan, Sinead Kelly, Dr Deirdre Ahern, Helen Dixon, David Mangan and Gordon Duffy BL

Two members of the Company Law Review Group (CLRG), Paul Egan of Mason Hayes and Curran and Declan Murphy BL, set out the background to the bill. Paul spoke about its origins in the CLRG reports published since 2001, and the *General Scheme* published in 2007. Declan Murphy explained that, with a couple of exceptions, the entire body of the *Companies Acts* would be repealed and consolidated in the bill. He estimated that the bill would be enacted in 2015 at the earliest, on the basis that it did not qualify for the expedited parliamentary procedure applicable to an administrative consolidation and restatement.

The conference also explored new private company types and the options for conversion. Sinead Kelly of A&L Goodbody described the features of the new-form CLS and the alternative Designated Activity Company. Following an explanation by the registrar of the CRO's new registration procedures, Gordon Duffy BL spoke about the conversion options for private companies, including the 'default strategy' of taking no action, by which an existing private company will be deemed at the end of the transition period to have adopted a new-form constitution in the standard form.

The new bill sets out the duties of directors in statute for the first time. Dr Ailbhe O'Neill, barrister and adjunct lecturer in law at Trinity College, spoke on the refinements made by the bill to the appointment of directors and secretaries.

Government prepares for the attack of the Cybermen

The Government is preparing a bill on cybercrime that will bring Irish law into line with the European framework laid down in 2001, according to Minister for Justice Alan Shatter. Minister Shatter was speaking at the summer launch of a new project in UCD that aims to develop a network of cybercrime centres for excellence in Europe.

Ireland signed up to the Council of Europe's *Convention on Cybercrime* in early 2002 but, as of yet, has failed to ratify it into Irish law. The EU is now also developing a directive on cybercrime, which Minister Shatter said any upcoming Irish bill would take account of.

According to Darius Whelan, lecturer in the law department of University College Cork, an update in the country's legislation in the area of cybercrime is badly needed. "The Government has a *Cybercrime Bill* on its agenda, but publication keeps moving back," he said. "We're already probably in breach of EU law because the framework on cybercrime was supposed to be implemented by member states by 2007."

According to Mr Whelan, the *Criminal Damages Act 1991* and the *Criminal Theft and Fraud Offenses Act 2001* are the only existing pieces of legislation that might cover cybercrimes.

"They're obviously quite dated and there are lots of interesting arguments that could be made if a prosecution was brought, because there are various loopholes in them," he said.

An example he gave was a 'denial-of-service attack', where hackers use tools to access a website in huge volumes, forcing its servers to crash. According to Mr Whelan, there is an argument to be made that says that this is not currently illegal in Ireland, as it merely involves people accessing a website, albeit on a massive scale.

Mr Whelan said it would be hard for a country like Ireland to position itself as a digital hub if it has not ratified an internationally recognised convention on cybercrime. He pointed out that the framework it sets out has even been adopted by the USA and others outside of Europe, showing how internationally accepted it is.

According to security consultant Brian Honan, the failure of Ireland to adopt the framework will also make extradition requests harder, something that could be critical given the international nature of cybercrime.

"If there's no matching crime on the statute books in both nations, then extradition is not going to work," he said. "The convention gives uniformity across jurisdictions and makes it easier for police forces to cooperate."

NEWS FROM THE LAW SOCIETY'S COMMITTEES AND TASK FORCES

Law Society wins funding for on-the-job training for unemployed solicitors

LAW SOCIETY FINUAS NETWORK AND LAW SOCIETY SKILLNET

Funding has been awarded to Law Society Skillnet and the Law Society Finuas Network for a number of training courses through the Job-Seekers' Support Programme.

The JSSP offers unemployed solicitors a choice of six new programmes in funds management, in-house legal officer roles, international regulation and compliance, Islamic finance, litigation, and social policy and research.

These programmes ensure that relevant legal and tax advisory skills are developed and diversified, and provide relevant job placement opportunities across a range of sectors.

Approximately 112 unemployed solicitors are currently registered to undertake the programme, which was launched in August 2011. It also provides job seekers with relevant work placements in their newly trained field, leading to a better chance of full-time employment in the future.

The Law Society Skillnet and the Law Society Finuas Network are currently seeking employers who are interested in having a solicitor join them, for up to six-months' placement for work experience, in the following areas:

- Financial services compliance and regulation,
- In-house legal officer roles,
- Investment funds,
- Islamic finance,
- Litigation, and
- Social policy and research.

Employers will get the benefit of a solicitor who has completed one month of intensive training to ensure that they can function effectively in the work they will do within the workplace.

The solicitor will be placed with the host firm for a period of up to six months, and will be in a position to assist existing staff, carry out project work or develop a new area of business. No salary is payable by the employing organisation.

In-house legal officers have been available from the end of September; litigation participants will be available from October; funds and compliance/regulation participants from November; and social policy and research/ Islamic finance participants from December.

The Law Society Skillnet and the Law Society Finuas Network are funded by member companies and the Training Networks Programme and the Finuas Networks Programme respectively. Both these programmes are managed by Skillnets Ltd and funded from the National Training Fund through the Department of Education and Skills.

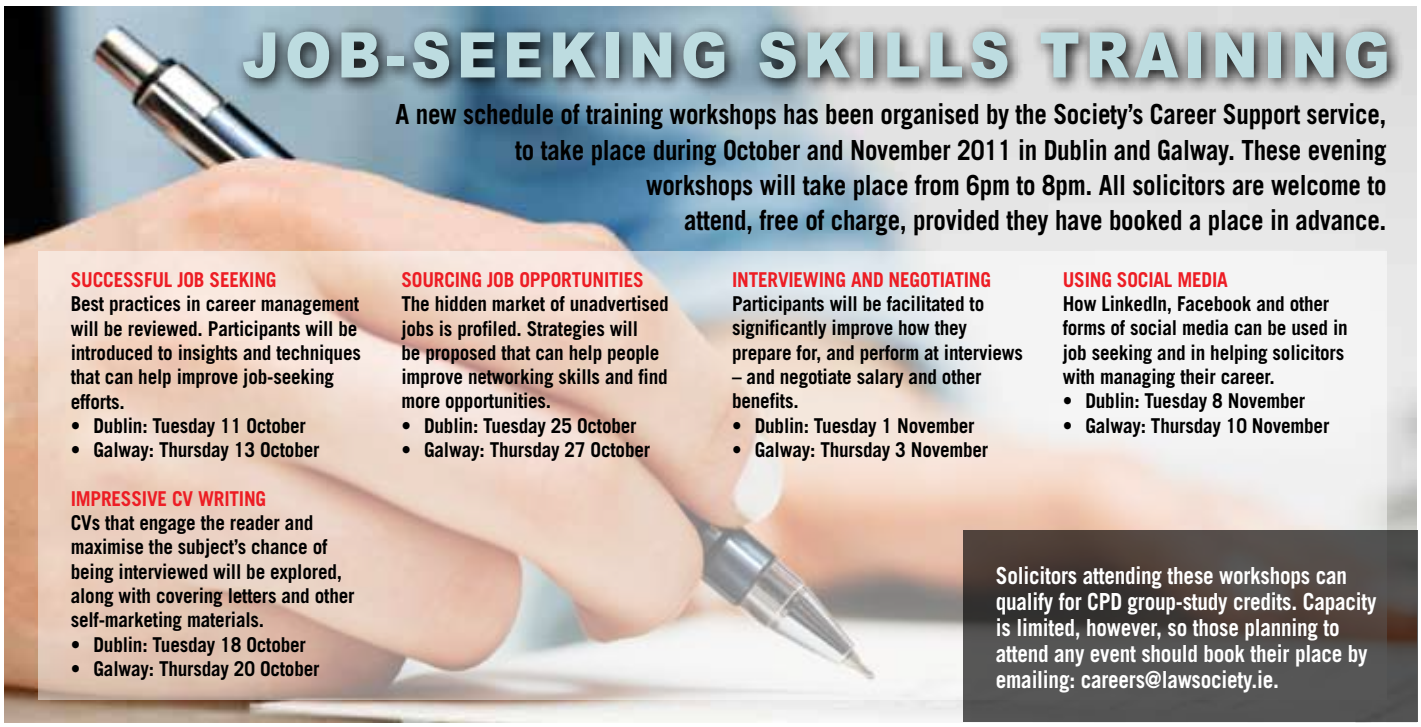
For more information, contact jssp@lawsociety.ie; or tel: 01 881 5727.

Revenue issues new form CA 24 (July 2011 edition)

PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

The Probate Administration and Trusts Committee is pleased to announce the issuing by the Revenue Commissioners of a new form CA 24.

In addition to the changes to take into account the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, a number of changes to the form lobbied for by the committee have been included, and the form can be completed on-screen, saved and amended.



JOB-SEEKING SKILLS TRAINING

A new schedule of training workshops has been organised by the Society's Career Support service, to take place during October and November 2011 in Dublin and Galway. These evening workshops will take place from 6pm to 8pm. All solicitors are welcome to attend, free of charge, provided they have booked a place in advance.

SUCCESSFUL JOB SEEKING
Best practices in career management will be reviewed. Participants will be introduced to insights and techniques that can help improve job-seeking efforts.
- Dublin: Tuesday 11 October
- Galway: Thursday 13 October

SOURCING JOB OPPORTUNITIES
The hidden market of unadvertised jobs is profiled. Strategies will be proposed that can help people improve networking skills and find more opportunities.
- Dublin: Tuesday 25 October
- Galway: Thursday 27 October

INTERVIEWING AND NEGOTIATING
Participants will be facilitated to significantly improve how they prepare for, and perform at interviews – and negotiate salary and other benefits.
- Dublin: Tuesday 1 November
- Galway: Thursday 3 November

USING SOCIAL MEDIA
How LinkedIn, Facebook and other forms of social media can be used in job seeking and in helping solicitors with managing their career.
- Dublin: Tuesday 8 November
- Galway: Thursday 10 November

IMPRESSIVE CV WRITING
CVs that engage the reader and maximise the subject's chance of being interviewed will be explored, along with covering letters and other self-marketing materials.
- Dublin: Tuesday 18 October
- Galway: Thursday 20 October

Solicitors attending these workshops can qualify for CPD group-study credits. Capacity is limited, however, so those planning to attend any event should book their place by emailing: careers@lawsociety.ie.

TRIBUNAL CHAIR CONDEMNS SOLICITOR CASES INACTION

The chairman of the Solicitors Disciplinary Tribunal, Frank Daly, has criticised the lack of progress in a number of solicitor cases referred to the DPP and has urged the Minister for Justice to act, reports Mark McDermott

Mark McDermott is editor of the Law Society Gazette

In the Solicitors Disciplinary Tribunal's annual report 2010, chairman Frank Daly has heavily criticised the lack of progress in a number of solicitor cases referred by the tribunal to the Director of Public Prosecutions. Mr Daly says that "no action appeared to have been taken in three cases that had been referred to the DPP" – despite his raising the issue in the tribunal's 2009 annual report.

"I am aware that limited progress has been made in some of these cases, but clearly not enough. Two of these cases have now passed the third anniversary of the solicitors' strike-off. I do not know if the delays are with the office of the DPP or with An Garda Síochána. White-collar crime needs to be prosecuted with energy and efficiency, and I would have thought that a decision should take a maximum period of 12 months. If the DPP's office or the Garda Bureau of Fraud Investigation are unable to deal with white-collar crime because of a lack of trained personnel, there are many solicitors, barristers and accountants out in the marketplace seeking jobs who would adequately fill these positions."

He continues: "The Minister for Justice should ensure that there is a sufficient number of proper professional teams within the office and the bureau to deal with such cases."

Reiterating his statement from the 2009 report that "justice delayed is justice denied", Mr Daly said that he had no reason to alter his view that "procrastination is the norm. Something is clearly wrong, and it is up to our new minister, who has expressed concern on white-collar crime, to take the initiative. The *Criminal Justice Act 2011* will help, but without the enforcement offices being adequately staffed by competent and qualified personnel, little will change. At the moment, miscreant solicitors appear only to have this tribunal to fear, rather than the full rigours of the law. This is unacceptable".

> ***"Procrastination is the norm. Something is clearly wrong, and it is up to our new minister, who has expressed concern on white-collar crime, to take the initiative"***

Bond of trust

The 2010 annual report covers the period 1 January to 31 December 2010. During the year, the tribunal saw a substantial increase in the number of new applications coming before it.

The report points out that, in the three-year period since 2008, the incremental increase in the number of new applications has been approximately 50%. During this time, the tribunal has dealt with a number of high-profile cases. The tribunal chairman states that "these have led to a weakening in the bond of trust, not only between solicitors and their clients, but also with the public in general".

He continues: "To restore this bond, it is important that solicitors who have engaged in unacceptable behaviour are made accountable, not only for their professional misconduct, but also for any possible unlawful acts they may have committed. However, the tribunal is conscious that its responsibility in this regard is being undermined because of the apparent delay in deciding whether or not to bring certain former solicitors before the criminal courts."

Severest penalties

In his report, the chairman states that "where a respondent [solicitor] has been found guilty of serious misconduct, the tribunal has had no hesitation in imposing the severest penalties".

In 2010, the tribunal recommended to the High Court that eight individuals should have their names struck off the Roll of Solicitors, that two be suspended from practice, and that seven have their practising certificates limited.

In addition to recommendations that solicitors be struck off, the tribunal has, in certain circumstances, recommended to the High Court that the papers be referred onwards to the DPP. The High Court made two such orders in 2010.

Findings of misconduct were found in relation to 63 separate applications. Some of these referred to multiple applications against certain solicitors – the actual number of individual solicitors involved in such cases was 48. Of these, 17 solicitors were referred to the President of the High Court.

Role of the tribunal

The role of the tribunal is largely confined to receiving applications for an inquiry to be held into the conduct of solicitors, or trainee solicitors, on grounds of alleged misconduct. Where a *prima facie* case of misconduct for inquiry is found by a division of the tribunal, the tribunal proceeds to hold an inquiry into the

Chairman of the Solicitors Disciplinary Tribunal, Frank Daly

"At the moment, miscreant solicitors appear only to have this tribunal to fear, rather than the full rigours of the law. This is unacceptable"

complaints of alleged professional misconduct. (A *prima facie* case is one where sufficient evidence exists to support an allegation, which calls for an answer from the respondent solicitor.)

Applications to the tribunal are made by the Law Society of Ireland. Subject to a few instances under the *Solicitors Acts* where applications are limited to the Law Society, members of the public may also make a direct application to the tribunal without resorting to the Law Society.

The annual report states that, "at times, respondents express their incredulity that they are the subject of a complaint where a solicitor/client relationship does not exist. However, such a relationship does not have to exist for a member of the public to form a view that a solicitor, other than their own, has engaged in misconduct."

In 2010, a total of 159 people applied for, and received, information on making a direct application to the tribunal into the conduct of solicitors. Of these, a total of 29 made applications to the tribunal for an inquiry to be carried out.

It is important to note that the *Solicitors Acts* give the tribunal the power and duty to conduct fact-finding inquiries in relation to complaints against solicitors. The annual report points out that the tribunal, in all cases, "makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured".

Accountants' reports

The tribunal made findings of misconduct in relation to 16 applications alleging that certain solicitors were guilty of misconduct in failing to file an accountant's report within the appropriate time limits, among other matters. The tribunal made a finding of misconduct in each case, with fines ranging from €250 to €5,000. In two cases, the tribunal made a recommendation to the High Court that each solicitor be suspended until the outstanding accountant's certificate was furnished. In four cases, solicitors were admonished and advised, and the Society was awarded its costs.

The chairman of the Solicitors Disciplinary Tribunal praises the work of the investigating accountants of the Law Society: "During the year under review, a number of serious matters came to light through the diligence of the Law Society's investigating accountants, who are to be commended for their work in discovering these problems. It was disturbing to see what respondents had done, but it was heartening to see that the system of supervision does work, and that the monitoring put in place by the Law Society uncovered the problems."

The chairman said, however, that the tribunal continued to be dismayed by the lack of appreciation on the part of solicitors to fulfil their duty by replying in a clear and comprehensive manner to the Society, and indeed to their own clients. He concluded: "When such failures are brought to the attention of the tribunal, appropriate fines ranging from €1,000 to €6,000 have been imposed on the respondents." G

To download the Solicitors Disciplinary Tribunal Annual Report 2010, visit www.solicitorsdisciplinarytribunal.ie

FACTS ABOUT THE SOLICITORS DISCIPLINARY TRIBUNAL

The Solicitors Disciplinary Tribunal is a statutory body – wholly independent of the Law Society of Ireland. It is composed of 20 solicitor members and ten lay members.

Solicitor members are drawn from among practising solicitors of not less than ten years' standing. Lay members are drawn from a wide variety of backgrounds, but may not be solicitors or barristers. The lay members' remit is to represent the interests of the general public. All tribunal members are appointed by the President of the High Court.

Under the *Solicitors Acts 1954-2008*, the tribunal's powers are mainly confined to receiving and hearing complaints of misconduct against members of the solicitors' profession, including trainee solicitors.

CAPACITY AND THE RIGHT TO REFUSE MEDICAL TREATMENT

A High Court ruling on capacity to give consent to medical treatment suggests that the *Mental Health Act 2001* may be open to challenge on constitutional grounds, writes Joyce Mortimer

Joyce Mortimer is the Law Society's human rights executive

The case of *The Health Service Executive v MX (a person of unsound mind not so found) represented by her solicitor* involved an involuntary patient in the Central Mental Hospital (CMH) who was required to have blood tests taken as part of her treatment at the hospital, to which she objected. The patient (MX) was found by the doctors "not to have the capacity to make decisions regarding her own welfare".

Mr Justice MacMenamin began his judgment by referring to the decision in *Re Ward of Court (withholding medical treatment) (no 2)* [1996]. The judge stated: "Where consent to particular forms of medical treatment and the capacity to give that consent arise, the issues of capacity and cognition are fundamental. In very exceptional cases, the nature of a patient's condition may entirely deprive them of the ability to give expression to any decision-making capacity." Justice MacMenamin acknowledged the difficult reality facing psychiatrists upon whom the task of having to make decisions in the patient's best interests is often placed.

The judge highlighted the seriousness of a finding of incapacity and referred to international instruments adopted by the committees of ministers of the Council of Europe and the United Nations, "intended to ensure that the voice and views of a patient are not only heard but considered". The judge held that, on an examination of the issues at stake, it became evident that "there exists a substantial gap in understanding between those who seek a 'rights-based' approach, and others who lay emphasis upon the challenges in taking care of patients on a day-to-day basis".

The High Court made reference to the case of *Shtukaturov v Russia*, where the European Court of Human Rights (ECtHR) deliberated on the issue of legal capacity and enforced hospitalisation and treatment without consent. In this case, the ECtHR held that "the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation". The European Court held that domestic legislations must provide for a "tailor-made response".

> ***"The issues which are raised are important. The case is without direct precedent and, as such, in my view, it may be desirable to invite the attorney general and the Irish Human Rights Commission to consider whether they wish to be fully placed on notice of the questions which are engaged"* – Mr Justice MacMenamin**

Difficult situation

The defendant is an involuntary patient in the CMH who suffers from paranoid schizophrenia and a borderline personality disorder. Her condition is severe and she poses a risk of extreme violence to others. Late in December 2010, her doctors were faced with a difficult situation. MX required a number of drugs to counteract her psychiatric condition, and, as part of their administration, it was necessary to obtain blood samples. MX indicated clearly through her lawyers and she did not consent to the taking of blood.

In December 2010, an interim application was made to the High Court to permit the administration of a drug regime that necessitated the taking of blood samples as an ancillary to that regime. On an interim and interlocutory basis, the court granted permission for the treatments (on the basis of expert medical evidence that it was entirely appropriate and in the patient's welfare) and, ultimately, the case proceeded to full hearing.

The interpretation of 'treatment'

Justice MacMenamin stated that the core issue for determination was the interpretation of the term 'treatment'. Counsel for the defendant submitted that, "the term must be strictly or narrowly interpreted, and that such a construction is necessary in light of the fact that there are at stake, here, the curtailment of a number of fundamental rights and interests without adequate procedural safeguards being embodied in the statute".

The judge agreed that a simple purposive interpretation might risk widening the scope, too much, of what are deemed permissible treatments. He stated: "Trust, without mechanisms for review and verification, may be abused."

Ambiguous meaning

Counsel for the defendant argued that a strict literal approach to interpretation should be adopted where fundamental rights were involved. This was the approach adopted in the case of *Salinas de Gortari v Smithwick*, where the rights at stake were that of liberty and fair procedures. In this case, the rights

"The judge highlighted the seriousness of a finding of incapacity and referred to international instruments adopted by the committees of ministers of the Council of Europe and the United Nations, 'intended to ensure that the voice and views of a patient are not only heard but considered'."

at issue were that of self-determination, human autonomy and liberty.

Justice MacMenamin began determining whether such a strict approach should apply in the given case, in light of the rights issues involved. The judge analysed the precise words of the definition of 'treatment', followed by a consideration of other provisions of the act as an interpretative aid. The judge considered the question of interpretation of the act in a manner "compatible with constitutional duties and those obligations which 'arise under convention provisions (section 2 of the *European Convention on Human Rights Act 2003*)". The judge acknowledged that "the court is enjoined to 'take notice' of judgments of the ECtHR and decisions of the committee of ministers."

Justice MacMenamin stated that the term 'treatment' was ambiguous and, therefore, could be interpreted broadly or narrowly. He stated that it was necessary to look at the purpose of the enactment. The judge noted that the first striking feature of the definition of 'treatment' was that it was not intended to be all encompassing. The judge held that there, "may also be other remedies not enumerated or identified in the act", and the "consequence of the interpretation urged on behalf of the defendant in this case would be, in fact, to preclude the possibility of the form of medical treatment envisaged here".

The judge found that, upon examination of the other provisions of the *Mental Health Act 2001*, there was support for a broader interpretative approach. He stated that the rights that were at stake in the given case were of health and of life itself. He found section 57 of the 2001 act particularly instructive in this regard. It provides: "The consent of a patient shall be required for treatment except where, in the opinion of the consultant psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore his or her health, to alleviate his or her condition, or to relieve his or her suffering … [when] the patient concerned is incapable of giving such consent."

The judge held that the intent of the Oireachtas in the 2001 act was to give priority to the constitutional values of health and life. The judge held that this meant "that a clinician may administer 'treatment', regardless of capacity or incapacity in cases of necessity where life is at stake".

Medical procedure allowed

Justice MacMenamin held, in conclusion, that, "the court, in its interpretation of the act, and in the assessment of the defendant's best interests, should allow for a medical procedure which, albeit invasive, is ancillary to, and part of, the procedures necessary to remedy and ameliorate her mental illness or its consequences".

Counsel for the defendant argued that the 2001 act fails to adequately safeguard the defendant's rights under the constitution and the convention because it fails, among other things, to provide for an independent tribunal to determine whether the patient lacks the capacity to consent to treatment.

In response to this, the judge held that there was no challenge to the constitutionality of the act, nor a declaration that it was incompatible with the convention. Justice MacMenamin held that "the issue should be properly and fully pleaded. The issues which are raised are important. The case is without direct precedent and, as such, in my view, it may be desirable to invite the attorney general and the Irish Human Rights Commission to consider whether they wish to be fully placed on notice of the questions which are engaged." G

CHRISTMAS CARDS

IN AID OF THE SOLICITORS' BENEVOLENT ASSOCIATION

Card A

MADONNA AND CHILD
Antonio Correggio

This is an opportunity to support the work of the Solicitors' Benevolent Association, whose needs are particularly acute at Christmas time

GREETING PRINTED INSIDE EACH CARD:

With Best Wishes for Christmas and the New Year

Card B

THE CHRISTMAS EVE BALL

ORDER FORM

Firm: _____ Contact: _____

Address: _____

DX: _____ Tel: _____ Fax: _____

Each card sold in packets of 50 costing €125 (including overprinting of your firm's name). Minimum order 50 cards. Add €7.00 for postage and packaging for **each** packet of 50 cards.

I wish to order _____ pack(s) of card A @ €125, _____ pack(s) of card B @ €125. _____

Text to be overprinted: _____

SAMPLE OF OVERPRINTED TEXT WILL BE FAXED FOR CONFIRMATION BEFORE PRINTING.

I enclose cheque for € _____ payable to Santry Printing Ltd (**€132 per pack**).

SEND ORDER FORM AND CHEQUE TO:

SBA Christmas Cards, Santry Printing Ltd, Unit 5, Lilmar Industrial Estate, Coolock Lane, Dublin 9. Tel: 842 6444. Contact: Amanda

Banks good at spending other people's money

From: Seán Ó Riain, legal executive, Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath

I refer to the article 'Cause and effect' by Anne Neary (see *Gazette*, Aug/Sept 2011) regarding professional indemnity insurance.

I trained as a legal executive during the days when we used to close mortgage transactions by way of the traditional three-way closings, in which the solicitors for all parties – the mortgagee, the purchaser and the vendor – took part and protected each of their respective client's interests.

Anne Neary in her article says that, over time, a strong feeling developed that clients (purchaser/mortgagor) were paying two sets of costs unnecessarily. She states that the "solution reached was to permit one solicitor to act for both the lending institution and the purchaser", which led to the certificate-of-title system by borrowers' solicitors. She is not strictly correct.

What, in fact, happened was that the *Consumer Credit Act 1996* prohibited the passing on of legal fees incurred by lenders in housing loan cases to purchasers. Rather than retaining and paying their own solicitors to do so, lenders simply passed that responsibility to someone else. They simply (with the cooperation of the Law Society) moved to the borrower's solicitor's certificate-of-title system for all residential and nearly all investment property.

I remember remarking at the time that it was odd that financial institutions were not prepared to engage solicitors to protect their own security – simply because the practice of charging someone else for it had been banned! Instead, they relied on householders (and, later on, commercial clients) to pay their own solicitors to protect lenders' security. It seems that, even then, banks were good at spending other people's money! I had hoped at the time that many in-house legal jobs might be created in the lending institutions. However, I also believed it to be rather unwise of the Law Society to entertain a system of certification of title by the borrower's solicitor.

The facts are that the legislature had decided by way of the *Consumer Credit Act 1996* that the legal fees should not be passed by the lender to the borrower. But that legislation did not require the introduction of a system of certification of title by borrowers' solicitors. What actually happened was that those legal fees were practically abolished, and the work (which certainly wasn't abolished) was then effectively done for nothing. Or in some cases, the work was not done at all!

Even though the horse has bolted, I believe the stable door can and should be securely and tightly closed again. Solicitors should simply refuse to further engage in, or the Law Society should simply ban the practice of, borrower solicitor certification of title in both residential and commercial transactions and let the banks engage solicitors and pay them. Not only will this avoid the same kind of high insurance losses described in Anne Neary's article arising in the future, but it will also create genuine employment.

(Opinions expressed are my own).

Overstating the problem?

From: Ronan O'Brien, TP Robinson, Solicitors, 94 Merrion Square West, Dublin 2

I refer to the article 'Nine-tenths of the law' by Gregory McLucas (see *Gazette*, Aug/Sept 2011 issue, p28) in relation to the High Court decision of Ms Justice Dunne on 25 July 2011 relating to repossession of properties by lenders.

I do not entirely agree with the views expressed by Mr McLucas and believe that he overstates the problem faced by lenders as a result of the High Court decision.

Whereas actions under section 62(7) of the *Registration of Title Act* are no longer possible in the circumstances outlined in the article, there may be other avenues open to the lender in order to regain possession of the property. For example, in the 1984 case of *Gale v FNBS*, Judge Costello in the High Court held that the lender, by virtue of the terms of the mortgage contract, had a contractual licence to enter and take possession of the property.

This case is not 'on all-fours' with the decision of Judge Dunne, as it related to the peaceful repossession of the property rather than an action under section 62(7). However, the plaintiff had argued that, in the case of registered land, the only way that a lender could recover possession lawfully was by means of an action under section 62(7). The argument was not accepted by the court in this case. Therefore, the repeal of section 62(7) may not be fatal in cases where the mortgage contract creates a contractual licence in favour of the lender.

In my experience, this will be the case in most standard bank/building society mortgages in use before the passing of the 2009 act. Also, mortgages of unregistered land are not affected by the decision. However, even in the case of registered land where the mortgage was created prior to the passing of the 2009 act, I do not see why the lender cannot issue proceedings for possession based on the contract.

THOSE UNDERTAKINGS BLUES

Solicitors' undertakings are taking a heavy toll in terms of complaints to the Law Society and increases in PII rates. Pat Igoe argues that it's time to stop facilitating lending institutions with undertakings

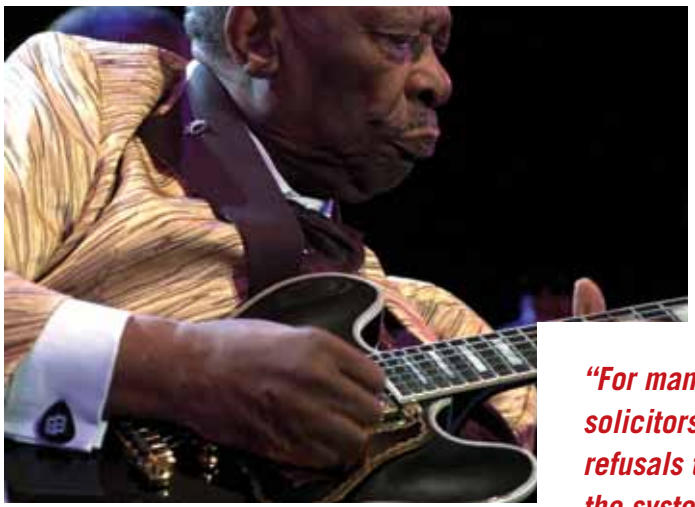
Pat Igoe is a practising solicitor with many years experience in conveyancing. He looks forward to using it again

With some lending institutions in a state of near panic, and passing it on to conveyancing solicitors, many colleagues are asking – what did our profession let us in for? Updates are being required in relation to undertakings, with peremptory time limits and a sense of serious unease. There has been talk of a significant number of complaints being lodged by financial institutions, against solicitors, with the Law Society.

Abolition of the old three-way closings seemed a good idea at the time. There seemed to be duplication, and it made sense for one solicitor to do the work and to guarantee title to the lender. It clearly suited the lenders. It seemed to suit solicitors' clients, and even suited solicitors. At least in principle… That was the orthodoxy and it remained unquestioned – unless you were a maverick and you just didn't understand these things.

During one of the recent solicitor scandals, a former chief executive of Allied Irish Banks took to the airwaves to assure the nation that there was nothing fundamentally wrong with the solicitors' undertakings system. There certainly wasn't, and isn't, for the financial institutions.

The lenders might benefit from a re-reading of Ms Justice Mary Laffoy's judgment in *Bank of Ireland Mortgage Bank v Daniel Coleman*, solicitor, in November 2006. The judge told the court that she was very conscious of the serious risk to the integrity of the lending system in Ireland relating to mortgages that the case had exposed.



The bank sought the full loan funds from the borrower's solicitor, plus interest and penalties, following default by the borrower. The judge noted that the bank had not issued proceedings against the borrower.

Massive sums saved

Now, even though the undertakings/certificate-of-title system has saved the financial institutions massive sums in legal costs over the years, which they preferred not to share with the solicitors facilitating them, the lenders themselves must now have their doubts, given what the receding economic tide is showing up in defective titles from the boom times.

Now, not only are solicitors under pressure from lenders, but also from insurers. Our professional insurers have been made aware of the claims – past, present and future – with the obvious implications for the ongoing cost of cover.

Accounts of the special general meeting at Blackhall Place on 30 July (which I didn't attend because my blood pressure is high enough) suggest deeply held, and in some cases, deeply divisive views among colleagues on whether undertakings in residential conveyancing should be banned.

For many solicitors, lenders' refusals to pay for the system that benefits them has long been seen as anomalous or just plain greedy, depending on how polite you are. For some colleagues, the squeeze on purchase fees – and, in some cases, no fees at all – in the mortgage, tightened the time that could be devoted to a file. For various files, the consequences on client work were perhaps inevitable and are now a cause of upset all round. The solicitors' profession does not come out of it entirely well. Reports of defective work are disturbing.

> ***"For many solicitors, lenders' refusals to pay for the system that benefits them has long been seen as anomalous or just plain greedy, depending on how polite you are"***

Ridiculously low fees

Apart from the economics of solicitors acting for lenders in all but name, the undertaking/certificate-of-title system has directly contributed to significant costs to all of us – whether or not mistakes were made under pressure of ridiculously low fees.

Uncounted existing undertakings do remain out there. Some are hostages to fortune or to the lenders. But giving future undertakings is another matter.

It, at least, deserves careful reconsideration by a fairly disgruntled profession and its leadership. Lending institutions and professional indemnity insurers protect their own interests. Nobody else will protect ours. Or, indeed, that of the public.

The task force that the Council of the Law Society has established on this matter can be expected to consider all viewpoints. Many colleagues would argue that solicitors need to actively protect both their own interests and those of their clients by refusing to continue to facilitate lending institutions with undertakings.

Maybe we are reaching the same position as Peter Finch shouting on air: "I'm as mad as hell and I'm not going to take it anymore."

SPAGHETTI JUNCTION

Road traffic law can be something of a spaghetti junction. While the new *Road Traffic Act 2011* addresses many previous problems, it renders some sections of earlier acts 'stuck at the roundabout'. Robert Pierse switches lanes and puts the foot down

Robert Pierse is an expert on road traffic law. He is currently rewriting Road Traffic Law *(Volume 2), which is expected to be published in 2011 by Bloomsbury Professional*

The present situation in relation to *Road Traffic Acts* is pretty chaotic. It has been that way for some years. The 1961 act has been amended in major ways by the 1968, 1984, 1994, 1995, 2002, 2003, 2004, 2006, 2010 and 2011 acts, and in minor ways by other acts. This article deals with the *Road Traffic Act 2011*. And, just to let you know, a new *Road Traffic (No 2) Act 2011* is looming in the rear-view mirror!

The 2011 act (no 7 of 2011) places sections 12 and 15 of the 1994 act on a 'roundabout' – that is, new versions incoming, old versions exiting. In fact, these new versions are already heading for another roundabout. They will probably be repealed before the end of the year; that is, if the 2010 act is brought in fully before the end of this year, as expected. The *Road Traffic (No 2) Act 2011* proposes amendments to the 1961, 1968 and 2010 acts.

The 2010 act

This act has broad-ranging potential to affect this area of law, but little of worth in it has been brought into existence yet. The initial commencement statutory instrument (no 394 of 2010) brought section 26(5) (regarding Medical Bureau exclusion from the *Freedom of Information Act*), section 68 (European disqualification) and section 78 (regulatory signs) into operation on 9 August 2010.

More recently, statutory instrument 255 of 2011 brought 23 sections into operation on 1 June 2011. These, basically, are sections that amend and replace sections in previous acts.

It is anticipated that part 2, as amended by the (no 2) act 2011, will be brought into operation in the next few months. We do not know the exact extent as of yet. This (no 2) act adds to the chaos. (Let's deal with what we have, as of 1 October 2011.)

The 2011 act

This act was apparently introduced due to concerns about two sections of the 1994 act. These are the sections that deal with mandatory roadside testing (section 12) and taking specimens in hospital (section 15).

The *Road Traffic Act 2011* was signed into law on 27 April 2011. It was brought into operation by SI 253 of 2011 from 1 June 2011. While it is a short act, it makes significant substitutions for sections 12 and 15 of 1994 act – and a lesser amendment to section 4 of the 2006 act.

Obligation to provide breath specimen

Section 2 of the 2011 act substitutes a new more detailed section 12 of the 1994 act. The 2011 'substituted section 12' deals with the obligation to provide preliminary breath specimens. It contains wider provisions than the previous version of section 12 of the 1994 act.

Section 12 of the 1994 act is to be repealed under section 33 of the 2010 act when the latter comes into operation. Section 12 of the 1994 act will then be replaced by section 9 of the 2010 act.

Application of section 12

Subsection (1) applies to a person in charge of a mechanically propelled vehicle in a public place who, in the opinion of a member of the Garda Síochána:

FAST FACTS

- *Road Traffic Acts* – a spaghetti junction of legislation
- *Road Traffic Act 2011* – what it does and doesn't do
- The obligation to provide breath specimen – legislation is now more detailed
- Strengthening of garda powers
- Penalties for refusing to comply with the gardaí
- Giving samples while in hospital – 2011 act (no 7) is much longer and more stringent than before
- Mandatory alcohol testing section

a) Has consumed intoxicating liquor,
b) Who is committing or has committed an offence under the *Road Traffic Acts 1961 to 2011*,
c) Is, or has been, with the vehicle, involved in a collision, or
d) Is, or has been, with the vehicle, involved in an event in which injury appears or is claimed to have been caused to a person of such nature as to require medical assistance for the person at the scene of the event or that the person be brought to a hospital for medical assistance.

Item (d) is a new insertion by the 2011 act. Item (b) has been extended to cover the 2010 and 2011 acts, though the provisions of the 2010 act about intoxicants are not in force. This 2011 act is a temporary measure in reality, as outlined above, that is, road law on the chaotic roundabout.

Garda powers

Subsection (2) gives a garda the following powers in relation to the categories of persons above:

i) An option to a garda to arrest the person if the garda is of the opinion that it is the proper course (see below), and
ii) (a) It places a mandatory duty on a garda as to category (a) and (d) above; or
(b) an optional power to require persons in categories (b) and (c) above:
- to provide preliminary breath specimen;
- and it requires the person to accompany the garda to a vehicle or place for that purpose; and/or
- to require the person to remain at the scene for a period not exceeding an hour.

This power, that is, in (ii) as to requiring specimens, is limited, as below, by subsection (6) and subsection (7) of this section.

Arrest

The previous subsection (2) had not given the first option above to the garda, even though it did have a clause in subsection (4) (which is now repeated in subsection 4 of the new version of the act) to arrest a person without warrant who was committing or had committed, in the member's opinion, an offence under the section.

This seems to mean that the garda, now, can arrest directly without going through a preliminary breath test. Presumably, this is when he considers (that is, 'is of the opinion') that the person is so drunk or on drugs that there is no need for a test. The change is probably primarily aimed at drugs because, of course, the equipment at present available cannot cope with drugs. Then, in a new provision subsection (9), the powers of arrest conferred by law are preserved. To whom? The gardaí only, probably.

Requirement prohibited

A member of the Garda Síochána shall not make a requirement, as above, of a person who has consumed intoxicating liquor, that is, a person in group (a) of subsection (1), if, in the opinion of the garda, such requirement would be prejudicial to the health of the person.

Neither shall a garda make a requirement of a person in group (d) (that is, involved in an event) of subsection (1) if the requirement would be prejudicial to the person's health in the garda's opinion, or on the advice of a doctor or other medical personnel attending the scene of the event. These provisions are new.

Presumption

By subsection (5), the apparatus provided by the Gardaí is presumed to be an apparatus for indicating the presence of alcohol in the breath. The courts have, in reality, limited the possibility of challenging this presumption – see *Whelan and ors v Kirby and DPP* [2005] and [2004]; and *Oates v Browne* [2010].

The penalty

"A person who refuses or fails to comply immediately with a requirement of a member of the Garda Síochána under this section commits an offence and is liable, on summary conviction, to a Class A fine or to imprisonment not exceeding six months, or to both".

A Class A fine is, of course, a fine under the *Fines Act 2010*, section 3, and is a monetary penalty not exceeding €5,000.

Barring of a defence

It is not a defence in any proceedings or in proceedings under subsection (3), that is, refusing or failing to comply to show that the member of the Garda Síochána did not make a requirement under this section.

Entry

It must be remembered that, in section 39(2) of the 1994 act, a garda is given wide powers of entry without warrant to any place (including the curtilage of a dwelling, but not including the dwelling) where a person is, or the garda, with reasonable cause, suspects him to be. This is for the purpose of section 12(2) of the 1994 act – even though there appears to be a drafting error in the act in referring to section 12(2) as being in the principal act (that is, the 1961 act). This defective wording does not seem to be corrected by section 31 of the 2010 act, though section 31 is, of course, not in force yet.

Blood or urine specimen while in hospital

The 2011 act (no 7 of 2011) substitutes a 'new' section 15 into the 1994 act also, and is operative from 1 June 2011. The new section is much longer and more stringent than the section that existed up to 1 June 2011. Again, the situation is that this is probably going to be only a temporary section, because it is intended that section 15 of the 1994 act is to be repealed by section 33(c) of the 2010 act when that comes into force. Again, section 15 of the 1994 act is a 'roundabout', to be replaced by section 14 of the 2010 act.

It seems clear, however, that the presently inoperative section 14 of the 2010 act will be substituted by a new version of same before it becomes operative, that is, section 15 of the 1994 act, and its heir apparent, section 14 of the 2010 act. It is probable that the second *Road Traffic Act 2011* will amend section 14 of the 2010 act.

Subsection (1) is a very lengthy subsection dealing with where, in a public place, an event occurs in relation to a mechanically propelled vehicle, in consequence of which a person is injured, or claims or appears to have been injured, and is admitted to, or attends at, a hospital. Then a member of the Garda Síochána may arrange the carrying out of certain tests on the driver or person in charge of the vehicle.

> ***"The garda may arrest the person without test, if the garda is of the opinion that he should be arrested. Subsection (i) of the 2011 act (No 7) substantially widens the scope of the powers of a garda, allowing the garda to arrest a person rather than require samples to be provided"***

Arrest

The garda may arrest the person without test, if the garda is of the opinion that he should be arrested. This subsection substantially widens the scope of the powers of a garda, allowing the garda to arrest a person rather than require samples to be provided.

In this new version of section 15, it is stated in subsection (8) that nothing in the section affects any power of arrest conferred by law apart from this section. This presumably draws in common law powers, as well as other statutory powers, for example, the *Misuse of Drugs Acts*, and so on.

There is the usual provision as to the requirement to give either a blood sample or a urine specimen to a designated doctor or nurse. However, if the doctor or nurse states in writing:

i) That he or she is unwilling, on medical grounds, to take from the person the specimen, or
ii) That the person is unable or unlikely within the period of time referred to in sections 49 or 50 of the 1961 act (the three-hour period) to comply with the requirement,

then the garda may require the other type of specimen, that is, other than that which was first required. Item (ii) is a new provision.

"A person who refuses or fails to comply immediately with a requirement of a member of the Garda Síochána under this section commits an offence and is liable, on summary conviction, to a Class A fine or to imprisonment not exceeding six months, or to both"

Mandatory consultation

Subsection (4), which is a new provision, states that before making a requirement of a person in hospital, as above, the garda shall consult with the doctor treating the person, and if a doctor treating the person advises that such a requirement would be prejudicial to the health of the person, the garda shall not make the requirement.

Defence

The 'new' subsection (3) follows the lines of the previous subsection (3), that is, that it is not an offence, where the doctor and nurse refuse on medical grounds to permit the taking of a specimen, that a person refuses or fails to comply with a garda requirement.

Penalty

Subsection (2) deals with the penalty that is a Class A fine and/or six months' imprisonment. This act is the first one in the *Road Traffic* series to introduce the notion of Class A fines into the *Road Traffic Acts*. No reference is made to the *Fines Act 2010*.

Entry

Subsection (5) repeats the previous garda power to enter a hospital without warrant where a garda, with reasonable cause, suspects the person to be. Subsection (6) states that a designated doctor or nurse may, similarly, enter any hospital where the person is, or where the doctor or nurse is informed by a member of the Garda Síochána, that the person is – as set out previously in subsection (4) of the 1994 act.

More powers of entry are in section 39 of the 1994 act and section 7 of the 2010 act, although this latter section is not yet in operation. Further, under section 33(d) of 2010 act, it is intended to repeal section 39(2), (3) and (4). It is rather mixed up at present.

No *Probation Act*

Subsection (7) continues the non-application of the *Probation Act 1907* to an offence under the section.

Defence barred

The last subsection of this new version of section 15 of the 1994 act bars the defence in any proceedings, other than proceedings under subsection (2) (that is, arrest/requirement power), to show that the garda did not make a requirement under this section 15.

Mandatory alcohol testing

Section 4 of the *Road Traffic Act 2006* deals with mandatory alcohol testing, that is, where the garda is operating a checkpoint under an authorisation. This section is amended by section 4 of the 2011 act on the technical basis by substituting subsection (4) "including those functions under section 12 (inserted by section 2 of the *Road Traffic Act 2011*) of the act of 1994" for "including the powers under section 12 (inserted by the act of 2003) of the act of 1994".

Again, a 'roundabout' exists here, as section 4 of the 2006 act and the whole of the 2003 act are to be repealed by section 33 of the 2010 act when the latter section is brought into force.

A consolidating act?

Ideally, we should now dispose of all of these bothersome roundabouts and build one coherent highway by consolidating the *Road Traffic Acts 1961-2011*.

As stated, the 2010 act will probably be amended before it is brought fully into operation. A further 2011 act will probably substitute into the 2010 act sections 9 and 14. Versions of the 'new' sections 12 and 15 of the 1994 act are set out in sections 2 and 3 of the 2011 act.

Stay alert and stay awake when driving through these acts! G

LOOK IT UP

Cases:

- *Oates v Browne* [2010] IEHC 381
- *Whelan and ors v Kirby and DPP* [2005] 2 IR 30 [2004] ILRM 1

Legislation:

- *Freedom of Information Act 1997*
- *Fines Act 2010* (no 8 of 2010)
- *Misuse of Drugs Acts 1977 and 1984*
- *Probation of Offenders Act 1907*
- *Road Traffic Acts 1961 to 2011*

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WHITE HEAT

"Mmm, that dirty, double-crossin' rat..."

FAST FACTS

- The *Criminal Justice Act 2011* commenced on 8 August 2011
- The act is intended to facilitate investigations into white-collar crime
- It introduces a new garda power to suspend detention periods when questioning a suspect
- It gives new garda powers to compel the production of documentation in a readily identifiable form or to compel an individual to answer questions to assist an investigation
- It reintroduces the old common-law offence of misprision of felony
- Whistleblower protection has been added
- It clarifies the law in relation to access to a solicitor during questioning

The *Criminal Justice Act 2011* gives new powers to the gardaí, introduces protection for whistleblowers, and will have major ramifications for solicitor access. Shelley Horan breaks out the starch

The *Criminal Justice Act 2011* – more colloquially known as the 'white-collar crime act' – was commenced on 8 August 2011. It is largely a welcome step in the Government's fight against white-collar crime. The act applies to 'relevant offences' that are arrestable offences (that is, offences that attract penalties of at least five years' imprisonment) that, broadly speaking, come within the following groupings:

- Offences relating to banking, investment of funds and other financial activities,
- Company law offences
- Money-laundering and terrorist offences,
- Theft and fraud offences,
- Bribery and corruption offences,
- Consumer protection offences, and
- Cybercrime offences.

The act is intended to facilitate investigations into white-collar crime and has five key aspects to it. First, there is a new power on the part of the gardaí to suspend detention periods so that they can revisit the questioning of a suspect, having had the chance to familiarise themselves with complex evidence already assimilated and the nature of the offence itself. Investigations into corporate crimes tend to be difficult and complicated, as, most often, the offence in question has many intractable facets and may be one that the investigator has not come across before. Therefore, the ability to suspend detention periods in this manner will be of huge benefit to the gardaí.

Second, the act allows a member of the Garda Síochána to call on a District Court judge to compel the production of documentation in a readily identifiable form, or to compel an individual to answer questions to assist the investigation. The act does not protect against a person's right to bankers' confidentiality, but does ensure that the privilege against self-incrimination is guaranteed in the context of an oral statement – but the privilege does not apply to documents required to be adduced. The provision is a reaction to the uncooperative behaviour of some individuals in the Anglo Irish Bank investigation, and it should also assist with problems of accessing computers and piecing together a coherent trail of information for use at a trial.

"The act will not prevent future occurrences of white-collar crime. What it will do, however, is provide welcome assistance to investigatory bodies when seeking to garner information about corporate or white-collar criminal activity"

Misprision of felony

Third, the act reintroduces the old common-law offence of misprision of felony, which was abolished by the *Criminal Law Act 1997*. The offence effectively requires people at any level of a corporation to provide information about an offence that they either know will be committed – to ensure that its commission can be prevented – or to disclose information about a suspected offence, in order that investigators are assisted in its detection. The section is very broadly drafted and it is unclear exactly how it will apply in practice. It effectively places a legal duty on an innocent bystander to come forward with information about an offence.

A provision like this tends to attract academic controversy, based on moral arguments about criminalising the inactivity of an innocent third party. Misprision of felony no longer exists in most common-law countries, although it does exist in US federal criminal law. It is unclear how the offence will tie in with other reporting obligations, such as those requiring designated persons to file suspicious transaction reports under money-laundering legislation. The act does not expressly protect the privilege against self-incrimination or legal privilege.

These are well-established legal rights,

and it would be surprising if the section in the act is interpreted so as to remove either of them. Therefore, it is unlikely that a person who is complicit in criminal activity, such as a person involved in an insider dealing ring or a criminal price-fixing cartel, would be expected to come forward, as this would violate their right to protect themselves against self-incrimination. On this reasoning, the act only targets innocent persons who witness the commission of an offence or have information about an offence. For the most part, this will involve employees, which brings us to the fourth key aspect of the act – the protection for whistleblowers.

Whistleblower protection

The introduction of whistleblower protection that is not confined to specific sectors – as in the past, where it applied to health-and-safety offences and, more recently, to corruption – is a heartening development. The act widens the protection, so that it applies to white-collar offences coming under the umbrella term, used in the act, of 'relevant offences'. Adequate whistleblower protection has been called for over many years, as the view is that white-collar crimes will not be unearthed without whistleblowers coming forward. In Ireland, the Allied Irish Bank overcharging scandal and the National Irish Bank systemic scheme of tax evasion would not have been uncovered had it not been for whistleblowers. The act prevents employees from being penalised by their employers when they report suspected white-collar activity. Penalisation can be difficult to prove, however, as an employer might dismiss somebody under another pretext.

The act appears not to go far enough, in that it fails to give protection to a person who is not an employee, but is an independent contractor engaged by the company to carry out particular work. Yet the independent contractor will be compelled under the remodelled misprision of felony offence to report suspicious conduct – but there will be no protection against the contractor's contract not being renewed due to whistleblowing. Neither does the act provide for immunity from prosecution, unlike the protection that exists for competition-law offences by virtue of a joint understanding between the Competition Authority and the DPP. Further, the act does not guarantee confidentiality, although Transparency International has set up a confidential whistleblowing line along the lines of those that exist in Britain and the US. There is a huge stigma attached to whistleblowing, and a person involved may be victimised by his or her colleagues or employer. Therefore, it is very difficult for employees to come forward. That it why it is regrettable that further protections of anonymity or immunity are not guaranteed under the act.

> *"The introduction of whistleblower protection that is not confined to specific sectors is a heartening development"*

Access to a solicitor

The act also clarifies the law in relation to access to a solicitor during questioning – the fifth aspect of the act. This brings Ireland in line with ECHR jurisprudence. Section 5A contains the general rule that questioning of detained persons is not to proceed, pending access to legal advice. Two exceptions are permitted: where the person waives his or her right to consult, or where the member in charge authorises questioning.

There are various provisions on the statute book that allow inferences adverse to an accused to be drawn in criminal proceedings from his or her failure, or refusal to, for example, answer certain questions asked by gardaí during an investigation.

In the context of white-collar crime, a crucial aspect of those provisions is section 19A of the *Criminal Justice Act 1984* (as amended by section 30 of the *Criminal Justice Act 2007*), which provides that, where an accused is detained upon the commission of an arrestable offence and he fails to mention any fact relied on in his defence, certain inferences may be drawn by a jury at trial.

Section 19A is an onerous provision, particularly in the case of complex financial or fraud offences, where asserting facts that may be relied on in one's defence may present an extremely difficult burden for an accused in the absence of legal advice. In such circumstances, a person is entitled to access to his solicitor; however, arguably, the safeguard does not go far enough.

In England, a solicitor may be present during a police interview under the terms of the *Police and Criminal Evidence Act 1984* (normally referred to as 'PACE') and, in certain cases, where a solicitor is not present, restrictions on the right to draw inferences will apply. In addition, the American 'Miranda' rule gives a suspect the right to have a lawyer present during questioning. It remains to be seen whether a challenge will be brought seeking the right to have a solicitor present during questioning about complex white-collar crime when section 19A is raised.

Welcome assistance

Had the *Criminal Justice Act 2011* existed before or during the financial crisis of 2008, it would not have prevented any of the white-collar crimes that occurred prior to or at that time. Therefore, orchestrators of

COMPLEX EVIDENCE

Another measure brought in by the Government recently is the *Criminal Justice (Theft and Fraud Offences) Act 2001 (Commencement) Order 2011* (SI 394/2011), which has commenced section 57 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*, so that the section has force as of 1 August 2011. Now, in the course of a trial on indictment, the trial judge may order that copies of any, or all, of the following documents be given to the jury in any form that the judge considers appropriate:

- **Any document admitted in evidence at the trial,**
- **The transcript of the opening speeches of counsel,**
- **Any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,**
- **The transcript of the whole or any part of the evidence given at the trial,**
- **The transcript of the closing speeches of counsel,**
- **The transcript of the trial judge's charge to the jury,**
- **Any other document that, in the opinion of the trial judge, would be of assistance to the jury in its deliberations, including, where appropriate, an affidavit by an accountant summarising, in a form that is likely to be understood by the jury, any transactions by the accused or other persons that are relevant to the offence.**

This provision is aimed at assisting juries in understanding financial information and other complex evidence in fraud cases. While the commencement of this section is a welcome development, especially since the act was first introduced ten years ago, the equivalent provisions in the *Competition Act 2002* and the *Company Law Enforcement Act 2001* have yet to be commenced. *Companies Acts* and competition law offences can be as difficult for a lay juror to comprehend as complex evidence in a fraud trial and, therefore, it is regrettable that these provisions have not yet received legislative force.

Ponzi schemes or errant bank directors would not have behaved any differently had the act existed. By the same token, the act will not prevent future occurrences of white-collar crime. What it will do, however, is provide welcome assistance to investigatory bodies when seeking to garner information about corporate or white-collar criminal activity.

There is a huge amount of legislation on the statute books already prohibiting the myriad classes of white-collar criminal activity. The public's perception of white-collar crime is that such criminals can act with impunity in Ireland and that prosecutions are rare. When somebody admits that they operated a pyramid scheme, and some three to four years later they have not been prosecuted, it seems apparent that there are delays in the system that need to be tackled.

Even if a successful prosecution is taken, in many cases suspended sentences are imposed, much to the ire of the public. Therefore, legislation dealing with white-collar crime is seen merely as window-dressing and not put into practice as often as it should be. The question is often raised as to whether this issue is one of a lack of ample resources for investigatory, regulatory and prosecuting bodies. However, the Garda Síochána and the Director of Corporate Enforcement have spoken out in the past 12 months about how they have sufficient resources.

When Jessica de Grazia, a New York prosecutor, was asked to commission a review of Britain's Serious Fraud Office in 2008, she discovered that the body used significantly more resources per case than its US counterparts, but achieved significantly less for its efforts. De Grazia therefore recommended a number of reforms for the British system that could also apply here to white-collar cases:

- The introduction of a form of plea bargaining,
- The deployment of sentencing guidelines to ensure that a more formulaic approach to sentencing exists,
- The use of pre-trial or preparatory hearings so that evidential and legal issues can be dealt with at the outset of a trial,
- The case management of trials,
- The employment of trial lawyers at an earlier stage in the investigation to ensure that investigators are not getting bogged down with irrelevant information or documentation,
- A more streamlined approach to disclosure, and
- The use of pre-trial issue statements.

While the *Criminal Justice Act 2011* is a welcome step on the road in the battle against white-collar crime, the Irish Government also needs to review the resources of the bodies charged with tackling this area and question whether the system here needs extensive reform to bring us up to speed with our US peers.

One aspect that could be reviewed is whether the various regulatory, investigatory and prosecuting bodies could be merged to form one centralised unit in order to reduce fragmentation, strengthen and harmonise investigatory powers, and better facilitate exchanges of information.

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THE abc OF REDUND

The EAT's 2010 annual report indicates that 58% of referrals consisted of claims under the *Redundancy Payments Acts* and the *Unfair Dismissals Acts*. Alan Haugh spells it out

The Employment Appeals Tribunal (EAT) recently published its annual report for 2010. The report indicates that the bulk (58%) of referrals to the EAT in 2010 consisted of claims under the *Redundancy Payments Acts 1967-2007* and the *Unfair Dismissals Acts 1977-2007*. The tribunal's report does not provide any further analysis of the grounds on which the unfair dismissal claims were grounded. However, it can safely be assumed that a large percentage of such claims were brought by applicants seeking to challenge their previous employer's decision to dismiss them by reason of redundancy, or to challenge the procedures followed by the employer in effecting the redundancy.

'R' is for redundancy

An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

a) The fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed, or has ceased or intends to cease to carry out that business in the place where the employee was so employed, and/or
b) The fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished, or are expected to cease or diminish, and/or
c) The employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee has been employed (or had been doing before his dismissal) to be done by other employees or otherwise, and/or
d) The fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done in a different manner, for which the employee is not sufficiently qualified or trained, and/or
e) The fact that the employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained.

The EAT, in adjudicating on redundancy matters, has consistently emphasised that each of the grounds that comprise the above statutory definition of redundancy has two important characteristics, namely:

- Impersonality, in that it refers to the job and not the person affected, and
- It focuses on change in the workplace.

The qualification that the dismissal must be attributable 'wholly or mainly' to one of the above reasons cannot be overemphasised: an employer's defence of an unfair

ANCY

FAST FACTS

- Where an employee has been dismissed for redundancy, he may be entitled to pursue a claim of unfair dismissal before the Rights Commissioner or the EAT
- An employer's defence of an unfair dismissal claim on grounds of redundancy can be derailed where the claimant adduces evidence to suggest a history of bad relations between the latter and a manager, for example
- If the employee makes a *prima facie* case that the decision to dismiss him was not due "wholly or mainly" to the employer's need to make redundancies, the employer will have to convincingly refute such allegations

dismissal claim on grounds of redundancy can be derailed where the claimant adduces evidence to suggest a history of bad relations between the latter and a manager, for example.

'E' is for entitlements

For the purposes of the *Redundancy Payments Acts*, a qualifying employee is one who is over the age of 16 and has 104 or more weeks of continuous service with the employer. There is no longer an upper age limit for redundancy purposes. The acts provide that a qualifying employee is entitled to the following in a redundancy situation:

- Written notice of redundancy,
- Paid time off to seek alternative employment, and
- A statutory lump-sum payment.

An employee's notice employment will be the longer of (i) two weeks; (ii) the statutory notice entitlement under the *Minimum Notice and Terms of Employment Acts 1973-2005* (varies from one to eight weeks, depending on an employee's length of continuous service); or (iii) the employee's contractual notice (typically three months for executive or managerial employees). The parties may agree payment in lieu of all or part of the notice period, where, for example, time is of the essence for the employer seeking to implement the necessary changes in the business. In such circumstances, the employee's statutory redundancy entitlement will be calculated to the date on which his notice would have expired.

During the final two weeks of the employee's notice period, he is entitled to reasonable, paid time off, on giving advance notice to the employer, for the purposes of attending job interviews, registering with an agency, or to arrange for training.

'L' is for lump sum

Under the Redundancy Payments Scheme, all eligible employees are entitled to a statutory redundancy lump-sum payment on being made redundant. A redundancy situation arises, in general, where an employee's job no longer exists and he/she is not replaced. An employee is entitled to two weeks' pay for every year of service, with a bonus week added on, subject to the prevailing maximum ceiling on gross weekly pay (€600 with respect to redundancies notified/declared on or after 1 January 2005). Partial years are also accounted for on a pro-rata basis. The statutory lump sum payable to the employee is non-taxable. The employer can seek a rebate of 60% of the statutory lump sum from the Social Insurance Fund.

There is an online calculator available that employees and employers can use to calculate the exact amount of the statutory lump sum and rebate payable to the employee and employer respectively. This calculator can be accessed via the websites of either the Department of Social Protection or the Department of Jobs, Enterprise and Innovation.

In certain circumstances where the employer is unable to pay the lump sum, the Department of Social Protection may pay the statutory amounts due to employees directly and seek to recoup the 40% balance from the employer. This will only be the case where the employer has signed the RP50 forms for the relevant employees and has provided evidence (for example, certified accounts) to the department of inability to pay the statutory amounts. Special arrangements can be made in the case of employers awaiting VAT or other rebates from Revenue, whereby the amount of the rebate can be offset against the employer's 40% contribution to the statutory lump-sum redundancy payment.

If it is the case that an employer purports to dismiss a qualifying employee by reason of redundancy, but refuses to make the statutory payment due to that employee, and fails or refuses to sign form RP50 confirming the employee's entitlement to the statutory lump sum, the employee will have no choice but to make an application to the EAT to have his entitlement to payment adjudicated on.

> ***"Best standards in human-resources practice suggest that an employer should have in place an internal appeal stage whereby an employee who has been notified that he is to be dismissed by reason of redundancy can seek to have the employer's decision reviewed"***

As the EAT's recent annual reports confirm, there has been a significant increase in such applications to the tribunal – the majority of which go uncontested by the respondent employer. Once the EAT has confirmed the claimant's entitlement to the statutory lump sum, the Department of Social Protection will process the claim and seek to recoup the employer's contribution.

'P' is for payment

Some employers will make an additional *ex gratia* or 'company' payment to employees on top of the statutory payment. Such payments are usually expressed in terms of 'x times gross weekly pay per year of service'. An employer may impose a cap on the total payment to an employee (for example, two years of gross pay). Also, in the case of employees approaching contractually agreed retirement age, an employer may legitimately limit the maximum amount payable to an employee by reference to what the employee would have earned between redundancy and retirement age.

Even in circumstances where an employer has paid a particular level of *ex gratia* in previous redundancy situations, there will not usually be a contractual obligation on the employer to match that level of payment again. It is normal practice for an employer to make the payment of *ex gratia* redundancy lump sums conditional on the employee signing a comprehensive 'waiver and discharge agreement', the purpose and effect of which is to exclude the possibility of the employee taking legal proceedings to challenge the validity of the dismissal subsequently.

'P' is also for procedure

An employer that finds that it has to reduce its workforce by reason of redundancy is required to follow a fair and objective procedure to determine which positions will be eliminated and, consequently, which employees will be dismissed. If the employer has previously had occasion to effect redundancies, it may have an established procedure in place. If this is the case, the employer will not be permitted to depart from that procedure unless he can demonstrate that special circumstances apply.

In the event that there is no established redundancy procedure, an employer is free to develop one, which can range from one based on the very simplistic 'last in, first out' (LIFO) selection criterion, to one based on a more complex selection matrix, possibly agreed with employees or their representatives, and taking account of factors such as competence, skills, performance appraisal history, and qualifications, for example.

The *Redundancy Payments Acts* themselves do not provide guidance on what constitutes objective selection criteria or fair procedures, generally, in the context of determining which employees are chosen for redundancy. This lacuna has been filled by extensive jurisprudence on the part of the EAT over the years. In particular, in this regard, the EAT has focused on section 6(7) of the *Unfair Dismissals Act 1977*, which permits it, in determining whether a dismissal is unfair, to have regard to "the reasonableness or otherwise of the conduct (whether by act

or omission) of the employer in relation to the dismissal" and the extent to which the employer has complied or failed to comply with any dismissals procedure or any code of practice.

'A' is for appeal

Best standards in human-resources practice suggest that an employer should have in place an internal appeal stage whereby an employee who has been notified that he is to be dismissed by reason of redundancy can seek to have the employer's decision reviewed. Such an appeal stage is not mandatory – and, indeed, may not be feasible for a small-scale employer – but where it is available to affected employees, it will add credibility to an employer's claim to have followed fair procedures throughout. Likewise, in the event that an employee fails to avail himself of the opportunity to appeal an employer's decision internally, that employee is likely to lose a certain amount of credibility should he decide to pursue a claim before a third party.

Where an employee has been dismissed for redundancy, he may be entitled to pursue a claim of unfair dismissal before the Rights Commissioner or the EAT. The fact that the employee has signed the RP50 form and confirmed receipt of a statutory payment is no bar to the employee commencing such proceedings.

Should the case go to hearing, the onus will be on the employer to demonstrate that:

- There was a genuine redundancy situation within the meaning of the acts that necessitated the elimination of the position held by the claimant,
- The claimant was fairly selected for redundancy, and
- The employer gave reasonable consideration to any and all alternatives to redundancy proposed by the employee.

If the employee makes a *prima facie* case that the decision to dismiss him was not due "wholly or mainly" to the employer's need to make redundancies, the employer will also have to convincingly refute such allegations.

In the event that the employer fails in its defence of the unfair dismissal claim, the Rights Commissioner or EAT, as the case may be, may award the claimant one of the following remedies: reinstatement, re-engagement, or compensation. The former two awards are rarely made (the EAT awarded reinstatement in only six cases in 2010).

Compensation is limited to the claimant's loss of earnings directly attributable to the unfair dismissal, subject to an absolute cap of two years' remuneration. There is mixed practice across different divisions of the EAT when awarding compensation to claimants who succeed under the *Unfair Dismissals Acts* in challenging their redundancy dismissal – some divisions will expressly provide in their written determination that the award is in addition to, or inclusive of, the statutory or other payments made to the employee by the employer; other divisions are silent on the issue.

"An employer that finds that it has to reduce its workforce by reason of redundancy is required to follow a fair and objective procedure to determine which positions will be eliminated"

LOOK IT UP

Legislation:

- *Minimum Notice and Terms of Employment Acts 1973-2005*
- *Redundancy Payments Acts 1967-2007*
- *Unfair Dismissals Acts 1977-2007*

Literature:

- Employment Appeals Tribunal, *Annual Report 2010*, www.eatribunal.ie/en/annual_reports.aspx
- Links to the legislation under which the EAT has jurisdiction to hear claims and appeals can be found at www.eatribunal.ie/en/about_legislation.aspx
- Statutory redundancy calculator: www.welfare.ie/EN/Schemes/RedundancyandInsolvency/redundancy/Pages/onlineredundancycalculator.aspx
- Form RP50: www.djei.ie/forms/formrp50.pdf

John Deeney is deputy registrar, John O'Sullivan is head of corporate affairs, and Shay Arthur is mapping advisor at the Property Registration Authority

The PRA's digital mapping project brings to a successful conclusion one of the largest and most complex technology projects undertaken by the Irish Government in recent years. John Deeney, John O'Sullivan and Shay Arthur point the way

HERE BE DRAGONS...

The completion of the Property Registration Authority's digital mapping project brings to a successful conclusion one of the largest and most complex technology projects undertaken by the Irish Government in recent years. The project took seven years, from design to final implementation, with the digitisation of the paper maps undertaken on a county-by-county basis over a five-year period.

This article outlines the main objectives and outcomes from the project. A follow-up article (to be published in November) considers some of the issues that have come up for discussion, including the system of 'non-conclusiveness' of boundaries that operates in Ireland.

Benchmark

The key contributions of the PRA to the Irish economy are to provide a register of title to land and to guarantee security for those transacting in property. The system of registration of title offered by the PRA provides a comprehensive record that is clear, easily accessible, minimises risk of fraud and responds to customer needs.

A distinguishing feature of registered conveyancing is that registered land is described by reference to a map ('plan') of the registered land parcels, based upon the national framework provided by Ordnance Survey Ireland (OSI) maps. Thus, a clear and reliable plan is substituted on first registration for the vague descriptions and inaccurate deed maps frequently associated with unregistered titles. Indeed, it is often the case that the process of

first registration has a curative effect as regards defects in title, such as vague descriptions in deeds and inaccurate deed plans going back over many years.

Longitude

Prior to the recent digitisation programme, Land Registry maps were maintained at varying map scales in the traditional paper format.

These paper maps (the County Series and the more recent Irish Grid) served the purpose of land registration since 1892 very well.

Section 84 of the *Registration of Title Act 1964* required the Land Registry to map registered boundaries on the latest available Ordnance Survey maps. In line with this provision, it was a statutory requirement since 1986 that the Land Registry map for property

FAST FACTS

- **Number of land parcels digitised: 2.8 million**
- **Number of registered boundaries digitised: 16 million**
- **Projected cost: €31 million**
- **Actual cost of project: €25.1 million**

in urban areas, insofar as was possible, would be provided at a 1:1000 scale, with necessary or obvious adjustments to conform to Ordnance Survey detail (rule 3 of the *Land Registration Rules 1986* (SI 310 of 1986) refers).

However, much of the country had not been resurveyed for many years, until the period between 1995 and 2009, when OSI conducted their resurvey of Ireland using the new 'Irish Transverse Mercator' (ITM) coordinate reference system. At that stage, it was an obvious and sensible move for the PRA to adopt and use the new ITM-derived mapping, once it was published. However, it was also readily apparent that the PRA could not accomplish this in a paper-based environment. This would have resulted in yet another set of paper maps covering the same area, making manual mapping searches complex and confusing.

Accordingly, it was decided that the optimum solution to the mapping conundrum was to digitise the Land Registry maps and to make them available online via the www.landdirect.ie web portal.

Orientation

Since its foundation in 1892, the Land Registry had built up a map base of over 36,000 paper map sheets, mostly of A0 size. Of course, many of these had undergone natural wear and tear through extensive use over the decades and required special storage conditions. One of the objectives of the digital mapping system was to secure this unique and historical mapping archive. Other key outcomes included providing faster and better service delivery, making better use of staff resources and delivering improved statistical and reporting control over the land register.

Following an extensive procurement process, the project was launched in July 2005. The first phase was successfully completed with the making available, online, of key geographical locator data ('seedpoints') for the entire country by July 2006. Seedpoints are the geospatial mechanism through which individual land parcels are linked to their corresponding legal title. With this significant achievement, customers of www.landdirect.ie could, from that date, conduct online map searches for the entire country.

The second phase, involving the systematic digitisation of the boundaries of every property registered in the PRA – amounting to 2.8 million or so land parcels and encompassing about 16 million individual boundaries – commenced immediately thereafter and was completed in August 2010.

The legislative basis for the digital map is contained in section 85 of the *Registration of Title Act 1964*, as substituted by section 62 of the *Registration of Deeds and Title Act 2006*. This provides for the form in which the Land Registry map may be maintained, including "electronic or other non-legible form as may be prescribed".

Triangulation

The digitisation of 2.8 million land parcels was a major undertaking that required careful planning, and the development of a detailed guide or handbook to manage and control the process was an essential first step. Considerable care was taken to ensure that properties were brought over into the digital environment correctly. The guide is known as the *Digitisation Protocol* and it outlines the procedures and protocols to be used when making decisions during the data-capture process. The document sets out all of the elements that must be considered and describes in great detail which OSI features are appropriate to adopt or not adopt, as the case may be, and provides many visual examples to support the decision-making process. The *Digitisation Protocol* is available online at www.prai.ie. A number of presentations on the data-capture process were made to representatives of the legal profession and other professionals operating in the land registration and property domain, and there was extensive consultation with the surveying community.

"Digital mapping has vastly improved the capacity of the PRA to process applications and to cope with the diminishing staff and financial resources available to the organisation"

It is important to note that making decisions on the adoption of OSI topographic detail is not a new phenomenon that has come about as a result of the PRA digitising the Land Registry map. Indeed, long before the digitisation programme, the Land Registry continually updated its paper maps to the latest available Ordnance Survey mapping in order to comply with its statutory obligation to do so. As a result, the Land Registry has many years of experience of updating its records to the latest available Ordnance Survey maps, including when OSI introduced its 1:2500 scale mapping and, again, when Irish Grid 1:1000 and 1:2500 mapping was introduced. Similar considerations and guidelines to those contained in the *Digitisation Protocol* were used as the basis for these decisions.

Relief

One of the benefits of the digitisation and accompanying quality verification programme has been the identification and elimination of some historical anomalies that existed on the paper maps prior to digitisation. This process is continuing and will result in many development schemes becoming realigned with revised OSI topographical detail, thus ensuring that the Land Registry map is as good a representation of what exists on the ground as is possible within the scale of maps available to the PRA.

Digital mapping has, of course, vastly improved the capacity of the PRA to process applications and to cope with the diminishing

staff and financial resources available to the organisation. Significantly higher levels of casework productivity are being achieved, thus resulting in faster turnaround times for applications. The project has also increased the flexibility of the organisation in dealing with evolving customer requirements, for example:

- Customers can now lodge electronic (CAD) versions of application maps,
- There is online access to the entire Land Registry map on a national basis – this is extensively used, with almost 600,000 map page requests in 2010 alone,
- Official copies of maps may be ordered online,
- The PRA is now in a position to offer customers a range of new map products to best suit their particular needs and better facilitate the registration process.

Also, the digital map now enables the PRA to support and participate in international developments on registration of title and land administration across the EU and beyond, through initiatives such as the European Land Information Service (EULIS) and the implementation of the *INSPIRE Directive* (INfrastructure for SPatial InfoRmation in Europe).

As a result of a major investment in information and communications technology over the last decade, the PRA has developed extensive online services, which are available through www.landdirect.ie. During 2010 alone, over three million transactions were processed through this web portal. The overall modernisation programme across the PRA has involved over 30 individual projects, the culmination of which has been the digitisation of the Land Registry map. Collectively, these initiatives have resulted in a successful migration from a national paper-based register of ownership of property to a world-class, fit-for-purpose, state-of-the-art electronic register, resulting in Ireland's most comprehensive online national database of land-related information.

"The digital land register also provides opportunities to streamline conveyancing and surveying processes"

This electronic register provides an excellent basis for the delivery of additional online services, paves the way for electronic conveyancing, and enables the PRA to contribute actively to land-based policy formulation across the government domain in the future. The digital land register also provides opportunities to streamline conveyancing and surveying processes. This requires all stakeholders in the land registration system to critically reassess long-established practices in order to reap the full benefits and deliver optimum cost savings. The implementation of compulsory first registration in the final two counties, in place since June 2011, complements these developments and will accelerate the completion of the land register in Ireland.

LOOK IT UP

Legislation:

- Directive 2007/2/EC of the European Parliament and of the Council, 14 March 2007 (*INSPIRE Directive*): http://inspire.jrc.ec.europa.eu/
- *Land Registration Rules 1972-2009*
- *Registration of Deeds and Title Act 2006*
- *Registration of Title Act 1964*

Literature:

- Property Registration Authority *Digitisation Protocol*, www.prai.ie

KEEP TAKING THE TABLETS

Ian O'Flaherty is president of Saurian Litigation Support in Miami, Florida, USA, and is the developer of the TrialPad *app*

Tablets like the iPad are changing the way lawyers work. Ian O'Flaherty, who was a guest speaker at the recent ILAI conference on the future of legal services, says that practising law on an iPad might be just what the doctor ordered

I recently read a quote by Mark Dean of IBM, who holds three of IBM's original nine PC patents: "When I helped design the PC, I didn't think I'd live long enough to witness its decline." His statement is both accurate and poignant. While desktop computers aren't going extinct (for now), mobile computing has shifted the focal point of computer development, and of computer consumers. Not only have developers and consumers taken notice, lawyers are using it to change the way they practise.

To some, the iPad was initially seen as a device created to fill a gap that didn't exist, but it harnesses the mobility of the phone, in a size we can read, while offering functionality we normally expect from a desktop. While many predicted it would just be another, perhaps sleeker, way to consume media, it has instead proven to be a game changer: the primary reason is apps. The apps available on the iPad have proven to be the key to making the iPad go from a consumption device – that is, reading the news, surfing the net, and getting email – to becoming a highly functional business tool.

It is important to note that there is a symbiotic relationship between the iPad's functionality being driven by the apps available in the App Store, and the iPad as a driver for individual device sales. The reason we are really only talking about the iPad when we say the word 'tablets' is due to that relationship. Apple's head start in the tablet market has put it so far in the lead, it has effectively become the 'only'. Of tablets sold worldwide through August 2011, the iPad has sold ten times more iPads than all the other tablets combined. The end result, according to an analyst at Deutsche Bank, when you include iPads, is that Apple now has the largest global notebook share.

"One thing is clear: lawyers who don't embrace tablets do so at their own peril, and will soon find themselves competing with those who can be more productive nearly anywhere than the non-adopter can be in the office"

For those who have already invested in other tablets, it is true that device manufacturers and operating system developers plan to ramp up for greater sales in the last quarter of 2011. But while the silver lining may be beginning to show, the cloud that blocks it is still the centre of focus. Hewlett-Packard have decided to discontinue their TouchPad tablet, and sales of the Samsung tablet have been crippled by recent litigation around the world, following claims by Apple that their tablet is basically a 'fat iPad'. And IDC, a global leader in consumer technology market research and analysis, has predicted that iPads will continue to enjoy nearly 70% of this growing market through the end of 2011.

FAST FACTS

- How tablets are changing the practice of law
- The tablet harnesses the portability of the mobile phone and the functionality of a desktop computer
- The ability to have a virtual office anywhere asks fundamental questions about the practice of law
- In the past five years, technology has been hard-wired into courtrooms across the world, including Dublin's own Criminal Courts of Justice
- Mobile computing is driving productivity – and is changing how lawyers work
- A recent ILTA survey found that, generally, large firms with 50 or more partners are buying into tablet technology
- Tablets are offering law firms new ways of saving on software investment
- Providers of CPD courses are also adopting the tablet

While many of the larger audience apps (such as social networking, and Windows or Adobe compatibility apps) are available across platforms, the stores relevant to other tablets, such as the Android-focused Market, don't compare with the variety of development in Apple's App Store. Developers, reticent to invest in the development process for platforms that are subject to piracy and have relatively few sales compared with the iPad, are still prejudiced toward developing for the iPad. Wider development and variety in the App Store increases the iPad's ability to function as a tool to any consumer or trade, and iPad sales continue skyward.

"The International Legal Technology Association surveyed firms in the US, Britain, Canada, and Australia for their 2011 technology survey. Results showed that 25% of responding firms had purchased tablets in the last 12 months, and an additional 25% were planning to buy them in the next 12 months"

Embracing technology

It shouldn't come as a surprise that lawyers aren't a group known for embracing technology or change. If we were to graph the way lawyers have embraced different technologies in the last 50 years, we would see the typical exponential curve: slow and flat for a short period of time, but increasingly and quickly aiming for the ceiling.

In 1974, retailers began using barcodes to track inventory and speed up the checkout process. Only in the past ten years has that same technology come into widespread use in the law to track scores of pages of lever arch folders full of documents. And while, much like the desktop computer, printing pages of documents will never quite go away, paperless offices and presentations are now standard practice.

In the past five years, technology has been hard-wired into courtrooms across the world, including Dublin's own Criminal Courts of Justice, in the anticipation and expectation of technology-driven presentations of evidence. And as the legal world begins to embrace electronic presentation of evidence, the curve in the graph of technology in the law takes an undisputed turn northward.

The *iThoughts* mind mapping app

TECH-SAVVY LAWYER – A TYPICAL DAY

Why not take a look at a typical day in the life of an iPad-savvy lawyer?

On bus or train to the office, you open your calendar app to see appointments for the day. (The calendar app in the iPad can be synced with the calendar in your office.) Your first meeting may be a document-signing at a solicitor's office. Tap the address in the calendar appointment to launch the *Maps* app and get turn-by-turn instructions and an estimate of travel time by car, public transport, or walking.

Once at the solicitor's office, you access your server, and download the file to sign. The document can be signed electronically, time stamped, and geo-tagged for future reference, and then emailed to all appropriate parties.

During lunch you receive and review several documents in an active matter, making comments and revisions, then emailing them to your assistant for final drafting. While reviewing one document in particular, you resolve a matter of contention by researching and finding the applicable caselaw online and then pasting the reference into the document you are reviewing.

Afterwards, you download all the documents relevant to a case you are scheduled to review with a barrister this afternoon. In his office, you connect to a flat panel monitor, present and discuss the key documents, highlighting and annotating important issues. Next week, you'll plug the iPad into a connection at court and present them to a judge electronically.

You get the picture. And perhaps the most important part of that picture is that all of it is not only possible, but happening now.

What does exponential change look like for lawyers who aren't known for adapting the latest technology? It means that the iPad is not to be ignored as a passing device. The ability to have a virtual office anywhere asks fundamental questions about the practice of law, ranging from the necessity of traditional brick and mortar offices to common billing and document review practices. It increases productivity and could allow law-firm overhead to shrink dramatically. Though mobile computing has started calling into question the traditional lawyering model, definitive answers remain hazy. One thing is clear: lawyers who don't embrace it do so at their own peril, and will soon find themselves competing with those who can be more productive nearly anywhere than the non-adopter can be in the office.

Changing the game

Productivity is a wonderful reason to adopt new technology, but it is ease of adaptability that explains the vertical turn in our graph. Unlike other technologies, the iPad is not just for the tech-minded or the young or trainable. The iPad was made for those with no interest in unnecessary irritation and complexity. It streamlines, and as a result, experienced lawyers who haven't quite warmed up to the PC are happy to open and use an iPad. There is virtually no learning curve, and no barrier to accessing exactly what you want, when you want it. Simply put, it is technology that doesn't get in the way of its use.

Another reason for the sudden exponential growth of mobile computing in the law is that it is not merely a lawyer-by-lawyer adoption.

This past August, the International Legal Technology Association (ILTA) surveyed firms in the US, Britain, Canada, and Australia for their 2011 technology survey. Results showed that 25% of responding firms had purchased tablets in the last 12 months, and an additional 25% were planning to buy them in the next 12 months. Perhaps more revealingly, 55% of firms are using in-house IT resources to support iPads purchased by employees.

Legal iPad adopters are not mavericks. The firms surveyed by ILTA were, generally, large firms with 50 or more partners. Recently, James Moncus III and Matthew Minner, of Hare, Wynn, Newell & Newton in Birmingham, Alabama, received a $37.5 million verdict using *TrialPad* for iPad. The plaintiffs' steering committee for the BP oil disaster in the Gulf of Mexico has also been using *TrialPad* for collaboration, document review, and presentations.

Providers of continuing professional development courses are also adopting the tablet. Most jurisdictions in the US allow lawyers to download an approved podcast for credit. The Law Society of Ireland has recently begun an iPad pilot project, offering a Commercial Contracts Certificate this November, to be delivered online and onsite, using the iPad (see page 7).

Tablets additionally offer easy methods of shopping for law firm software applications – no sales person asking you to buy software that also requires investment in a server, or costly subscriptions and updates. An ever growing plethora of options are available, all very affordable for a small or solo firm. At time of writing, there were 5,259 apps in the business category of the App Store, and 3,572 in the productivity category. With new apps being created every day, it can be guaranteed that there are more as you read this.

Do-it-yourself app research is not only possible, it is easy and expected. Commentary from current users, including ratings, can be found on the App Store, and several blogs are dedicated to app reviews. In the 'Look It Up' panel, I've included a short list of apps that are popular and useful in the legal profession, as well as some legal iPad blogs with excellent reputations and a couple of articles of note.

Consumers the world over have recognised that the future of computing is not only here, it is inexpensive, easy and convenient. And, unlike past decades, the legal field is right on their heels.

BACKGROUND TO TRIALPAD

The developer of the *TrialPad* app, Saurian Litigation Support Ltd, claims that its app helps to maximise presentations before the court, while minimising the time spent doing so.

"After many years assisting lawyers to electronically present matters of all sizes, I've seen what works, and what lawyers are willing to learn to advocate for their clients at court," says Ian O'Flaherty.

"After purchasing an iPad in early 2010, I recognised that the rules as we know them were about to change. The iPad had the potential to be the laptop, the 'cloud' and complicated software applications – all rolled into one, and all made easy.

"Since it was already looking to replace three of my areas of expertise, I figured I should replace a fourth. So I developed a legal-file management and presentation app. *TrialPad* was completed in late 2010, and, following the aforementioned expectation of electronic presentation of evidence, *TrialPad* has been downloaded in over 20 different countries. The United States, Britain, Canada, Australia, and New Zealand rank in the top five of *TrialPad* users."

LOOK IT UP

Useful legal apps:

- *Court Days Pro* (date calculator)
- *Digits* (calculator)
- *Dragon Dictation* (dictation)
- *Dropbox* (cloud based storage)
- *Flipboard* (news aggregator)
- *GoodReader* (document viewer)
- *Google Translate* (translator)
- *iLegal* (offline access to UK legislation)
- *iThoughts HD* (mind mapping)
- *Keynote* (presentations)
- *LogMeIn Ignition* (remote access to server)
- *Numbers* (spreadsheet)
- *OmniOutliner* (outliner to organise thoughts and ideas)
- *Pages* (word processor)
- *PDF Expert* (document editor)
- *Penultimate* (note taking)
- *PlainText* (text editor)
- *Quickoffice Pro HD* (view and edit Microsoft *Office* documents)
- *Reeder* for iPad (RSS reader)
- *Sign My Pad Pro* (add text, date, geotag info and signature to PDF)
- *Skype* (VOIP phone calls and video conferencing)
- *TrialPad* (legal file management and presentations)

Blogs:

- www.iphonejd.com
- www.tabletlegal.com

Articles:

- *Law Technology News* link: www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202496710945
- *Law Technology News* link: www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202508346768&Persuading_a_Jury_With_an_iPad_and_an_App

JUDGE CON MURPHY 1960 – 2011

An appreciation

On 1 August last, an entire community was shocked upon hearing of the sudden death of Judge Con Murphy.

The thousands of people who queued during the obsequies, many for hours, to extend their condolences to his much-loved wife Miriam, to his mother Teresa, to his brothers Dan and Phil and to his sister Margaret, bore testimony to his immense popularity in the community. The attendance of many members of the judiciary, the Bar and former solicitor colleagues, from near and far, exemplified the respect that he commanded in the legal profession.

Con (as he was known to all) was born in Bandon on 5 April 1960. Having attended national school and the Hamilton High School, Bandon, he subsequently read law at UCC, gaining a BCL degree in 1981. He served his apprenticeship at R Neville & Co, Bandon, qualifying as a solicitor in 1984. Con and James Long set up a partnership in 1987, which continued until Con was appointed a Circuit Court judge in November 2004.

During his career as a solicitor, he showed an enormous capacity for work, serving as president of the West Cork Bar Association and as a member of the Refugee Appeals Tribunal for a number of years. As a solicitor, he was a formidable but fair adversary. His huge client base extended across all sections of the community. He had an innate respect for his fellow human beings, and his ability to empathise was astonishing.

Con met Miriam in 1986 and they married in 1988. They were devoted to one another, and Con was always happiest in her company. And that is how he spent his time a short few hours before he was called from us.

A proud Bandonian, he fully immersed himself in numerous local clubs and associations.

His passion for sport, especially the art of hurling, was legendary. Having gained many honours as an underage player, he then involved himself in the administration and management of his beloved Bandon GAA Club for many years. One of his proudest achievements was coaching the Bandon minor hurling team to county honours in 1995.

Following his appointment as a Circuit Court judge, he immersed himself in his new task with great energy. His first sitting was at the Four Courts. On that day, he dealt with 114 State appeals effortlessly. Following a period as a travelling judge, he was appointed as a permanent judge in the Cork Circuit in February 2007, where he sat until his death. While there, he presided over many high-profile, lengthy and complex cases. He quickly gained the unstinting respect of his fellow judges, members of the Bar, former colleagues, An Garda Síochána, and members of the public at large who, in whatever capacity, appeared before him. He always brought his common sense (with which he was endowed in abundance) to bear. Courteous in the extreme, ever patient, he would often bring his trademark sense of humour to bear where appropriate.

He was a lover of classical music and art and a voracious reader, particularly of British and Irish history, biography and autobiography.

Con was involved in politics from an early age. He served three terms as a member of the Bandon Town Commissioners (as it then was), on each occasion attaining over twice the required quota, and was elected chairman on four occasions. He served as a successful director of elections for Fianna Fáil in the Cork South West constituency on many occasions, especially for his friend Joe Walsh, former Minister for Agriculture and Food. His political nous and ability to garner votes was the envy of others.

A master of the pithy observation, with a passion for life, Con was a Gaelgóir, historian, philosopher, wit and raconteur, a family man, loyal friend and – above all – a wonderful husband to his beloved Miriam.

With Con's passing, Miriam has lost her husband and best friend, his family have lost their pride and joy, jurisprudence has lost a talent, and we have all lost a friend.

Ní bheidh a leithéid ann arís. G

JL

Waterford Law Society

PIC: GARRETT FITZGERALD PHOTOGRAPHY

At the Waterford Law Society meeting in the Granville Hotel, Waterford, on 26 September 2011 were: *(front, l to r)*: Ellen Hegarty, Helen Bowe O'Brien, Donald Binchy (Vice-President of the Law Society), John Costello (President of the Law Society), Gerard O'Herlihy (President, Waterford Law Society), Ken Murphy (Law Society Director General), Gerard O'Connor, Rosa Eivers and Siobhan Geraghty. *(Back, l to r)*: Jim Hally, Kieran Higgins, Frank Heffernan, Neil Breheny, Tom Murran, Myles O'Connor, Marie Dennehy, Conchur Lavelle, Donal O'Connell, Derry O'Carroll, John Purcell, Kerri O'Shea, Jo Geary, Morette Kinsella and Nicholas Walsh

'Leman 500' races to €10k

Popping open the champagne in Eyre Square following their Dublin to Galway cycle were *(l to r)*: Declan Tormey, John Hogan, Larry Fenelon, Maria Edgeworth, Gavin Bluett and John Walsh (all of Leman Solicitors)

Seven solicitors and trainees from Leman Solicitors in Dublin between them embarked on a 500km charity cycle for Our Lady's Hospital for Sick Children, Crumlin, on 24 September. The group left Dublin at 6.30am and arrived in Galway at 6pm on 24 September.

All costs associated with the cycle were covered by Wheelworx in Lucan, Co Dublin (www.wheelworx.ie) and Sixt Car hire on Haddington Road, Dublin (www.sixt.ie), as well as Lemans itself.

The firm had aimed to raise €5,000 for Our Lady's Hospital, but it looks like sponsorship will double that figure, due to the excellent response from friends, clients and colleagues.

It's not too late to support this worthy cause. You can donate by visiting: www.cmrf.org/donate/creditCard?sponsorshipPageID=805.

The Sligo Bar Association joined with the Leitrim and Roscommon Bar Associations to host the inaugural 'Philly McGuinness Memorial Cup Match' in Sligo recently. The event raised funds for the Philly McGuinness Memorial Park, Mohill, Co Leitrim. Winners Leitrim/Roscommon were presented with their trophy by Judge Kevin Kilrane. For more information on the park's fundraising events, visit www.facebook.com/pages/Philly-McGuinness-page/115198441837420

ON THE MOVE

Aoife awarded doctorate in environmental law

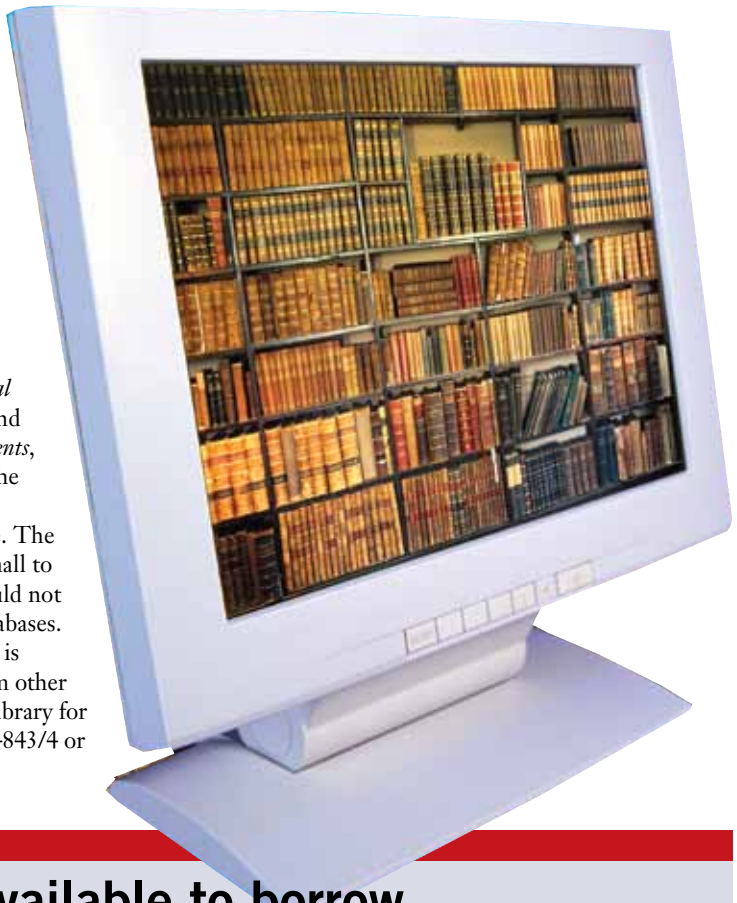
Aoife Shields, who practises in Ronan Daly Jermyn's environmental law group in Cork, has been awarded an EPA-funded PhD by UCC for her thesis, *The Need for a Dedicated Legal Regime for the Management of Contaminated Land in Ireland.*

Robert McDonagh promoted to partner

Mason Hayes & Curran has further strengthened its commercial practice with the promotion of Robert McDonagh to partner. Robert advises public and private sector clients in relation to commercial contracts and outsourcing, information technology, intellectual property and data protection.

New archive for your library FAQs

Answers to the library's most frequently asked questions are now available on the 'library services' page in the members' area of lawsociety.ie



Eddie Mackey is executive assistant librarian at the Law Society of Ireland

Library staff deal with a wide variety of questions on a daily basis. Queries can range from straightforward requests for information on practice notes, *Gazette* articles, law reports and book loans, to more complicated requests that require further research and a call back.

Quite often, information that is requested is available freely on a website, and the staff can direct members to a specific URL address. The members' area on the Law Society's website is a very useful source for guidance notes, precedent documentation and access to the online library catalogue.

We are frequently asked a range of similar questions, and a list of these questions and answers is now available on the 'library services' page in the members' area. Questions such as: 'Where can I find the family home declaration relating to civil partnerships?', 'What forms do I need for enduring powers of attorney?', 'Why can't I get a hard copy of the *Legal Diary* in recent weeks?'; 'How do I use the library app?' – a range of questions about accessing and getting the best use from the members' area, library catalogue and other library services are covered.

Electronic precedents

The library is licensed to supply precedents electronically in MS *Word* format from *The Encyclopedia of Forms and Precedents* (LexisNexis), *Practical Commercial Precedents* (Thomson Reuters), and *Laffoy's Irish Conveyancing Precedents*, the latter recently launched on the new Irish property service from Bloomsbury Professional Online. The service is designed to support small to medium-sized practices that would not ordinarily subscribe to these databases.

A large selection of precedents is also available in PDF format from other publications. Please contact the library for further information (tel: 01 672 4843/4 or email: library@lawsociety.ie).

JUST PUBLISHED

New books available to borrow

- Anderson, Jack *et al*, *Anti-Social Behaviour Law* (Bristol: Jordans, 2011)
- Barnes, Robin D, *Outrageous Invasions: Celebrities' Private Lives, Media and the Law* (New York: OUP, 2010)
- Beauchamps Solicitors, *Employment Law Contracts and Policies* (Dublin: Round Hall, 2011)
- Bergin, John (ed), *New Perspectives on The Penal Laws* (Dublin: Eighteenth Century Ireland, 2011)
- Beyerlin, Ulrich, *International Environmental Law* (Oxford: Hart, 2011)
- Brest, Paul *et al*, *Problem Solving, Decision Making and Professional Judgment: a Guide for Lawyers and Policymakers* (Oxford: OUP, 2010)
- Department of Children and Youth Affairs, *Listen to our Voices! Hearing Children and Young People Living in the Care of the State* (Dublin: Stationery Office, 2011)
- Egan, Suzanne, *The UN Human Rights Treaty System: Law and Procedure* (Haywards Heath: Bloomsbury Professional, 2011)
- Feeney, Michael, *The Taxation of Companies* (2011 ed) (Haywards Heath: Bloomsbury Professional, 2011)
- Forde, Evelyn, *Taxation of Company Reorganisations in Ireland* (Haywards Heath: Bloomsbury Professional, 2011)
- Foster, Nigel (ed), *Blackstone's EU Treaties and Legislation 2011-2012* (Oxford: OUP, 2011)
- Howard, Gillian, *Drafting Employment Contracts* (2nd ed) (London: Law Society, 2010)
- Johnson, Helen, *Guide to Trademark Law and Practice in Ireland* (Haywards Heath: Bloomsbury Professional, 2011)
- Keating, Albert, *Jurisprudence* (Dublin: Round Hall, 2011)
- Loughlan, Patricia, *Celebrity and the Law* (Sydney: Federation Press, 2010)
- McGowan-Smyth, Jacqueline and Eleanor Daly, *Irish Company Secretary Handbook* (Haywards Heath: Bloomsbury Professional, 2011)
- McGreal, Cathal, *Criminal Justice (Theft and Fraud Offences) Act 2001: Annotated and Consolidated* (2nd ed) (Dublin: Round Hall, 2011)
- McMullen, John, *Redundancy: the Law and Practice* (3rd ed) (Oxford: OUP, 2011)
- Marchini, Renzo, *Cloud Computing: a Practical Introduction to the Legal Issues* (London: BSI, 2010)
- Murphy, Yvonne, *Journalists and the Law* (3rd ed) (Dublin: Round Hall, 2011)
- Oliver, Dawn and Carlo Fusaro, *How Constitutions Change: a Comparative Study* (Oxford: Hart, 2011)
- *Report of the Commission of Investigation into the Catholic Diocese of Cloyne* (Dublin: Department of Justice and Law Reform, 2011)
- Shapland, Joanna *et al*, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (London: Routledge, 2011)
- Spierin, Brian E, *The Succession Act 1965 and Related Legislation: a Commentary* (4th ed) (Haywards Heath: Bloomsbury Professional, 2011)

Law Society Council meetings 1 and 15 July 2011

Motions: professional indemnity insurance

1) "*That this Council agrees to consider the PII Task Force recommendation of a master policy at its meeting to be held on Friday 9 December 2011. That this Council agrees that, in the interim, the Society should continue to develop the master policy proposal and should also explore all options open to it to improve the renewal process for the indemnity period commencing on 1 December 2011, including the introduction of amendments to effect improvements in the minimum terms and conditions, the qualified insurers agreement and the* PII Regulations.
2) "*That this Council approves the introduction of amendments to the minimum terms and conditions, the qualified insurers agreement and the* PII Regulations, *as set out in the schedule circulated.*"

Proposed: Eamon Harrington
Seconded: Stuart Gilhooly

At the meeting on 1 July 2011, Eamon Harrington briefed the Council in detail in relation to proposed amendments to the PII scheme, which would effect significant improvements in PII arrangements for the benefit of the public and which would also result in improved indemnity arrangements for firms. He reported on a recent meeting with the insurers, at which the Society had emphasised the fact that a master policy was still under consideration and that, if the forthcoming renewal process did not address the myriad of shortcomings endured during the previous two periods, the Council would not hesitate to pass the motion on a master policy, which would be considered at its meeting on 9 December.

Mr Harrington highlighted a number of matters, including agreement on a common proposal form, variable renewal dates, specific requirements in relation to run-off cover, the 'succeeding practice' rule, risk-management guidance and the Assigned Risks Pool.

The amended draft *PII Regulations* were approved by the Council at its meeting on 15 July 2011.

Council election dates

As required by the bye-laws, the Council approved Monday 26 September 2011 as the final date for receipt of nominations for the Council election, and Thursday 3 November 2011 as the close-of-poll date.

Report on SGM

The president noted that there had been a full Presidents' Hall and an excellent debate at the special general meeting held on the previous evening. In particular, he thanked those who had spoken on behalf of the Society's two task forces – John D Shaw and Niall Farrell – who had outlined the issues facing both task forces with clarity and balance.

EU/IMF proposals

At the meeting on 1 July, the Council noted a letter to the new Minister for Justice seeking a meeting to discuss the EU/IMF proposals in relation to the legal profession regarding (a) regulation and (b) legal costs. The letter emphasised that the Society wished to engage constructively with the minister in relation to these issues and would welcome the earliest opportunity to do so.

In terms of the Society's policy position on regulation, it was agreed that, as a matter of principle, any regulatory system should not encroach upon the independence of the profession and should not involve a disproportionate level of costs.

At the meeting on 15 July, the Council were briefed on the meeting with the minister, which had been held on 11 July 2011. The Society had been represented by the president, senior vice-president and director general. The Society had discussed, in broad terms, the issues that needed to be addressed in the bill. The minister had emphasised many times at that meeting that no final decisions had yet been taken by him in relation to the bill's contents. He had indicated that he wished to meet again with the Society, perhaps in early September. In the meantime, the Society was encouraged to engage with his officials.

Postal ballot on SMDF

The Council noted that the postal ballot on the SMDF had yielded a positive result, with 62% of those voting supporting the proposal.

Criminal legal aid

The Council approved a submission to the Department of Justice expressing opposition to the further proposed reduction of 10% in criminal legal aid fees and outlining the Society's specific objection to the lack of consultation with the profession, particularly given the comprehensive document proposing efficiencies and savings that had been submitted by the Society in recent months.

The submission also emphasised the excessive nature of the cuts, the constitutional right to legal representation, the fact that criminal defence solicitors were being expected to provide services for levels of fees well below those paid by the State in other areas, the fact that no other profession had to endure cuts of such a magnitude, and that no equivalent levels of cuts had been applied to other parts of the Department of Justice's budget.

In addition, the submission emphasised that the combination of cuts would render it uneconomic for solicitors in country areas to travel to remote District Courts, in circumstances where the travel expenses allowed to the solicitor were a fraction of the rates allowed to the civil servants manning those District Courts.

The submission emphasised the unilateral and arbitrary decision to sever the link between criminal legal aid defence fees and fees paid to prosecution counsel. The submission formally requested that the minister include a representative of the solicitors' profession on the task force, which seemed to comprise only departmental officials.

The Society had also sought an explanation of the basis on which the department sought to impose a two-year deadline on the payment of fees properly arising and due to a service provider, noting that there were many instances where judges adjourned matters for lengthy periods in order to monitor the behaviour of a defendant.

In conclusion, the submission sought a meeting with the minister at the earliest opportunity.

eConveyancing Task Force

The chairman and members of the eConveyancing Task Force made a presentation to the Council on the work of the task force, including the milestones to date and the proposed 'next steps' and recommendations of the task force, which were approved by the Council.

Guide to Professional Conduct

The Council approved a proposal that the new draft guide, excluding Chapter 3 on conflicts of interest, should be circulated to the profession at the earliest date in early autumn for their comments and suggestions. It was agreed that Chapter 3 should be withheld, pending the deliberations and recommendations of the Conveyancing Conflicts Task Force.

BRIEFING

Practice notes

Notice to all practising solicitors: practice names

The attention of all practising solicitors is drawn to regulation 4 of SI no 178 of 1996 – *Solicitors (Practice, Conduct and Discipline) Regulations 1996* – which provides that the name of the practice under which a solicitor or a firm of solicitors carry on business shall consist only of the name or one of the names of the solicitors, or one or more of the present or former principals of the firm, as the case may be, or such other name as is approved in writing by the Society. This requirement does not apply to any name that was in use on 1 July 1996.

The function of approving professional names under these regulations is vested in the Regulation of Practice Committee, and applications for approval should be addressed to the Registrar of Solicitors.

In cases where the committee does not approve a name application, the committee will state its grounds for withholding approval. Generally, the grounds will be that the name could reasonably convey to solicitors and/or non-solicitors generally any one or more of the following meanings:

a) A meaning likely to bring the solicitors' profession into disrepute or that is in bad taste or that reflects unfavourably on other solicitors,
b) A meaning that the solicitor or firm of solicitors concerned has specialist knowledge in any area of law or practice superior to that of other solicitors,
c) A meaning that the normal business of the solicitor or firm of solicitors concerned has more extensive geographical coverage than it actually has, or
d) A meaning otherwise misleading to clients, potential clients or the wider public, or otherwise contrary to the public interest.

John Elliot,
Registrar of Solicitors and
Director of Regulation

Funeral expenses are the priority debt payable from the assets of the deceased

PROBATE, ADMINISTRATION AND TRUSTS COMMITTEE

Practitioners are reminded that the funeral expenses are the priority debt payable from the assets of the deceased in each and every estate.

The committee recommends that, if the practitioner with carriage of administration of the estate is in funds, then, upon receipt of a request for payment of the funeral account, it should be settled without delay. Moreover, the committee reminds practitioners that, if the deceased left a bank account with sufficient funds to discharge the funeral account, then, upon production of the funeral director's invoice, it is the practice of most banks to provide a bank draft payable to the funeral director in satisfaction of the funeral account, without requiring a grant of representation.

Accordingly, if not already in funds, a request for payment of the funeral account should be made to the bank promptly by practitioners upon receipt of the request for payment from the funeral director.

In the event that there are no liquid assets available to discharge the funeral account until non-liquid assets have been realised following extraction of the grant of representation, or if there is some other difficulty in obtaining the requisite funds from the estate, then this should be communicated to the funeral director, together with an estimate of when payment may be likely.

The funeral director should also be provided with the name and address of the legal personal representative(s), in case the funeral director needs to make personal contact with them in relation to the funeral account. Where such difficulties arise, it may be worth considering whether there are other options available to enable discharge of the funeral account pending administration of the estate.

Criminal Legal Aid Panel – tax clearance certificates

CRIMINAL LAW COMMITTEE

Members who wish to retain their name on the Criminal Legal Aid Panel for the legal aid year 1 December 2011 to 30 November 2012 are required to hold a tax clearance certificate with an expiry date later than 30 November 2011.

Applications for tax clearance certificates can be made in writing (form TC1) to local district offices of Revenue or via Revenue's online tax clearance application facility (www.revenue.ie). At the time of making an online application, there is an option available whereby the taxpayer may elect to allow a third party to electronically verify the taxpayer's tax clearance status. This facility is secure and can only be accessed with the permission of the taxpayer. In such cases, the taxpayer provides his/her tax clearance number and his/her customer number to the third party. This obviates the necessity to send the original tax clearance certificate to the county registrar for each of the counties in which the solicitor wishes to be eligible for legal aid assignments, as the registrar will be able to view the certificate online and print it down for his/her file if necessary. Please note that online verification is not available unless the application for tax clearance has also been made online.

Where application for a tax clearance certificate is made in writing to the local district Revenue office, solicitors must submit the original certificate to the county registrar for each of the counties in which the solicitor wishes to be eligible for legal aid assignments. Copy certificates are not acceptable.

Members should note that no fees will be payable to a solicitor who accepts an assignment to a case if his/her name is not, at the time of assignment, on the relevant solicitors' panel.

Legislation update 23 July – 9 September 2011

Details of all bills, acts and statutory instruments since 1997 are on the library catalogue – www.lawsociety.ie (members' and students' area) – with updated information on the current stage a bill has reached and the commencement date(s) of each act. All recent bills and acts (full text in PDF) are on www.oireachtas.ie and recent statutory instruments are on a link to electronic statutory instruments from www.irishstatutebook.ie

ACTS PASSED

Child Care (Amendment) Act 2011
Number: 19/2011
Content: Provides for the High Court to have statutory jurisdiction to hear applications by the Health Service Executive for special care orders or interim special care orders and related matters in respect of children where their welfare may require their detention in a special care unit. Provides that special care units will be inspected under the *Health Act 2007*. Amends and extends the *Child Care Act 1991*, amends the *Children Act 2001*, the *Health Act 2004* and the *Health Act 2007*. Provides for the dissolution of the *Children Acts* Advisory Board and the transfer of its assts, liabilities and employees to the Minister for Health and Children. Repeals part 11 of the *Children Act 2001* and provides for related matters.
Enacted: 31/7/2011
Commencement: 31/7/2011 for sections 7 and 49, commencement order(s) to be made for other sections (per s1(6) of the act)

Civil Law (Miscellaneous Provisions) Act 2011
Number: 23/2011
Content: Amends the law relating to civil liability for acts of good Samaritans, volunteers and volunteer organisations; amends the *Civil Legal Aid Act 1995*, the *Private Security Services Act 2004*, the law relating to the sale of intoxicating liquor, the *Employment Equality Act 1998*, the *Equal Status Act 2000*, the *Bankruptcy Act 1988*, the *Family Law (Maintenance of Spouses and Children) Act 1976*, the *Coroners Act 1962*, the *Land and Conveyancing Law Reform Act 2009*, the *Registration of Title Act 1964*, the law relating to tribunals of inquiry, and certain other enactments, and provides for related matters.
Enacted: 2/8/2011
Commencement: 2/8/2011 for all sections except sections 6, 12 and 13(g) and sections 49 to 55, for which commencement order(s) will be made (per s1(10) of the act)

Communications Regulation (Postal Services) Act 2011
Number: 21/2011
Content: Provides for the regulation of postal services, the implementation of EC Directive 2008/6, amending EC Directive 97/67 with regard to the full accomplishment of the internal market of community postal services, confers additional functions on the Commission for Communications Regulation, ensures the provision of a universal postal service, provides for the designation of a universal postal service provider, provides financial support for universal postal provision, provides for the authorisation of postal service providers, provides for enforcement measures, provides for the establishment, operation and maintenance of a system of postcodes, and provides for related matters.
Enacted: 2/8/2011
Commencement: 2/8/2011

Criminal Justice Act 2011
Number: 22/2011
Content: Amends the criminal law to improve certain procedural matters and strengthen garda investigative powers. The intention is that such improvements will assist in reducing the delays associated with the investigation and prosecution of complex crime, in particular white-collar crime. The bill also addresses two matters relating to the investigation of offences more generally: (i) refinements to the processes around the constitutional/*European Convention on Human Rights* entitlement of a person in garda custody to access legal advice, and (ii) the circumstances in which a person detained under section 4 of the *Criminal Justice Act 1984* may be questioned between midnight and 8am.
Enacted: 2/8/2011
Commencement: Commencement order(s) to be made (per s1(2) of the act)

Criminal Justice Act (Community Service) (Amendment) (No 2) Act 2011
Number: 24/2011
Content: Introduces a requirement on a court, before which an offender stands convicted of an offence for which a sentence of up to 12 months' imprisonment would be appropriate, to consider imposing the alternative sentence of a community service order.
Enacted: 2/8/2011
Commencement: 2/8/2011 for section 13; commencement order(s) to be made for other sections (per s14(3)).

Defence (Amendment) Act 2011
Number: 17/2011
Content: Amends the *Defence Acts* by providing for an expansion of the potential candidature for appointment to the post of military judge and the Director of Military Prosecutions to persons other than members of the Defence Forces and for the appointment of a Circuit judge to perform the functions of the military judge where the military judge is not available for whatever reason. Also provides for an amendment to the powers of the selection committees established for the purposes of selecting a suitable candidate for appointment to the posts of Director of Military Prosecutions and military judge, respectively. Amends and extends the *Courts of Justice Act 1947* and provides for related matters.
Enacted: 26/7/2011
Commencement: Commencement order(s) to be made (per s12(3) of the act)

Electoral (Amendment) Act 2011
Number: 14/2011
Content: Provides for the revision of the terms of reference of a Constituency Commission, puts a time limit on the calling of bye-elections to fill vacancies in Dáil Éireann, and reduces the spending limits and the level of election expenses that can be reimbursed to a candidate at a presidential election.
Enacted: 25/7/2011
Commencement: 25/7/2011

Environment (Miscellaneous Provisions) Act 2011
Number: 20/2011
Content: Amends and extends the *Air Pollution Act 1987*, the *Waste Management Act 1996*, and the *Freedom of Information Act 1997*, and provides for related matters.
Enacted: 2/8/2011
Commencement: Commencement order(s) to be made (per s1(5) of the act).

Finance (No 3) Act 2011
Number: 18/2011
Content: Amends and extends the *Taxes Consolidation Act 1997*, the *Stamp Duties Consolidation Act 1999*, the *Capital Acquisitions Tax Consolidation Act 2003* and the *Value-Added Tax Consolidation Act 2010* in relation to the taxation of civil partners and cohabitants as a consequence of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, and provides for connected matters.
Enacted: 27/7/2011
Commencement: Various – see act

Public Health (Tobacco) (Amendment) Act 2011
Number: 15/2011
Content: Amends section 38 (as amended by section 6 of the *Public*

BRIEFING

Health (Tobacco) (Amendment) Act 2009) of the *Public Health (Tobacco) Act 2002* to enable the minister to make regulations to introduce combined text and photo warnings on tobacco products.
Enacted: 25/7/2011
Commencement: 25/7/2011

Residential Institutions Redress (Amendment) Act 2011
Number: 16/2011
Content: Amends section 8 of the *Residential Institutions Redress Act 2002* to provide that the Redress Board shall not consider an application made on or after 17 September 2011, and provides for related matters.
Enacted: 25/7/2011
Commencement: 25/7/2011

SELECTED STATUTORY INSTRUMENTS

Child Abduction and Enforcement of Custody Orders Act 1991 (Section 4) (Hague Convention) Order 2011
Number: SI 400/2011
Content: Section 4 of the *Child Abduction and Enforcement of Custody Orders Act 1991* enables the Minister for Foreign Affairs to declare which states are contracting states to the *Convention on the Civil Aspects of International Child Abduction*, done at The Hague on 25 October 1980, and that a declaration or reservation has been made to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. This order specifies which states are contracting states and sets out the texts of the declarations and reservations that have been received by the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
Commencement: 20/7/2011

Circuit Court (Fees) Order 2011
Number: SI 407/2011
Content: Provides for revised fees to be charged in the Circuit Court offices.
Commencement: 22/8/2011

Circuit Court Rules (Civil Partnership and Cohabitation) 2011
Number: SI 385/2011
Content: These rules insert a new order 59A in the *Circuit Court Rules*, to prescribe the procedure in respect of civil partnership law proceedings, within the meaning of section 139 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*, and proceedings under part 15 of that act ('cohabitation proceedings').
Commencement: 13/8/2011

Criminal Justice Act 2011 (Commencement) Order 2011
Number: SI 411/2011
Content: Appoints 9/8/2011 as the commencement date for part 1 (other than s5), ss7 (other than paragraph (c)) and 8, part 3 and schedules 1 and 2 of the act.
Commencement: 9/8/2011

Criminal Justice Act 1984 (Suspension of Detention under Section 4(3A)) Regulations 2011
Number: SI 416/2011
Content: Provides in relation to procedures that are to apply where a person's detention is being suspended under s4 of the *Criminal Justice Act 2011*.
Commencement: 9/8/2011

Criminal Justice (Legal Aid) (Amendment) Regulations 2011
Number: SI 362/2011
Content: These regulations provide for: (1) a decrease in the fees payable under the Criminal Legal Aid Scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and for a decrease in the fees paid to solicitors and counsel in respect of essential visits to prisons and other custodial centres (other than garda stations) and for certain bail applications, as follows: 10% with effect from 13 July 2011; (2) an amendment to the structure of the 'first day of hearing fee', where the full rate will apply to the first two cases represented by the solicitor on any one day and a reduced rate will apply for the third and subsequent cases on any one day; (3) a reduction of 50% for payments in respect of travel and subsistence; (4) clarification of the basis upon which the solicitor assigned in pursuance of a certificate for free legal aid may be represented by another individual and confirmation that the fees and expenses payable shall be made to the assigned solicitor only.
Commencement: 13/7/2011

Criminal Justice (Theft and Fraud Offences) Act 2001 (Commencement) Order 2011
Number: SI 394/2011
Content: Appoints 1/8/2011 as the commencement date for s57 (provision of information to juries) of the act.

District Court (Civil Partnership and Cohabitation) Rules 2011
Number: SI 414/2011
Content: Inserts a new order 54A in the *District Court Rules* to prescribe the procedure in respect of civil partnership law proceedings within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.
Commencement: 3/8/2011

District Court (Fees) Order 2011
Number: SI 408/2011
Content: Provides for the fees to be charged in District Court offices with effect from 22 August 2011.
Commencement: 22/8/2011

Enforcement of Court Orders (Legal Aid) (Amendment) Regulations 2011
Number: SI 363/2011
Content: These regulations provide for a decrease in the fees payable in proceedings on a summons under section 6 (inserted by section 2 of the 2009 act) of the *Enforcement of Court Orders Act 1940* (including that section as applied by section 8 (as amended by the said section 2) of the 1940 act as follows: 10% with effect from 13 July 2011.
Commencement: 13/7/2011

Environment (Miscellaneous Provisions) Act 2011 (Commencement of Certain Provisions) Order 2011
Number: SI 433/2011
Content: Appoints 23/8/2011 as the commencement date for ss1-14, 20, 21, 43-47 of the act.
Commencement: 13/7/2011

Health (Charges for In-Patient Services) (Amendment) Regulations 2011
Number: SI 382/2011
Content: These regulations amend the *Health (Charges for In-Patient Services) Regulations 2005* to set the charge for those receiving in-patient services where 24-hour nursing care is provided at the weekly rate shown in schedule 1 (up to a maximum of €175) and to set the charge for those receiving in-patient services

where 24-hour nursing care is not provided at the weekly rate shown in schedule 2 (up to a maximum of €130).
Commencement: 23/7/2011

Medical Practitioners (Amendment) Act 2011 (Commencement) Order 2011
Number: SI 388/2011
Content: Appoints 19/7/2011 as the commencement date for those sections of the act not already commenced.

Road Traffic (Restraint Systems in Organised Transport of Children) Regulations 2011
Number: SI 367/2011
Content: These regulations make restraint systems of an acceptable standard mandatory for all passengers accommodated in a category M2 and M3 vehicle that is involved in the organised transport of children. These regulations also require the restraint systems of a category M2 and M3 vehicle involved in the organised transport of children to be maintained in a fit-for-purpose state.
Commencement: 31/10/2011

Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011
Number: SI 409/2011
Content: Provides for the revision of professional indemnity insurance regulations.
Commencement: 1/12/2011

Supreme Court and High Court (Fees) Order 2011
Number: SI 406/2011
Content: Provides for revised fees to be charged in the Office of the Registrar of the Supreme Court, the Central Office, the Examiner's Office, the Office of the Official Assignee in Bankruptcy, the Taxing Master's Office, the Accountant's Office, the Office of Wards of Court, the Probate Office and District Probate Registries.
Commencement: 22/8/2011

Prepared by the Law Society Library

ONE TO WATCH

One to watch: new legislation

Criminal Justice Act 2011
The *Criminal Justice Act 2011* came into effect on 9 August 2011. The new act seeks to address the current gap in the legislation regarding white-collar crimes. The act addresses offences in the following areas:

- Banking, investment of funds and other financial activities,
- Company law,
- Money laundering and financing terrorism,
- Theft and fraud,
- Bribery and corruption,
- Competition and consumer protection,
- Criminal acts involving the use of electronic communication networks and information systems or against such networks or both, and
- The raising and collection of taxes and duties.

Order to produce documents
According to section 15, a member of the Garda Síochána may apply for an order of the District Court for a person to make available any particular document or documents of a particular description, or for a person to provide particular information by answering questions or making a statement containing the information, or both.

On an application to the judge of the District Court for an order of the type above, the judge may order the person to (a) produce the documents to a member of the Garda Síochána for the member to take away and, if the judge considers it appropriate, to identify and categorise the documents to be so produced in the particular manner (if any) sought in the application or in such other manner as the judge may direct and to produce the documents in that manner, or (b) give such a member access to them, if the judge is satisfied that:

- There are reasonable grounds for suspecting that a person has possession or control of particular documents or documents of a particular description,
- There are reasonable grounds for believing that the documents are relevant to the investigation of the relevant offence concerned,
- There are reasonable grounds for suspecting that the documents (or some of them) may constitute evidence of or relating to that offence, and
- There are reasonable grounds for believing that the documents should be produced or that access to them should be given, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances.

An application to provide documents or information may also be made, according to section 15(3), if the District Court judge is satisfied that "there are reasonable grounds for suspecting that a person has information which he or she has failed or refused without reasonable excuse to give to the Garda Síochána, having being requested to do so".

According to section 15(15), "a person who without reasonable excuse fails or refuses to comply with an order under this section shall be guilty of an offence and shall be liable:

a) On summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
b) On conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both."

Concealing facts
Section 17 relates to the concealing of facts and states: "Any person who (a) knows or suspects that an investigation by the Garda Síochána into a relevant offence ... is being or is likely to be carried out, and (b) falsifies, conceals, destroys or otherwise disposes of a document or record which he or she knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal, shall be guilty of an offence."

Withholding information
Section 19 relates to withholding information. It states: "A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in (a) preventing the commission by any other person of a relevant offence, or (b) securing the apprehension, prosecution or conviction of any other person for a relevant offence, and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána."

Protection for employees
According to section 20, "an employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee:

a) For making a disclosure or for giving evidence in relation to such disclosure in any proceedings relating to a relevant offence, or
b) For giving notice of his or her intention to do so".

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 Michael J Murphy, a solicitor formerly practising as MJ Murphy & Co, Solicitors, 25 Lower Salthill, Galway, Co Galway, and in the matter of the *Solicitors Acts 1954-2008* [4803/DT119/08 and High Court record no 2009/95 SA]
Michael J Murphy (respondent solicitor)
Law Society of Ireland (applicant)

On 1 September 2009, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Deducted an improper solicitor client fee of €15,000 from a named client's settlement of €30,000, which represents a solicitor client fee of 50%, when he also received party-and-party costs of €7,978.26,
2) Failed to record the receipt of the above amount of €7,978.26 in the books of account,
3) Failed to lodge the above amount of €7,978.26 to client account or to office account,
4) Failed to maintain a copy of the party-and-party bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
5) Misapplied the above party-and-party costs of €7,978.26 by lodging same to an account in his own name in a named credit union,
6) Deducted an improper solicitor client fee of €9,500 from a named client's settlement of €22,500, which represents a solicitor client fee of 42.2%, when he also received party-and-party costs of €3,500,
7) Failed to record the receipt of the above amount of €3,500 in the books of account,
8) Failed to lodge the above amount of €3,500 to client account or to office account,
9) Failed to maintain a copy of the party-and party-bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
10) Deducted an improper solicitor client fee of €2,000 from a named client's settlement of €5,000, which represents a solicitor client fee of 40%, when he also received party-and-party costs of €928.41,
11) Failed to record the receipt of the above amount of €928.41 in the books of account,
12) Failed to lodge the above amount of €928.41 to client account or to office account,
13) Failed to maintain a copy of the party-and-party bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
14) Deducted an improper solicitor client fee of €8,515.44 from a named client's settlement of €22,515.44, which represents a solicitor client fee of 37.8%, when he also received party-and-party costs of €3,000,
15) Failed to record the receipt of the above amount of €3,000 in the books of account,
16) Failed to lodge the above amount of €3,000 to client account or to office account,
17) Misapplied the above party-and-party costs of €3,000 by lodging same to an account in his own name in a named credit union,
18) Failed to maintain a copy of the party-and-party bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
19) Deducted an improper solicitor client fee of €15,000 from a named client's settlement of €40,000, which represents a solicitor client fee of 37.5%, when he also received party-and-party costs of €7,050,
20) Failed to record the receipt of the above amount of €7,050 in the books of account,
21) Failed to maintain a copy of the party-and-party bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
22) Deducted an improper solicitor client fee of €7,500 from a named client's settlement of €20,000, which represents a solicitor client fee of 37.5%, when he also received party-and-party costs of €6,335.50,
23) Failed to record the receipt of the above amount of €6,335.50 in the books of account,
24) Failed to lodge the above €6,335.50 to client account or to office account,
25) Misapplied the above party-and-party costs of €6,335.50 by lodging same to an account in his own name in a named credit union,
26) Deducted an improper solicitor client fee of €5,699.14 from a named client's settlement of €15,769.14, which represents a solicitor client fee of 36.1%, when he also received party-and-party costs of €5,886.32,
27) Failed to record the above €5,886.32 in the books of account,
28) Failed to lodge the above €5,886.32 to client account or to office account,
29) Failed to maintain the letter received enclosing the party-and-party costs cheque on the client's file in the case of a named client,
30) Misapplied the above party-and-party costs of €5,886.32 by lodging same to an account in his own name in a named credit union,
31) Deducted an improper solicitor client fee of IR£3,500 from a named client's settlement of IR£13,500, which represents a solicitor client fee of 25.9%, when he also received party-and-party costs of €3,850,
32) Deducted an improper solicitor client fee of €2,500 from a named client's settlement of €10,000, which represents a solicitor client fee of 25%, when he also received party-and-party costs of €3,377.40,
33) Failed to record the receipt of the above €3,377.40 in the books of account,
34) Failed to lodge the above €3,377.40 to client account or to office account,
35) Failed to maintain a copy of the party-and-party bill or the letter received enclosing the party-and-party cheque on the client's file in the case of a named client,
36) Misapplied the above party-and-party costs of €3,377.40 by lodging same to an account in his own name in a named credit union,
37) Deducted an improper solicitor client fee of €5,000 from a named client's settlement of €20,000, which represents a solicitor client fee of 25%, when he also received party-and-party costs of €4,755.52,
38) Deducted an improper solicitor client fee of €3,000 from a named client's settlement of €13,301, which represents a solicitor client fee of 22.5%, when he also received party-and-party costs of €6,620.13,
39) Deducted an improper solicitor client fee of €3,500 from a named client's settlement of €16,500, which represents a solicitor client fee of 21.2%, when he also received party-and-party costs of €3,907.41,
40) Deducted an improper solicitor client fee of €20,000 from a named client's settlement of €110,000, which represents a solicitor client fee of 18.2%, when he also received party-and-party costs of €35,888.79 in two instalments of €25,000 and €10,888.79,
41) Failed to record the receipt of the above instalment of party-and-party costs of €25,000 in the books of account,
42) Failed to lodge the above instalment of party-and-party costs of €25,000 to client account or to office account,
43) Failed to maintain a copy of

the party-and-party bill or the letters received enclosing the party-and-party cheques on the client's file in the case of a named client,

44) Misapplied the above party-and-party costs instalment of €25,000 by lodging same to an account in his own name in a named credit union,

45) Deducted an improper solicitor client fee of €5,000 from a named client's settlement of €30,000, which represents a solicitor client fee of 16.67%, when he also received party-and-party costs of €20,378.33,

46) Failed to record the receipt of the above €20,378.33 in the books of account,

47) Failed to lodge the above €20,378.33 to client account or to office account,

48) Misapplied the above party-and-party costs of €20,378.33 by lodging same to an account in his own name in a named credit union,

49) Failed to record in the books of account the receipt of party-and-party costs of €3,194.66 received in the case of a named client,

50) Failed to lodge the party-and-party costs of €3,194.66 received in the case of a named client to client account or to office account,

51) Failed to maintain the letter received enclosing the party-and-party costs cheque of €3,194.66 on the client's file in the case of a named client,

52) Failed to record in the books of account the receipt of party-and-party costs of €5,717.26 received in the case of a named client,

53) Failed to lodge the party-and-party costs of €5,717.26 received in the case of a named client to client account or to office account,

54) Failed to maintain the letter received enclosing the party-and-party costs cheque of €5,717.26 on the client's file in the case of a named client,

55) Misapplied the above party-and-party costs of €5,717.26 by lodging same to an account in his own name in a named credit union,

56) Left the sum of €2,541.00, received to pay counsel in the case of a named client, in office account between October 2003 and June 2004,

57) Failed to record in the books of account the receipt of party-and-party costs of €8,384.77 received in the case of a named client,

58) Failed to lodge the party-and-party costs of €8,384.77 received in the case of a named client to client account or to office account,

59) Failed to maintain the letter received enclosing the party-and-party costs cheque of €8,384.77 on the client's file in the case of a named client,

60) Misapplied the above party-and-party costs of €8,384.77 by lodging same to an account in his own name in a named credit union,

61) Failed to record in the books of account the receipt of party-and-party costs of €3,957.93 received in the case of a named client,

62) Failed to lodge the party-and-party costs of €3,957.93 received in the case of a named client to client account or to office account,

63) Failed to maintain the letter received enclosing the party-and-party costs cheque of €3,957.93 on the client's file in the case of a named client,

64) Failed to record in the books of account the receipt of party-and-party costs of €3,591.95 received in the case of a named client,

65) Failed to lodge the party-and-party costs of €3,591.95 received in the case of a named client to client account or to office account,

66) Failed to maintain the party-and-party bill of costs and the letter received enclosing the party-and-party costs cheque of €3,591.95 on the client's file in the case of a named client,

67) Failed to record in the books of account the receipt of party-and-party costs of €17,872.80 received in the case of a named client,

68) Failed to lodge the party-and-party costs of €17,872.80 received in the case of a named client to client account or to office account,

69) Failed to maintain the letter received enclosing the party-and-party costs cheque of €17,872.80 on the client's file in the case of a named client,

70) Misapplied the above party-and-party costs of €17,872.80 by lodging same to an account in his own name in a named credit union,

71) Delayed in paying €1,875 to counsel from June 2003 to February 2005 in the case of a named client,

72) Untruthfully stated during the investigation that the party-and-party costs cheques that had not been lodged to client or office accounts and had not been recorded in the books of account had all been cashed "across the counter" and that they were not lodged to any account,

73) Drew costs from client account by means of cheques payable to Bank of Ireland in the sums of €250 and €2,000,

74) Deducted €315.99 for an itemised list of 'specials' from a named client's settlement and subsequently misapplied the €315.99 to office account,

75) Informed the barrister in a named client's case that the claim had been settled for €5,000 when it had actually been settled for €7,500,

76) Deducted €18,000 from a named client's settlement of €100,000 and lodged same to office account after the client had been informed that €8,000 of the deduction was for 'specials',

77) Drew €6,112.50, being part of a solicitor client fee of €8,000 in the case of a named client, from client account by means of a cheque payable to Bank of Ireland,

78) Failed to record the receipt of the €6,112.50 as a fee in the books of account in the case of a named client,

79) Deducted an improper solicitor client fee of €8,000 from a named client's settlement of €33,000, which represents a solicitor client fee of 24.24%, when he was also entitled to charge party-and-party costs,

80) Misused €417 of clients' money when he drew €662 from client account and the clients' ledger account of a named client by means of a cheque payable to Galway City Council for his (the respondent solicitor's) domestic refuse charges,

81) Delayed in paying the stamp duty of €12,050 in the case of a named client,

82) Failed to fully comply with section 68(6) of the *Solicitors (Amendment) Act 1994* in respect of 36 clients' files examined,

83) Deducted improper solicitor client fees ranging from 14% to 47.21% and ranging from €2,000 to €63,608 of the client's settlements in up to 16 other cases documented in work papers provided by the reporting accountant,

84) Misused clients' money when he caused debit balances on clients' ledger accounts in his own name,

85) Failed to provide documentation, prior to his referral to the disciplinary tribunal, to enable the following amounts credited to his own accounts in the clients' ledger to be verified: €28,498.82 on 7 March 2002; €24,760 on 9 April 2002; €10,204.82 on 13 June 2002; €7,000 on 14 June 2002; €17,478.62 on 20 June 2002; €10,000 on 28 June 2002; €21,254.84 on 12 July 2002; €24,660 on 29 January 2003; and €25,000 on 1 December 2004,

86) Failed to identify or provide documentation, prior to his referral to the disciplinary tribunal, to enable the following amounts lodged to his account in a named credit union to be verified:

- 16 July 2002 – €5,000,
- 5 June 2003 – €17,578.99,
- 1 July 2003 – €7,800,
- 1 August 2003 – €2,907,
- 13 April 2004 – €2,461.80,
- 24 April 2004 – €13,519.75,
- 21 May 2004 – €5,000,
- 6 August 2004 – €4,026.27,

- 6 August 2004 – €4,000,
- 17 August 2004 – €11,825.60,
- 24 August 2004 – €3,142.24,
- 27 August 2004 – €19,422.55,
- 7 September 2004 – €27,583.25,
- 7 September 2004 – €6,300.42,
- 5 October 2004 – €3,793.35,
- 17 November 2004 – €3,800,
- **Total – €138,161**

87) Misled the Revenue by excluding solicitor client fees of €459,000 from income in his voluntary disclosure and informing the Revenue, through his representatives, that solicitor client fees of €459,000 were obtained in breach of the regulations and would be paid back to the clients, and then failed to repay the full €459,000 to the clients prior to his referral to the disciplinary tribunal,

88) Preferred 12 former clients by refunding them solicitor client fees totalling €83,545.95 plus interest, as per a letter dated 22 July 2008 from his legal representative, without explaining why these 12 clients were preferred and did not explain why any of the remainder of the €459,000 was not refunded,

89) Failed to refund all of the solicitor client fees to the clients as directed by the Regulation of Practice Committee at its meeting on 6 April 2006 prior to his referral to the disciplinary tribunal,

90) Failed to provide or failed to ensure, prior to his referral to the disciplinary tribunal, that the explanation required by the Regulation of Practice Committee was provided concerning the circumstances of an undertaking to Bank of Ireland over the sale proceeds of a house in a named location, as requested at the May 2006 meeting of the Regulation of Practice Committee.

The tribunal recommended that:

a) The respondent solicitor was not a fit person to be a member of the solicitors' profession and that the name of the respondent solicitor be struck off the Roll of Solicitors,

b) The respondent solicitor pay the whole of the costs of the Society, including witness expenses, to be taxed by a taxing master of the High Court in default of agreement.

On 14 June 2010, the President of the High Court ordered:

1) That the respondent solicitor is not a fit person to be a member of the solicitors' profession and the name of the respondent solicitor be struck off the Roll of Solicitors,

2) That the respondent solicitor shall pay the whole of the costs of the Society, including witness expenses before the Solicitors Disciplinary Tribunal, to be taxed by a taxing master of the High Court in default of agreement;

3) An order for the costs of the proceedings in the High Court to be taxed by a taxing master of the High Court, in default of agreement.

Subsequently, the respondent solicitor appealed to the Supreme Court against the decision of the President of the High Court.

In the matter of Ciaran Quinn, a solicitor practising as Quinn Solicitors, Unit 118, First Floor, Baldoyle Industrial Estate, Baldoyle, Dublin 13, and in the matter of the *Solicitors Acts 1954-2008* [4342/DT26/10]

Law Society of Ireland (applicant)
Ciaran Quinn (respondent solicitor)

On 23 November 2010, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he permitted a deficit of approximately €52,119 to arise in the client account of his practice.

The tribunal ordered that the respondent solicitor:

a) Do stand censured,

b) Pay a sum of €1,500 to the compensation fund,

c) Pay the whole of the costs of the Society as taxed by a taxing master of the High Court in default of agreement.

The reasons for the tribunal's opinion that it was appropriate to make such an order are by reason of the submissions made and the fact that the respondent solicitor has personally discharged the deficit of €52,119.

In the matter of Ambrose Steen, a locum solicitor, and in the matter of the *Solicitors Acts 1954-2008* [2851/DT28/10, 2851/DT36/10, 2851/DT40/10 and High Court record no 2011 no 5SA]

Law Society of Ireland (applicant)
Ambrose Steen (respondent)

On 18 November 2010, in the matter entitled 2851/DT28/10, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to fully account to the complainants for the proceeds of the estate of a named deceased and, in particular, left a minimum shortfall of €2,000 and interest, which was due to the residuary legatee of the estate,

b) Failed to hand over his file in relation to the estate to the complainants until April 2009, despite being requested to do so on 16 May 2008,

c) Failed to deal with the administration of the estate of the named deceased in a timely manner or at all,

d) Indicated by letter dated 2 April 2002 that he was preparing an Inland Revenue affidavit when this was not the case,

e) Failed to respond to the Society's correspondence and, in particular, the Society's letters of 2 July 2009, 17 July 2009, 28 July 2009, 23 September 2009, 10 November 2009.

On 18 November 2010, in the matter entitled 2851/DT36/10, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to obtain a refund for his client of £2,537.07, which she paid to the solicitor for counsels' fees and town agents,

b) Failed to comply with a section 10 notice issued on 1 May 2008 in a timely manner, having only complied following a High Court order on 30 June 2008 compelling him to do so,

c) Failed to reply to the Society's correspondence and, in particular, the Society's letters of 22 February 2008, 4 April 2008, 1 May 2008 and despite giving an undertaking to the Society and the disciplinary tribunal on 11 January 2008 that he would respond to the Society's correspondence.

On 18 November 2010, in the matter entitled 2851/DT40/10, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

a) Failed to comply with the directions of the Complaints and Client Relations Committee at their meeting on 9 June 2009 that he discharge the complainants' professional fee in the sum of €2,000 plus VAT plus outlay within four months,

b) Failed to respond to correspondence from the Society and, in particular, the Society's letters of 17 November 2008, 21 January 2009, 12 February 2009, 26 August 2009, 22 September 2009, 19 October 2009, 11 November 2009,

c) Failed to respond to correspondence from the complainants in relation to the missing title documentation in a timely manner or at all.

The tribunal ordered that the three matters be brought before the High Court and, on 28 March 2011, the President of the High Court ordered that:

i) The respondent solicitor be suspended from practising as a solicitor until such time as all orders of the Solicitors Disciplinary Tribunal and the High Court made against him and arising from disciplinary proceedings have been complied with in full,

ii) In the event that the respondent solicitor returns to practice, the respondent solicitor should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,
iii) The respondent solicitor do pay the sum of €3,000 to the compensation fund of the Society,
iv) The Society do recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal when taxed and ascertained.

In the matter of Charles O'Neill, a solicitor formerly practising as Cathal O'Neill & Company, Solicitors, 10 Church Avenue, Rathmines, Dublin 6, and in the matter of the *Solicitors Acts 1954-2008* [2707/DT81/09 and High Court record no 2011 no 64 SA]
Law Society of Ireland (applicant)
Charles O'Neill (respondent solicitor)
On 7 April 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed/neglected to furnish to the complainant the information requested by him in relation to the disposal of his property in Wexford,
b) Failed to account to the complainant in relation to the balance of proceeds of sale of the property in Wexford for the period of 12 January 2005 to 13 July 2007,
c) Through his failure to account to his client for the balance of sale proceeds or to furnish the information required by the client in relation to the disposal of the property in Wexford, failed to protect the interests of his client,
d) Failed, refused or neglected to transfer title deeds in respect of two other properties in Wexford in a timely manner,
e) Failed to provide a written explanation to the complainant for not handing over the title deeds to the complainant's new solicitors in a timely manner,
f) Gave an assurance to the complainant in an email dated 8 August 2008 to the effect that he would finally deal with the problems at (a), (b) and (c) above during the weekend of 8 August 2008, which assurance he did not carry out,
g) Failed to reply adequately to the complainant's correspondence by email on several occasions from 20 June 2008 onwards,
h) Failed to reply or instruct his solicitor to reply to the Society's letters dated 18 August 2008, 1 September 2008, 17 September 2008 and 1 October 2008,
i) In his failure to correspond or instruct his solicitor to correspond with the Society, obstructed the Society's investigation into the complaint.

The tribunal recommended that:
a) The respondent solicitor is not a fit person to be a member of the solicitors' profession,
b) The name of the respondent solicitor be struck off the Roll of Solicitors,
c) The respondent solicitor pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

The tribunal ordered that the matter be brought before the High Court and, on 27 June 2011, the President of the High Court ordered that:
1) The name of the respondent solicitor, Charles O'Neill, be struck from the Roll of Solicitors,
2) The Society do recover as against the respondent solicitor the costs of the proceedings before the High Court when taxed and ascertained,
3) The Society do recover as against the respondent solicitor the costs of the Solicitors Disciplinary Tribunal proceedings, to include witness expenses when taxed and ascertained.

In the matter of Robert Sweeney, a solicitor practising as Robert Sweeney at 2 Crerand House, Larkins Lane, Letterkenny, Co Donegal, and in the matter of the *Solicitors Acts 1954-2008* [10658/DT14/11]
Law Society of Ireland (applicant)
Robert Sweeney (respondent solicitor)
On 12 July 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 May 2010 within six months of that date, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001),
b) Through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors' Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors' Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €2,000 to the compensation fund,
c) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court, in default of agreement.

In the matter of John BK Lindsay, a solicitor formerly practising as Lindsay & Company, Solicitors, at 47 Wellington Quay, Dublin 2, and in the matter of the *Solicitors Acts 1954-2008* [3483/DT31/10]
Law Society of Ireland (applicant)
John BK Lindsay (respondent solicitor)
On 13 July 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
a) Failed to reply to correspondence from the complainant,
b) Failed to reply to correspondence from the Society.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €2,000 to the compensation fund,
c) Pay the whole of the costs of the Society, including witnesses' expenses, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Fabien P Cadden, solicitor, Main Street, Dunshaughlin, Co Meath, and in the matter of the *Solicitors Acts 1954-2008* [7364/DT116/10]
Law Society of Ireland (applicant)
Fabien P Cadden (respondent solicitor)
On 19 July 2011, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor that he:
a) Failed to comply with his solicitor's undertaking to a named building society, dated 27 November 2007, up to the date of the swearing of the Society's affidavit (17 August 2010),
b) Failed to lodge in a timely manner in the Property Registration Authority an application for dispensing with the production of the land certificate in question, when he knew he had mislaid the land certificate,
c) Failed to deal in a timely manner with a Property Registration Authority query in relation to the above application,
d) Failed to reply to multiple queries from the building society about progress in registering their mortgagors' title and their charge,
e) Failed to reply to multiple correspondence from the Society in a timely manner or at all.

The tribunal ordered that the respondent solicitor:
a) Do stand censured,
b) Pay a sum of €7,500 to the compensation fund,
c) Pay the whole of the costs of the Law Society, including witness expenses, as taxed by a taxing master of the High Court in default of agreement. G

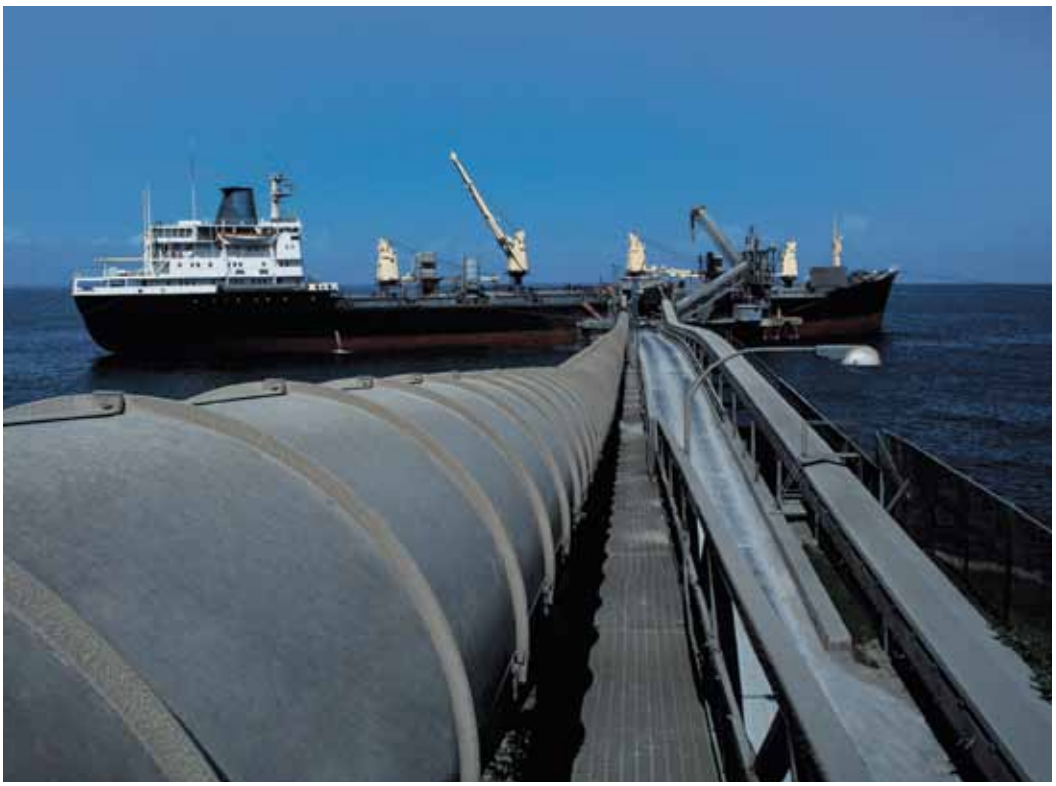
BRIEFING

Eurlegal

Edited by TP Kennedy, Director of Education

European jurisdiction rules and arbitration

There can be no doubt that the world is a more contentious place, and this has been evidenced by the growth in international arbitration in recent years. Ireland has proactively taken steps to take advantage of this trend and to promote the country as a centre for international arbitration. One such step was the implementation, into Irish law, of the UNCITRAL *Model Law on International Commercial Arbitration* by way of the *Arbitration Act 2010*. Nevertheless, strong competition exists between countries seeking to act as centres for international arbitration both within the EU and externally. Indeed, the ability to protect arbitration agreements may be a critical deciding factor when commercial entities are choosing a seat of arbitration.



Trouble in the pipeline for arbitration agreements?

One manner in which arbitration agreements are policed is through the use of anti-suit injunctions. Anti-suit injunctions, in the context of international arbitration, are used to prevent a party from pursuing court proceedings that would be in breach of an arbitration agreement between the parties. The nature of such injunctions is to ensure that parties comply with their contractual obligations and to prevent the parties from 'forum shopping' in the context of resolving their contractual disputes.

Such injunctions are frequently used to prevent one party from engaging in tactical litigation, whereby that party issues court proceedings, in breach of an extant arbitration agreement, in an effort to stymie any arbitration proceedings. The extra costs and delay involved in fighting proceedings on two fronts can often mean that the 'weaker' party may not be in a position to proceed with the dispute as a result and/or may settle a dispute on substantially less favourable terms.

These injunctions were the traditional means by which English courts sought to protect arbitration agreements and prevent parties from engaging in vexatious litigation. However, the international context and ramifications of such orders invariably led to conflict in relation to jurisdiction within the EU. In February 2009, the ECJ delivered a controversial decision, in case C-185/07, *West Tankers Inc v Allianz SpA and Generali Assicurazioni General SpA* ([2011] EWHC 829), which essentially 'sank' the anti-suit injunction in an EU context.

Not to be outdone, the English courts have recently issued an interesting decision that would appear to claw back some of their ability to enforce arbitration agreements. It is worth reviewing the facts of the case to put the matter in context.

Facts

West Tankers Inc owned a ship that was chartered to Erg Petroli SpA to carry a cargo of crude oil to Erg's refinery in Italy. The charterparty was on an amended Asbatankvoy (one of the most-used tanker charterparties in the world, produced by the Association of Ship Brokers and Agents) standard form, dated 24 July 2000, and contained an arbitration agreement that all disputes arising out of the charter were to be referred to arbitration in London, with English law to apply.

The ship was involved in a collision with a pier at Erg's refinery in August 2000, causing a great deal of damage and putting the jetty out of operation. Erg suffered losses in respect of both the repair costs and the disruption to the refinery operations and the liability to pay demurrage to third parties. The defendants (Allianz SpA and Generali Assicurazioni SpA), who were Erg's insurers, paid compensation to Erg in the sum of €15,587,292.66 under the relevant insurance policies.

In August 2000, Erg commenced arbitration proceedings against West Tankers in respect of Erg's uninsured losses. The defendants concurrently brought a claim against West Tankers in an Italian court in respect of the insured losses, relying on their rights of subrogation.

West Tankers issued proceedings in the Commercial Court on 6 October 2003 for an anti-suit injunction to restrain the defendants from taking any steps to prosecute their claims except by way of arbitration in London. On 21 March 2005, Colman J granted the injunction; however, the defendants appealed the decision to the House of Lords. The Lords referred a question to the CJ as to whether it was consistent with regulation 44/2001 (Council regulation on jurisdiction and the

recognition and enforcement of judgments in civil and commercial matters) for a court of a member state to make an order to restrain a person from commencing or continuing proceedings in another member state on the ground that such proceedings are in breach of an arbitration agreement.

Meanwhile, in the arbitration proceedings, West Tankers denied liability and counterclaimed for a declaration against Erg and the defendants that it was under no liability arising from the ship's collision with the pier. Although Erg continued to participate fully in the reference, the defendants declined to take any part in the arbitration in London.

On 7 May 2008, Smith J ordered and directed that the defendants were bound by the arbitration agreement and that the dispute between Erg, West Tankers and the defendants was to be determined as a single reference by the arbitral tribunal that had been appointed. Although Erg continued to participate in the reference, the defendants declined to take any part in the London arbitration.

On 12 November 2008, the arbitral tribunal issued its final award, which, among other things, declared that West Tankers were under no liability to the defendants in respect of the collision.

The ECJ, on 10 February 2009, answered the question in the negative, holding that the anti-suit injunction enforcing an arbitration agreement was incompatible with the regulation. Following the discharge of the anti-suit injunction, the defendants continued to prosecute the proceedings in Italy, despite the arbitral tribunal's award.

Upon application from West Tankers, the High Court, on 15 November 2010, gave leave to enforce the award as a judgment, and judgment was entered against the defendants, pursuant to section 66(2) of the *Arbitration Act 1996*, in the terms of the award.

It is the award of 15 November 2010 that the defendants sought to set aside, and they brought an application to the High Court for this purpose.

Application before the High Court

Among other things, the defendants argued that leave, pursuant to section 66 of the *Arbitration Act 1996*, could only be given if the award would be capable of being enforced by use of one or more of the available means of execution – for example, a charging order, *fi fa*, and so on. Since the declaratory judgment is only a declaration of the parties' rights, it is not susceptible to being enforced through the established execution process, except in highly exceptional circumstances. The defendants argued that no such circumstances existed in the present case.

Counsel also argued that no reliance could be placed on article 34(1) or article 34(3) of the regulation in light of the findings in *The Wadr Sudr* ([2010] 1 Lloyd's Rep 193) and *Solo Kleinmotoren GmbH v Emilio Bloch* ([1994] ECR 1-2237). In *The Wadr Sudr*, the Court of Appeal held that a decision by a court of a member state that a dispute was not within an arbitration agreement was a regulation judgment, and it was not open to argue that recognition of the judgment was contrary to public policy within article 34(1). In *Solo Kleinmoteren*, the CJ stated that to be a 'judgment' for the purposes of the *Judgments Convention*, the decision had to emanate from a judicial body of a contracting state deciding on its own authority on the issues between the parties; accordingly, a settlement recorded in an order of a court was not a judgment for the purposes of the convention.

Counsel on behalf of the claimant (West Tankers) argued that the purpose of section 66 of the *Arbitration Act 1996* was to assist a successful party in obtaining the benefit of an award and that the word 'enforced' in section 66(1) should be construed accordingly. He argued that, where a party's object is to convert an award into a judgment to utilise article 34(3) of the regulation to trump a later judgment given in breach of an arbitration agreement, the court would be enforcing the award it made under section 66 of the *Arbitration Act 1996*.

The claimants also proposed that the facts of *Solo Kleinmotoren* were distinguishable from the present case and that the public policy arguments in *The Wadr Sudr* were different. In that case, the public policy engaged was the giving of force and effect to awards in accordance with the *New York Convention*, whereas in the present case the public policy contended for was the enforcement of arbitration agreements.

Judgment

Field J felt that the purpose of section 66 of the *Arbitration Act 1996* was to provide a means by which a victorious party in an arbitration could obtain material benefit of the award, other than by suing on foot of it. Where the award is of the nature of a declaration and there is no appreciable risk of the losing party obtaining an inconsistent judgment in a member state, leave will generally not stand to be granted, because the victorious party will not obtain any benefit that he does not already have by virtue of the award. In such a case, the grant of leave will not facilitate the realisation of the benefit of the award. However, where the victorious party's objective is to establish the primacy of a declaratory award over an inconsistent judgment, the court will have jurisdiction to make a section 66 order, because to do so will be to make a positive contribution to the securing of a material benefit of the award.

In such an application, Field J was of the view that it was enough for the party seeking to enforce the award to show that he has a real prospect of establishing the primacy of the award over an inconsistent judgment. He noted that it was not necessary for the court to decide the hypothetical question of whether an inconsistent judgment would be given, because the unsuccessful party to the arbitration would not have obtained an inconsistent judgment in a member state at the time the court is dealing with a section 66 application. Therefore, he dismissed the claim.

Comment

The 2009 CJ decision in West Tankers caused a certain amount of surprise, particularly for those who engage in international trade under contracts that often contain arbitration clauses. It was felt that the decision undermined arbitration agreements and could lead to considerable costs in fighting a case in more than one jurisdiction, and the case was widely criticised as a result.

The High Court seems to have taken a practical approach to the problem in an effort to restore some of the certainty to arbitration agreements. In allowing the arbitral award to be enforced as a judgment, an English court can refuse to enforce a judgment of another EU court if it is irreconcilable with an earlier judgment of the English court – article 34(3) of the regulation. While the ECJ put an end to anti-suit injunctions in the context of restraining proceedings wrongly brought in EU countries subject to the regulation, the High Court has taken steps to claw back some of the certainty to arbitration agreements. Nevertheless, parties may still be subject to proceedings in two jurisdictions with costs being incurred in respect of each. It also remains to be seen what difficulties will arise if the Italian court chooses to rule on the proceedings before it and what difficulties may arise thereafter.

Martin Cooney is an associate with the construction and engineering group of Arthur Cox.

Recent developments in European law

CONSUMER

Case C-83/10, *Sousa Rodriguez and others v Air France*, opinion of Advocate General Sharpston, 28 June 2011

Under Regulation 261/2004 on air passenger compensation, passengers of a flight that is cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing. Where a flight is cancelled with little or no notice and where there are no extraordinary circumstances, the passengers are also entitled to compensation, the amount varying depending on the distance of the planned flight. The regulation also states that it applies without prejudice to a passenger's right to further compensation, but that compensation granted under the regulation may be deducted from such compensation. The applicants were booked on an Air France flight from Paris to Vigo on 25 September 2008. The flight took off as planned but returned to Charles de Gaulle Airport a short time later due to a technical problem. All were rebooked onto alternative flights the following day. The Rodriguez family were rerouted to Oporto and had to take a taxi from there to their home in Vigo. All the passengers took legal action to claim compensation for the cancellation of the flight. In addition, the Rodriguez family sought €170 to cover the cost of the taxi fare and €650 per person by way of non-material damages. The Sousa family claimed €650 each for non-material damages and the cost of meals in the airport and an additional day in boarding kennels for their dog. Mr Puga Luerio sought €300 non-material damage. The national court referred a number of questions to the CJ as to whether the events in question could be considered a 'cancellation' and whether the 'further compensation' that a passenger may claim concerns the type of compensation covered by the regulation (such as care costs) or whether it can extend to other damage, such as non-material damage. Advocate General Sharpston found that a flight is 'cancelled' within the meaning of the regulation if, after departing as planned, it does not arrive at its scheduled destination, but returns to the airport of departure. A flight is intended to carry passengers and their baggage from one point to another. If it leaves one point and then returns there, the flight cannot be said to have operated. Nothing of the operation has been achieved, as the carrier has carried no one and nothing anywhere. The reference to 'further compensation' cannot be limited to the compensation of the type provided by the regulation. The regulation does not set any limitation on the type of damage for which a passenger may make a claim. That question must be determined in light of national law and may, therefore, include non-material damage. A passenger may seek compensation for expenditure incurred where the airline has failed to provide care and assistance. The regulation does not expressly provide for such compensation, but the obligation to provide care and assistance would be nugatory if it could not be enforced. The obligation to provide care and assistance is in no way contingent on a request by a passenger at the time, and such a request is not necessary in order to seek compensation. Finally, the advocate general found that the reimbursement of such expenses should not be considered as 'further compensation' from which other compensation granted under the regulation may be deducted. The duty to pay compensation for a cancelled flight and the duty to provide care and assistance are concurrent and cumulative – the airline may not escape liability by offsetting one against the other.

FREE MOVEMENT

Joined cases C-288/09 and C-289/09, *British Sky Broadcasting Group plc and Pace plc v the Commissioners for Her Majesty's Revenue & Customs*, 14 April 2011

EU law sets the rates of customs duties applicable to items imported from third states into the EU. Sky imports satellite television receivers, known as 'Sky+ boxes', manufactured for them by Pace. The box receives satellite signals, contains a hard disc drive, and allows the end user to record programmes broadcast by Sky. Customs in Britain classified the Sky+ box as a recording apparatus, which is subject to a customs duty of 13.9%. Sky and Pace argued that it should be classified as a set-top box with a communication function, which is exempt from customs duties. The case was referred to the Court of Justice. The court found that decoders with a hard disc drive are to be classified as set-top boxes with a communication function rather than as recording devices. In the case of electrical devices, machines that have several functions and can be classified in different categories are to be classified according to the principal function of the device. Decoders such as the Sky+ box are sold to television service providers such as Sky, who make them available to their customers so that they can access their programmes. The television recording function that is also available on that model is merely an additional service. Customers who choose that product are primarily seeking, not a recording function, but rather a function of decoding television signals. The box cannot record video content from any other external source; it cannot play video content from external media and is incapable of recording video content onto external media. Thus, it is principally intended to be used to receive television signals and that function is inherent in that device. This is its principal function, and the recording function is only secondary.

INTELLECTUAL PROPERTY

Case C-271/10, *Vereniging van Educatieve en Wetenschappelinke Auteurs (VEWA) v Belgische Staat*, 30 June 2011

Directive 92/100 on rental and lending rights gives authors an exclusive right to authorise or prohibit the rental and lending of original and copies of copyright works. For public lending, member states may derogate from that exclusive right, provided that authors obtain remuneration for such lending. VEWA is a Belgian copyright management society. It brought an action before the Belgian courts against the royal decree transposing the directive. The royal decree fixed a flat-rate remuneration of €1 per adult per year and 50 cents per child registered with the lending institutions, as long as that person has borrowed once during the reference period. VFWS argued that this breached the provisions of the directive, which require that 'equitable remuneration' be paid for a loan or a rental. The Belgian Council of State referred the case to the Court of Justice. The CJ held that the remuneration must enable authors to receive an adequate income. Its amount cannot be purely symbolic. It is for member states to determine the relevant criteria for determining the amount payable to authors in the event of public lending. In doing this, a wide margin of discretion is reserved to the member states. They may determine the amount of remuneration payable to authors for public lending in accordance with their own cultural promotion objectives. However, as remuneration is consideration for harm caused to authors by reason of the use of their works without their authorisation, the determination of the amount of that remuneration cannot be completely

dissociated from the elements that constitute that harm. As that harm is the result of public lending – the making available of protected works by establishments accessible to the public – the amount of remuneration payable should take account of the extent to which those works are made available. The higher the number of protected works made available by a public lending establishment, the greater will be the prejudice to copyright. The amount of remuneration to be paid by such an establishment should take account of the number of works made available to the public, and thus large public lending establishments should pay a greater level of remuneration than smaller ones. Another factor of relevance is the number of borrowers registered with a lending establishment. The greater the number of persons having access to the protected works, the greater will be the prejudice to the author's rights. The amount of remuneration to be paid to authors should also be determined by taking into account the number of borrowers registered with that establishment. The Belgian decree took into account the number of borrowers registered with public lending establishments, but not the number of works made available to the public. Such a taking into account does not, therefore, have sufficient regard for the extent of the harm suffered by authors or for the principle that those authors must receive remuneration that is equivalent to an adequate income. The decree also provided that, where a reader is registered with a number of different establishments, the remuneration is payable only once in respect of that person. VEWA argued that 80% of establishments in the French community in Belgium declared that a large number of their readers are also registered with other lending establishments. Those readers were then not taken into account for payment of the remuneration of the author concerned. In those circumstances, that system may have the result that many establishments are, in effect, almost exempted from the obligation to pay any remuneration. This is at variance with the directive.

Case C-462/09, *Stichting de Thuiskopie v Opus Supplies Deutschland GmbH, M van der Lee, H van der Lee*, 16 June 2011

Directive 2001/29 on copyright and related rights gives the exclusive right to reproduce audio, visual and audiovisual material to authors, performers and producers. As an exception, member states may authorise the making of private copies on condition that the copyright holders receive 'fair compensation'. The purpose of that compensation is to contribute towards ensuring that right-holders received appropriate remuneration for the use of their works or other subject matter. Dutch legislation provides for such an exception for copying for private use. It is for the manufacturer or importer of the reproduction media to pay the private copying levy. The applicant is the Dutch body responsible for recovering the private copying levy. Opus is a company based in Germany that sells, via the internet, blank media. Its operations are focused in particular on the Netherlands by means of Dutch-language websites that target Dutch consumers. The contract of sale from Opus provides that, where a Dutch consumer makes an order online, the order is processed in Germany and the goods are delivered from Germany to the Netherlands on behalf of, and in the name of, the customer. Opus does not pay a private copying levy in respect of the media delivered to its customers in the Netherlands, either there or in Germany. The Stichting brought an action against Opus before the Dutch court, arguing that Opus had to be regarded as the 'importer'. Opus argued that it is the Dutch purchasers who must be classified as importers. The argument relied upon by Opus was accepted by the Dutch courts. The Stichting appealed to the Supreme Court, which made a reference for a preliminary ruling to the CJ. The Court of Justice found that the directive does not expressly address the issue of who must be regarded as responsible for paying the fair compensation. The CJ had already held that fair compensation must be regarded as recompense for the harm suffered by the author. The person who causes the harm is the one who, for his private use, reproduces a protected work without seeking prior authorisation from the right-holder. It is in principle for that person to make good the harm by financing the compensation that will be paid to the right-holder. However, there are practical difficulties in identifying private users and obliging them to compensate right holders. Thus, it is open to member states to establish a private copying levy for the purposes of financing fair compensation, chargeable not to the private persons concerned, but to those who have digital reproduction equipment, devices and media and who make that equipment available to private users or who provide copying services for them. The introduction of the private copying exception is not to unreasonably prejudice the legitimate interests of the copyright holder. Member states that have introduced this exception must guarantee the effective recovery of the fair compensation intended to compensate the authors harmed by the prejudice sustained, in particular if that harm arose on the territory of that member state. In this case, the harm suffered by the authors arose in the Netherlands, since the purchasers, as final users of the protected works, reside there. It is impossible, in practice, to recover compensation from the final users as importers of those media in the Netherlands. The system of recovery chosen by the member state cannot relieve that member state of the obligation to achieve the result of ensuring that authors who have suffered harm actually receive payment of fair compensation for the prejudice that arose on its territory. Thus, it is for the authorities, in particular the courts, of that member state to seek an interpretation of national law that is consistent with that obligation to achieve a certain result and guarantees the recovery of that compensation from the seller who contributed to the importation of those media by making them available to the final users. It is no bearing that the commercial seller is established in another member state.

LITIGATION

The European Commission has proposed a new regulation to create a European asset preservation order. The order that would allow creditors to preserve the amount owed in a debtor's bank account. Its effect would be to prevent debtors from removing or dissipating their assets during the time it takes to obtain and enforce a judgment. Creditors would be allowed to preserve funds in bank accounts under the same conditions in all member states of the EU. The new procedure will be an *ex parte* interim measure. The order will be available to the creditor as an alternative to instruments existing under national law. It will only be used in cross-border cases. The regulation provides rules relating to jurisdiction, conditions and procedure for issuing an order, rules on enforcement, and remedies for the debtor. G

LAW SOCIETY
PROFESSIONAL Training

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
13 Oct	Law Society Professional Training in partnership with the Conveyancing Committee present the **Annual Property Law Conference 2011**	€180	€240	3 General (by Group Study) **plus** 1 Regulatory matters (by Group study)
3 Nov	Law Society Professional Training in partnership with the Business Law Committee present: **Annual Contract Law Update 2011**	€112	€150	2.5 General (by Group Study)
4 Nov	Law Society Skillnet in partnership with DSBA present: **A Criminal Litigation Update 2011**	€135	€180	3 General (by Group Study)
16 Nov & 22 Nov	Law Society Professional Training: **Public Procurement:** Practical 2-day Workshop *Plus* Legislation Overview	€295	€395	8 General (by Group Study)
25 Nov	Law Society Professional Training in partnership with the In-house and Public Sector Solicitors Committee present their **Annual Conference 2011**	€135	€180	2 Management and Professional Development Skills **plus** 1 Regulatory matters (by Group study)
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2 Dec	Law Society Professional Training: **Governance Risk and Compliance Seminar**	€180	€240	3 Management and Professional Development Skills **plus** 1 Regulatory matters (by group study)
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*Applicable to Skillnet members/Public sector subscribers

NOTICES

WILLS

Bredin, Mary (deceased), late of 13 Limerick Road, Ennis, Co Clare, who died on 2 August 2011. Would any person having any knowledge of the whereabouts of a will executed by the above-named deceased please contact Lorraine Burke of Desmond J Houlihan & Co, Solicitors, Salthouse Lane, Ennis, Co Clare; tel: 065 684 2244, email: lburke@djhoulihan.ie

Brennan, Kathleen (deceased), late of 13 Brookville Park, Coolock, Dublin 5, in the county of Dublin. Would any solicitor holding or having knowledge of the whereabouts of an original will, executed on 3 March 2008 by the deceased, please contact Colin Morris, solicitor, Moroney Barron Solicitors, 49a Donaghmede SC, Donaghmede, Dublin 13, in the county of Dublin; tel: 01 832 7899, fax: 01 851 2085

Brophy, Martin (deceased), late of 39 The Mill, Crossgun's Quay Bridge, Phibsboro, Dublin 7, who was born on 28 September 1956 and died on 18 July 2011, formerly of Hollybank Road, Drumcondra, Dublin 9. Would any person having any knowledge of the whereabouts of a will executed by the above-named deceased please contact Sylvia Tyrrell, tel: 087 695 9789

Horgan, Gerard (deceased), late of no 7 The Rock, Midleton, Co Cork, who died on 8 June 2011. Would any person having knowledge of any will executed by the above-named deceased please contact Joseph S Cuddigan & Co, Solicitors, 30-31 Washington Street, Cork; tel: 021 427 0903, fax: 021 427 0561, email: lindajsc@eircom.net

O'Connell, Bernard (deceased), late of Apartment 5, Hazelbrook Court, 65/69 Terenure Road West, Terenure, Dublin 6, and formerly of 34 Rathgar Road, Rathmines, Dublin 6, and 40 Leinster Road, Rathmines, Dublin 6, who died on 6 July 2011. Would any person having knowledge of a will made by the above-named deceased please contact Mary Mylotte, MacDermot & Allen, Solicitors, 10 Francis Street, Galway, tel: 091 567 071, email: marymylotte@macdallen.ie

MISCELLANEOUS

Busy Galway City practice for sale. Reply in strictest confidence to **box 08A/11/01**

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 no 34 Pope's Quay, Cork, and upon an application being made by Michael Powell and Sean Durcan

Take notice that any person having an interest in the freehold estate of the following property: all that and those the premises demised by indenture of lease dated 25 March 1846 and made between Reverend William Bleazby of the one part and William Walsh of the other part for the term of 200 years from 26 March 1846, which premises are

RATES

Professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €144 (incl VAT at 21%)
- **Title deeds** – €288 per deed (incl VAT at 21%)
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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for November *Gazette*: 19 October 2011. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877)

NOTICES

known as 34 Pope's Quay, Cork.

Take notice that the applicants, Michael Powell and Sean Durcan, intend to apply to the county registrar for the county of Cork 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 is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days from the date of this notice.

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

Date: 7 October 2011

Signed: Julian O'Brien & Boland (solicitors for the applicant), 43 South Mall, 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 Elizabeth Murray

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 2 Parnell Street (otherwise 2 Main Street), Dungarvan, in the county of Waterford, being part of the hereditaments and premises comprised and demised by lease dated 13 May 1889 between Richard Anthony Maxwell, Francis Luke Holland and James Jerome Walsh of the one part and James Fitzgerald Ryan of the other part, for the term of 199 years from 25 March 1889, subject to the yearly rent of £30 and subject to the covenants and conditions on the part of the lessee.

Take notice that Elizabeth Murray of 24 Church Street, Dungarvan, Co Waterford, being the person entitled to the lessee's interest in the said lease, intends to apply to the county registrar for the city and county of Waterford, the Courthouse, Catherine Street, Waterford, for the acquisition of the fee simple estate and all intermediate interests (if any) in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto to the county registrar and to the under-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Elizabeth Murray intends to proceed with the application before the said county registrar at the end of the 21 days from the date of this notice and will apply to the said county registrar at the end of the 21 days from the date of this notice 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 unascertainable.

Date: 7 October 2011

Signed: McCullagh Higgins & Co (solicitors for the applicant), 1-2 Cois Mara, Dungarvan, Co Waterford

RECRUITMENT

NOTICE TO THOSE PLACING RECRUITMENT ADVERTISEMENTS IN THE *LAW SOCIETY GAZETTE*

Please note that, as and from the August/September 2006 issue of the *Law Society Gazette*, **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*.

DCC plc, one of Ireland's leading public companies, is a sales, marketing and business support services group focused on the energy, IT & entertainment products, healthcare, environmental and food & beverage markets. DCC employs approximately 8,000 people and in the year ended 31st March 2011 generated profits of €230 million on revenue of €8.68 billion.

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- Establish and manage a network of subsidiary compliance coordinators to ensure appropriate and effective delegation of compliance activities
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- Engage in the regular monitoring of developments or changes in the laws or regulations applicable to the Group

The Person

- Professionally qualified with an excellent academic background and a minimum of ten years' relevant experience gained leading a legal, regulatory, compliance, finance or internal audit function
- A problem solver with a strong technical background and a detailed understanding of compliance and regulatory processes
- Excellent leadership skills demonstrated by a track record of managing a high performance function through people, processes and systems
- Proven first rate interpersonal, communication and influencing skills required to command the confidence and respect of the senior executive teams within DCC and it's operating subsidiaries

A very attractive remuneration package commensurate with experience will apply.

Interested candidates should contact or forward their CV in strict confidence to our retained consultant:
Marcus Kelly, Managing Director,
FK International Financial Search & Selection.
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HRM RECRUITMENT | GROUP

Brightest High Flyers

DUBLIN

Banking Solicitor — Top 5

In joining the stand-out banking team in Ireland you will be exposed to the full gambit of banking law including acquisition finance, property finance, structured products, capital markets and aviation finance. You will deal directly with top drawer Irish and international clients, participate in business development and will be given clear goals for career progression. The true lockstep structure of the partnership ensures a transparent collegiate culture, a client first mentality and merit only based promotions. 2+ years relevant experience in a Top 10 firm.

Corporate Solicitor — Top 5

This top flight corporate practice advises on a broad range of public and private deals across all industry sectors with transaction values ranging from tens of millions to multi billion Euro deals. With 3 years corporate experience, you would be leading a €300M deal with the partner in the background supporting you as required. You will deal directly with clients, have substantial lead lawyer exposure, participate in business development and work in a collegiate, friendly and future focussed team. 2-5 years relevant experience in a Top 10 firm.

In-House Corporate Advisor — Financial Institution

Reporting directly to the group head of legal, you will advise the business on corporate and restructuring issues across all bank divisions. You will have a high degree of visibility within the bank and as such you must be confident in your approach, possess the ability to work collaboratively, be an effective decision maker and be capable of working autonomously. As this is a newly created position, you will have a unique opportunity to put your own stamp on the role. 4-7 years relevant experience in a Top 10 firm.

Funds Solicitor — Top 5

Consistently ranked as a tier one adviser to the asset management industry, the team advises on UCITS, ETFs, money market funds, structured funds and alternative funds invested in royalties, insurance products, currencies, real estate, private equity, commodities and bank loans. The Firm's strong servicing ability and multiple partner per client approach has seen it grow consistently over the last 5 years with a number of major new client wins. Personable, client focused and ambitious will be the hallmarks of the appointee. 2-5 years relevant experience in a Top 10 firm.

LONDON

Financing Associate — Magic Circle

In joining this outstanding international finance practice you will advise corporates, banks and financial institutions on cutting edge legal matters. A true lockstep partnership, the Firm is renowned for its multi-disciplinary approach. As an associate you are not expected to master all types of financing work but gain familiarity with four to five areas of the practice and if you feel you are ready to run a negotiation or meeting alone, the Partners will be keen to encourage you. 2-4 years relevant experience with a Top 5 or international corporate firm.

Corporate Associate — Magic Circle

This Firm has a cutting edge international corporate practice advising a broad range of industries on a wide range of transactions. The Firm promotes a culture of inclusivity, transparency and responsibility; with 4 years corporate experience you would take the lead on a large cross-border merger. With a 7 year track from NQ to Equity, this Firm has the shortest track of any Magic Circle firm and equally, the Firm has lost less partners to its rivals than other City firms. 2-5 years relevant experience with a Top 5 or international corporate firm.

Competition Associate — Magic Circle

As one of the leading "go to" competition law practices in Europe, associates in the group soon find themselves involved in decision making for some of the biggest household names and largest commercial organisations in the world on matters of strategic importance to those businesses. Dealing with a broad range of advisory and litigious matters, with 4 years relevant experience you could take the lead on defending a statement of objections alleging cartel activity. 1-5 years relevant experience with a Top 5 or international corporate firm.

Dispute Resolution Associate — Magic Circle

This dispute resolution practice deals with complex litigation, domestic and international arbitrations (40-60% of the work), formal inquiries and inter-jurisdictional disputes. As an associate you will gain experience across a range of commercial and financial disputes including defamation, insurance litigation, banking litigation, professional negligence, administrative law and JR. Due to the international nature of the work and clients, there are also many opportunities for travel or secondment overseas. 2-4 years relevant experience with a Top 5 or international corporate firm.

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

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WILD, WEIRD AND WACKY STORIES FROM LEGAL 'BLAWGS' AND MEDIA AROUND THE WORLD

Prince's party over – oops, out of time

Prince, the flamboyant pop star with ten platinum albums, should pay nearly US$4 million in damages for welching on his promise to promote a perfume named after his latest CD, a special referee in Manhattan concluded, after a four-day inquest on damages.

The referee, Louis Crespo, awarded $3.9 million to Revelations Perfume and Cosmetics to cover expenditures it had made in reliance on Prince's commitment to promote a perfume, 3121, named for the CD, reports the *New York Law Journal*. Mr Crespo, however, rejected Revelations' claim for an additional $3.4 million in lost profits, finding they were too "speculative." He also denied Revelations' assertion that it was entitled to punitive damages.

Prince's lawyer, Kenneth A Novikoff said his client would oppose the application.

Don't feed the solicitors

Thanks to solicitor Anthony Brady, from Fairview, Dublin, for this one. He says: "A friend of mine recently took this picture in LA. Have our circumstances really deteriorated to this point?"

Social media defamation on the up

Defamation cases in Britain relating to social media content more than doubled in 2010 – from seven the previous year to 16. That's against a backdrop of a 4% increase in the overall number of defamation proceedings of 86, according to research carried out by legal information provider, Sweet & Maxwell

Jeremy Clarke-Williams, head of media, libel and privacy at Russell Jones & Walker, says: "The news that there's been an increase in defamation court cases involving online publications is not surprising. What is, perhaps, surprising is how modest the numbers remain – up from seven to only 16 in the last year."

Do 'ugly people' deserve legal protection?

An economics professor is making the case for legal protections against so-called 'looks-challenged' people. Writing an op-ed for the *New York Times*, University of Texas professor Daniel Hamermesh cites findings that good-looking people make more money, find higher-earning spouses and get better mortgage deals. One study shows that American workers assessed as being in the bottom seventh in terms of looks earn about $230,000 less in a lifetime than similar workers in the top one-third of looks.

Hamermesh offers a solution: protect ugliness with small extensions of the *Americans With Disabilities Act.* Ugly people could get help from the Equal Employment Opportunity Commission. "We could even have affirmative-action programmes for the ugly," he suggests.

How would legal decision-makers determine ugliness? It's not that difficult, Hamermesh says. "For purposes of administering a law, we surely could agree on who is truly ugly – perhaps the worst-looking 1% or 2% of the population."

"You might reasonably disagree and argue for protecting all deserving groups," Hamermesh says. "Either way, you shouldn't be surprised to see the United States heading toward this new legal frontier."

No point in crying over spilt milk

A Limerick man who tried to convince a storeowner that he slipped on spilt milk was caught on camera opening and spilling the liquid himself, the *Irish Independent* reports. The 20-something was considering suing the store, but the footage didn't leave him much of a case to argue.

"He told me he had phoned his solicitor and that it was going to cost me thousands, but we have heard nothing from his solicitor yet, and if he does put in a claim, we will ask the gardaí to prosecute him [presumably the client!] for fraud," said store owner Shane Gleeson.

Litigation for such claims in Ireland has cost the insurance industry more than €100 million annually.

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PARTNER OPPORTUNITIES - DUBLIN

GENERAL PRACTICE ACQUISITION

Our client, a leading firm, is looking to open discussions with a general practice firm with an established reputation in the private client arena. The purpose of this acquisition is to manage the firm's current portfolio while bringing additional clients to the firm. **Contact Sharon Swan Ref: S2001**

COMMERCIAL LITIGATION — Team

This established firm is looking to hire a commercial litigation team. You will come from a recognised commercial practice where you are acting for top quality clients. Your relationships and reputation will be such that you will expect clients to continue to instruct you when you move. **Contact Sharon Swan Ref: S2004**

INTELLECTUAL PROPERTY — Partner

Our client is seeking to appoint an intellectual property partner with an established practice in a leading firm. The firm continues to go from strength to strength in terms of standing, profile in the market and financial performance. Excellent opportunity for ambitious partner to join this firm. **Contact Sharon Swan Ref: S2002**

LIFE SCIENCES/PHARMA — Partner

This firm is looking to grow their life science/ pharma practice. They are looking to recruit an individual with an exceptional reputation in the market. This is an excellent opportunity for the right candidate to be able to develop a practice while utilising the support of the wider firm.

Contact Sharon Swan Ref: S2005

INVESTMENT FUNDS — Team

Easily identified as a leading light in the field of investment funds, our client is actively looking to secure the services of a top tier partner/team with exceptional experience within the investment funds market. Ideally you will have UCITS or hedge funds experience. Excellent remuneration on offer. **Contact Sharon Swan Ref: S2003**

PROJECTS — Partner

Due to an increasing demand for the services of the projects team, our client is looking to expand the practice through the acquisition of a projects partner. The firm specialises in large scale global projects across the major sectors, such as oil and gas, nuclear, waste, mining and renewables. **Contact Sharon Swan Ref: S2006**

INTERNATIONAL OPPORTUNITIES

BANKING LAW — Dubai

Head of Regulatory Banking Law is required for leading local firm based in Dubai. Ireland or UK qualified. Compliance experience necessary.

Contact Carol McGrath Ref: C2007

ASSET FINANCE — Paris

Asset Finance Associate required for leading international firm in Paris. Aviation, shipping or general banking experience essential.

Contact Carol McGrath Ref: C2009

CORPORATE ASSOCIATE — BVI/Guernsey

Corporate Associate required for leading off –shore firm in Guernsey. You will have general banking, finance, funds or corporate experience.

Contact Carol McGrath Ref: C2008

CORPORATE ASSOCIATE — London

Corporate M&A Senior Associate required for US and UK law firm based in London. Relocation on offer.

Contact Carol McGrath Ref: C2010

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