Advocates of Change

In December 1998 the Council of the Law Society of Northern Ireland set up a Working Party to, inter alia, develop, deliver and promote suitable educational courses and other activities designed to enhance the ability and competence of Solicitors to exercise and extend their current rights (of audience).

I was very honoured to be asked to Chair that Working Party which includes Gareth Jones, Barra McGrory, Attracta Wilson and Tom Anderson. The Working Party with the full support of the Council entered first into collaboration with the Institute of Professional Legal Studies, in particular the Director, Ms Anne Fenton, and also Ms Fiona Donnelly, Lecturer, together with an American advocacy training organisation called the National Institute of Trial Advocacy (NITA) to set up a course for solicitors with a view to improving their advocacy skills by way of a pilot project. The course was designed to include first a series of lectures delivered on a weekly evening basis on Advanced Evidence over a nine week term in the spring. This aspect of the course was devised and delivered by Professor John Jackson of Queens University Belfast and Ms Mary O’Rawe from the University of Ulster.

The 24 participants who successfully completed that element of the course were then required to participate in an intensive five day practical course in advanced advocacy in the first week of this term commencing 4th September. The course, which took place in the Institute of Professional Legal Studies, at Lennoxvale Malone Road, Belfast was led by the distinguished panel of NITA lawyers who were assisted by a group of experienced local lawyers including several members of the bench who acted as tutors. The participants all successfully concluded this course.

As a pilot project the course generally has been recognised as being a wonderful success and subject to ratification by Council and future resourcing issues being resolved, all those involved are determined that it will be established on an annual basis in the years ahead. The format of the course may be altered in future years when an opportunity has been given to all participants to express their views on its conduct and administration and on the great demands it placed on busy practitioners throughout. All of us in the Working Party felt a great deal of pride when we observed our colleagues perform in the four moot trials that took place in the Royal Courts of Justice on the final afternoon of the course. The adjudication by four eminent High Court Judges was a reflection of the importance of the course and the respect won by the NITA faculty members.

The Working Party recognises that its work in this area is only beginning. In our view Solicitor Advocacy is a subject that ought to be at the top of the Agenda of subjects which with which our professional body and all those involved in the administration of justice are tasked with dealing in the months ahead. Certainly the Government itself has

Pictured l-r are John Neill, Junior Vice-President, Law Society of Northern Ireland; Mr Bob Stein, Mr Jim Brosnahan, Ms Jeanne Jourdan, Professor Lonnie Rose, Faculty Members, National Institute of Trial Advocacy and Mr John Meehan, President of the Law Society of Northern Ireland.

Participants on the Course with the US delegates.

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On 19th September, in Belfast, the Parliamentary Secretary of the Lord Chancellor’s Department, David Lock MP delivered the long awaited news about the outcome of the legal aid review process which has been underway since February 1998. So now we know - up to a point.

The Decisions Paper outlines plans as follows:

(a) Responsibility for legal aid administration will pass from the Law Society to a new Northern Ireland Legal Services Commission.
(b) The Commission will comprise up to 11 members from a range of backgrounds including the finance, business and legal sectors. It will control all legal aid funding in Northern Ireland, administering both criminal and civil legal aid (including family cases.)
(c) Only lawyers who meet quality standards set out in a new code of practice will be paid public money for their work. The Legal Services Commission will maintain and audit a new register of authorised law firms and individuals who comply with the code of practice.
(d) The Lord Chancellor will approve the levels of the lawyers’ fees under a new standard fee scheme.
(e) Lord Irvine will also approve a new code to replace the present merits test for legal aid.
(f) The criminal courts will continue to have the power to grant criminal legal aid, applying the current “interests of justice” test. But at the end of a criminal case, the Crown Court will have the power to recover a portion of the legal costs from those defendants who can afford to contribute.
(g) The new Commission will also have powers to employ salaried lawyers and to contract with legal services providers for new or specialist services in the future. But at this stage the model for legal aid reform in England and Wales - which involved block contracting with franchised solicitors’ firms - will not apply in Northern Ireland.
(h) Given that there was little significant support on consultation for Conditional Fee Agreements, the Government will set up a working group to look into legal insurance based schemes as alternatives to public money being spent on “money claims” cases.

The Government’s next step will be to publish a proposed Order in Council to provide the primary legislation necessary for the reforms. The Northern Ireland Assembly will be able to comment on the Government plans before the Order in Council is laid before the Westminster Parliament. The minister asserted that the Government had been and would continue to be sensitive to the need to provide a system tailored to “the distinctive legal services landscape.”

In an immediate response to the proposals the Law Society welcomed that commitment, the value of which would be tested and proved as the further process of consultation is taken forward. The Society stated that they would continue to stress the importance of preserving and improving access to justice through the provision of independent and adequately funded legal services. The president of the Law Society, John Meehan said, “On any analysis these proposals constitute a watershed in the development of legal aid. The challenges they present to all concerned, including the Government, over the next two years are immense. For the profession the concept of quality audit and standard fees in particular pose important challenges to which we need to be able to respond. We need to be ready also to hold the government to its decision against contracting or franchising and to its commitment to finding proportionate and practical arrangements suitable for Northern Ireland.”
THE LAW SOCIETY OF NORTHERN IRELAND’S FAMILY LAW COMMITTEE AND THE FAMILY BAR ASSOCIATION INVITE YOU TO 2 SEMINARS

Tuesday 17th October 2000
4.00 p.m. - 6.00 p.m. in the Lecture Hall, Law Society House, Belfast.

Recent Developments in practice and procedure including case law updates on topics from pre-nuptial contracts to injunctions; and “Divorce, Insanity, Bankruptcy and Death” - The overlap Speakers including: Master McReynolds and Master Redpath.

Friday 1st December 2000
2.00 p.m. - 6.00 p.m. in the Lecture Hall, Law Society House, Belfast

The Welfare Reform and Pensions (NI) Order 1999
Pension Splitting and Pension Sharing

Speaker: Margaret Craig, Standard Life.

To reserve a place please complete the attached form and return it to:

The Law Society House of Northern Ireland
Law Society House
98 Victoria Street
BELFAST BT1 1EZ
DX 422NR BELFAST 1
(early booking is advised as spaces are limited)
COST: £25.00 FOR ONE SEMINAR OR £40.00 FOR TWO

BOOKING FORM

“Divorce, Insanity, Bankruptcy and Death” - Tuesday 17th October 2000 4.00 p.m. - 6.00 p.m. Lecture Hall, Law Society House, Belfast

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The Welfare Reform and Pensions (NI) Order 1999 - Friday 1st December 2000 2.00 p.m. - 5.00 p.m. Lecture Hall, Law Society House, Belfast

Solicitor/Barrister Name: ........................................................................................................................................
Firm Name (if relevant): ..........................................................................................................................................
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I enclose a cheque for £ ______ Made payable to the Law Society of Northern Ireland.
Time to Tackle Time Bar

Back to the issue of time bar claims again. Why? Because there are various types of system and procedure that can help to minimise the risk of these claims occurring, yet time limits are still being missed. The explanation? There are various possible explanations including the following:

- The relevant time isn’t known.
- The date of expiry of the time isn’t correctly identified/verified.
- The relevant date isn’t diarised.
- There isn’t a fail-safe to catch the cases which might otherwise slip through the firm’s diary system.

Analysis of the claims experience shows most of the time bar claims dealt with by insurers arise through the failure to put a system of control in place or through the failure of the system that has been put in place.

The relevant time isn’t known

Very few time bar claims arise because of an error in relation to the relevant prescriptive period. While there have been one or two cases in the past involving special prescriptive periods - accidents at sea or on aircraft, for instance - practitioners are generally alert to these specialties.

The date of expiry of the time limit isn’t correctly identified

Even if the relevant period is properly understood, there is still the risk of a mistake being made from which time begins to run.

One of the risks here is than an incorrect assumption is made at an early stage of a claim and that the assumption is never verified/challenged thereafter.

Because so much rides on that piece of information being correct, it must be worthwhile incorporating in appropriate check lists a prompt to double check the information on which the calculation of the expiry date of the prescriptive period has been made.

If there is a colleague who could double check that for you so much the better.

The relevant date isn’t diarised

If the date isn’t entered into an effective diary system, then there is an enormous risk that the time limit will be overlooked and the deadline missed. While concentrating on the merits of an even modest caseload, there is a quite enough to consider without relying on one’s memory to ensure that deadlines aren’t missed. Whether manual or computerised, it is essential for everyone to operate an effective diary system for managing dates and deadlines.

There isn’t a fail-safe

The insurers, in giving risk management feedback on their experience of handling claims, refer to instances of time bar claims where the solicitor has a diary system but the particular case slipped through the net. What can you do about this risk? Is it a risk that simply has to be lived with? No.

Experience in this area of risk shows that we cannot safely rely on a single line of defence but need to work on a ‘belt and braces’ basis by having a combination of various systems and procedures to operate as a reliable fail-safe.

What for instance? The following are examples of systems and procedures which practitioners have found practical and effective.

File reviews

Practitioners have spoken of the benefits to be derived from conducting a regular review of all files for which they are responsible on a regular, rolling basis. That ensures that cases which may not have been actioned for a period of time or not diarised receive appropriate action before expiry of any time limit. This also helps to ensure that clients are kept advised of developments or the reason why there have been none.

File Audits

The independent review by a colleague of a random sample of files is seen by some firms as useful as a spot check. It is not suggested that the colleague undertaking this sort of spot check should be exhaustively reviewing matters in detail, simply that the file is up to date, that it appears that the client is being kept regularly advised and the critical dates have been properly identified, drawn to the clients attention and diarised. It is suggested that a check list approach might be used.

Case review meetings

For any case approaching the prescriptive date, a case review meeting could usefully be held to ensure that there is a plan of action to ensure that appropriate steps are being taken to raise proceedings timeously or, if the problem is that the client is failing to provide information or instructions, that the client is being warned of the consequences and advised that the firm may have to withdraw from acting.

Managing the client

The client needs to be made to understand at the earliest stage that failure to take particular action in advance of a specified date will have serious and irretrievable consequences for the client. The client needs to be told that he will require to provide proceedings timeously. These warnings need to be confirmed in writing, perhaps in the clients engagement letter. Some firms adopt the practice of requiring clients to sign and return the firms explanatory, warning letter by way of confirmation that the clients have been made aware of critical dates and the implications of failure to comply.

Checklists

To ensure that the appropriate warnings are communicated to the client at the earliest stage, some find it beneficial to use a check list or aide memoir as a prompt. Checklists can also address the various other issues described above. If checklists are devised in a particular format, they can be used in the process of regular file reviews and independent file audits.

Summary

• Consider whether your own systems
and procedures put you in control of timescales and time limits by ensuring that you -

• Identify the prescriptive date at the outset

• Double check the date ideally having it checked by a colleague

• Establish a mechanism (aides-memoir/checklists, for instance) for identifying and verifying special time limits i.e. for aviation, maritime or international claims

• Note the prescriptive date on the file and in a diary system and have countdown dates diarised.

• Make diary entries for all court dates and appropriate number of days in advance thereof

• Keep in a central diary as back up for all court dates

• Hold case review meetings on a regular basis, particularly for those cases approaching the prescriptive date

• Set up file review and independent file audit systems and keep a log of reviews/audits conducted

• Keep in touch with your correspondent and never just assume that your correspondent is keeping the time limits in mind.

• Advise your client of the consequences of their own delay

• Consider withdrawing from acting if the client persistently fails to give instructions

There is a lot at stake. Although claims should be covered under the Master Policy, the firm will incur various uninsured losses. In addition to the management time involved in dealing with a claim, premium loading might result.

Alistair Sim is associate director in the Professional Liabilities Division at Marsh UK Ltd.

The information on this page is (a) intended to provide guidance on matters of practical risk management and not on issues of law and (b) is necessarily of a generalised nature. It is not specific to any practice or to any individual and should not be relied on as stating the correct legal position.

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An established group of European and US law firms is expanding its coverage of Europe and seeks a member firm in Northern Ireland

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Or visit the group’s website at www.law-europe.com
LORD CHANCELLOR'S DEPARTMENT

JUDICATURE (NORTHERN IRELAND) ACT 1978

STATUTORY OFFICER APPOINTMENT – MASTER (HIGH COURT)

The Lord Chancellor invites applications from suitably qualified persons for consideration for appointment as Master (High Court) in the Supreme Court of Judicature of Northern Ireland.

Qualifications

Under the terms of Section 70 of and Schedule 3 to the Judicature (Northern Ireland) Act 1978, members of the Bar of Northern Ireland of not less than ten years’ standing, solicitors of the Supreme Court of Judicature of Northern Ireland of not less than ten years’ standing and persons holding any other statutory offices listed in Schedule 3 of the Act are eligible for appointment.

The Lord Chancellor will appoint the candidate who appears to him to be best qualified regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion or disability (except where the disability prevents the fulfilment of the physical requirements of the post). It is not normally the Lord Chancellor’s policy to appoint persons under the age of 40 or over the age of 60.

Remuneration

Salaries are determined in accordance with recommendations made by the Review Body on Senior Salaries. Masters of the Supreme Court fall into Group 7. The current salary is £76,921.

A non-contributory pension scheme is available in respect of this post.

Persons wishing to be considered for appointment may obtain an application from together with supplementary information about the post by writing to Mr George Richardson, Judicial Services Branch, Northern Ireland Court Service, Windsor House, 9-15 Bedford Street, Belfast, BT2 7LT. Only those candidates who appear from the information available to meet the published eligibility and selection criteria for appointment will be called for interview.

Completed forms MUST be returned to arrive at the above address not later than 12 noon on Friday 27 October 2000.
I could never miss a time limit...

As every trainee knows, one of the main causes of action in negligence claims against solicitors is a missed time limit in personal injury litigation.

Yet this remains one of the most frequent reasons for claims under the Society’s Master Policy. See how this can happen.

Failure to check jurisdiction issues

Ben was instructed by a client injured at an airport while on holiday. The accident was caused by an employee of an airline based in a country with a shorter limitation period than Northern Ireland. No consideration was given to this point - the shorter period expired. Counsel later advised that the client’s damages might have been higher if proceedings had been commenced overseas.

Relying on the client’s memory

Candice was instructed by Graham, who had sustained serious head injuries in an accident at work. She took full details of the accident, but Graham supplied the wrong date. The defendant’s accident book revealed the true date - and the defendant’s solicitors referred to it in correspondence. The discrepancy was not noticed until too late. When the firm’s automated diary system reminded Candice that she had just three months left to issue proceedings, the limitation period had already expired.

Lack of inter-departmental communication

A conveyancing client mentioned to Victoria that she had had an accident ‘a couple of years ago’. Victoria noted this for her file and, as she didn’t handle litigation, told the client that she would refer it to her colleague. The limitation period was about to expire at the time of interview; three weeks later, when the litigation colleague met the client, it was too late.

All at sea

Many practitioners remain unaware that the limitation period for claims for damages for Personal Injury arising from accidents at sea is two years, not three. Never make assumptions about limitation periods. Research them every time you open a file on a new matter and every time a new fee-earner takes over the file. Conduct regular case reviews and look out for discrepancies or odd situations. Act promptly upon receipt of instructions.

...3 solicitors who missed their time limits

FRASER

Ben

Victoria

Candice

This article was published in the Gazette 97/21 25th May 2000 and is reproduced here with kind permission of the Editor.
Women and Law from two islands in Europe
(Hosted by the Bar Council of Ireland and the Law Society of Ireland)

Speakers include: Baroness Helena Kennedy QC, Mrs Catherine Dixon, President Mary McAleese, Advocate General for Scotland
Dr Lynda Clark QC MP, Mrs Moya Quinlan, Mrs Carol O’Kennedy, Cherie Booth QC

For further information and booking form please contact: Ivana Bacik BL, Law School, Trinity College, Dublin 2
Tel: 003531 6082299 Fax: 003531 6770449 e-mail: icbacik@tcd.ie

This day to remember Millennium Conference:

• Celebrates the passing of the Sex Disqualification (Removal) Act 1919, which enabled the Women in Ireland, England, Scotland and
Wales to hold Public Office and to enter the Legal Professions and the Civil Service.
• It is a tribute to our Pioneers such as Georgina Frost - the first women to hold Public office from Central Government as Clerk of
the Petty Sessions Courts for Six-mile-bridge and New Market on-Fergus.
• It is in recognition of the women who are leading and joining us here today as we now enter the new Millennium together as
Citizens of Europe - next step the World.
• The time is right for us to reflect and be inspired so that we can discuss the challenges facing us as Europeans and beyond.

The Conference is being held under the joint auspices of the Bar Council and the Law Society of Ireland and is supported by the
Attorney General, the Minister for Justice, Equality and Law Reform, the Courts Service and the British Council.

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**Individual Registration Booking Form**

**Conference Details and Programme are at: www.womenandlaw1919-2000.com**

The Conference is open to men and women

The Price of the Conference (including Lunch and Refreshments) is IR£60.00 P.P. (and is exempt from VAT)

Cheques should be crossed and made payable to: “Women and Law Conference”

Payment must accompany signed completed Registration/Booking form and be returned to: The Bar Council Accounts
Office, Law Library, PO Box 2424, Four Courts, Dublin 7, Ireland.

Places are limited and are on a first come basis. Hence to give everyone a fair chance no completed Registration/Booking
Forms with payment will be accepted before the 2nd day of October 2000.

Please register me for the above Conference

Last name: ___________________________ First Name: ___________________________ Title: ___________________________

Company/Organisation: ________________________________________________________________

Badge Name: ____________________________________________________________

Signature: ___________________________

Address: ___________________________

City: ___________________________ Postcode: ___________________________ Country: ___________________________

Phone: ___________________________ Fax: ___________________________ Email: ___________________________

Please specify dietary or special requirements, if any:- __________________________________________

If you have any questions or queries please contact Ms. Jeanne McDonagh in the Bar Council Office:
CONFERENCE PROGRAMME

09.00-10.05 Registration
~ Tea, coffee and hot-buttered scones will be served during Registration ~

10.15-10.30 Welcoming Address
The Honourable Miss Justice Mella Carroll

Chair of morning session: The Honourable Mrs Justice Susan Denham of the Supreme Court

10.30-11.00 Baroness Helena Kennedy QC
~ “The Illusion of Inclusion - An Analysis of Women and Law”

11.00-11.15 Senior Vice-President of the Law Society of Northern Ireland Catherine Dixon
~ “After the Good Friday Agreement - Issues facing Women”

11.20-11.40 Coffee break with Shortbread biscuits & Arrival of President Mary McAleese

11.45-12.00 Address by President Mary McAleese

12.00-12.15 Advocate General for Scotland Dr Lynda Clark Q.C. MP.
~ “Women, Law and Government in the U.K - a time of opportunity”

12.15 - 12.30 Mrs Moya Quinlan first woman past President of the Law Society and Mrs Carol O’Kennedy B.L. the senior woman at the Irish Bar.
~ “Reflections - a Tribute to our Pioneers”~

12.30-12.45 Book Launch: Sex Discrimination Law by Marguerite Bolger and Cliona Kimber Introduction of Guest Speaker by Fionnuala Flanagan, Director General, Attorney General’s Office

12.45-2.15 Celebratory Luncheon
Toasts will be given on behalf of the Bar Council and the Law Society

Chair of afternoon session:
The Honourable Mrs Justice Catherine McGuinness of the Supreme Court

2.30- 3.00 Cherie Booth Q.C.
“The Future for Women in the Law”

3.00-3.30 Panel consisting of: Mary Banotti MEP, Dr. Mary Redmond, Mary Faherty B.L. President of the European Association of Labour Court Judges for 2000, Helen Priestly, Information Officer for the Courts Service.
~ “European network - Advancing women”

3.30-4.00 Plenary Session Chaired by The Honourable Mrs Justice Fidelma Macken of the European Court of Justice, with questions and contributions from the floor.

4.00-4.25 Closing the Conference we will be linking up through Cyberspace to bring you our Surprise Guests!

4.30 p.m. Reception across the Courtyard in the State Rooms of Dublin Castle hosted by the Attorney General, Michael McDowell S. C~
**SOCIETY FOR COMPUTERS & LAW**

"Professional Use of the Internet and Basic Legal Issues"

Speakers: Michael Kaye, Kaye Tesler & Co. Lee Cudmore, Osborne Clarke

Date: Wednesday October 25th

Time: 5.00 pm

Venue: Law Society House

Booking: Caroline Gould
01179 237393

Cost: £20.00 + VAT (£23.50) for SCL members
£35.00 + VAT (£41.13) for non-members

Michael Kaye is Senior Partner in Kaye Tesler & Co and is Managing Director of NKT (Computer Consultants) Ltd (Internet design company) and Video Conferencing for Lawyers Ltd.

Lee Cudmore is an Assistant Solicitor at Osborne Clarke working in the IT, Telecoms and Medial team, based in Bristol where he advises a range of clients on a host of Internet-related issues.

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Contact AnneMarie McCrystal LL.B.
(Also admitted N.I. 1991)
The Law Centre and the Human Rights Commission jointly ran a conference on 14 September 2000 on the Human Rights Act and the Bill of Rights for Northern Ireland. The day was an opportunity to find fact and inspiration, as well as for solicitors to debate ideas on the potential of both measures with other lawyers and advice workers. The Conference considered the scope for innovative use of the incoming provisions in the areas of employment rights, immigration & asylum, housing, social security and social services law. A presentation on the general issues led into workshops on the Law Centre’s five core areas, chaired by specialists in each field. Pointers were given as to the scope of the European Convention Articles, followed by time for discussing the potential in new approaches. The afternoon of the conference was devoted to consideration of the Bill of Rights for Northern Ireland.

Previous articles in the Writ and numerous papers elsewhere have set out the mechanisms and procedures under the Human Rights Act. None of those technical issues on enforcement and remedies will arise unless solicitors alert to the application of the Convention to their clients’ circumstances.

We may take our lead from the creativity of Scottish lawyers who have already successfully challenged temporary judicial appointments made by the authority which is ultimately responsible for prosecutions, as being contrary to the right to a fair trial, under Article 6 of the ECHR. It was devolution in Scotland which gave access to ECHR standards prior to the implementation of the HRA on 2nd October 2000, just as the Northern Ireland Act brought in the requirement for public bodies to meet ECHR standards here since last December. Since this time there has been a noticeable absence of cases relying on the NI Act, illustrating the need for us all to wake up to the untapped potential in the Convention, which we could be using for the benefit of our clients.

The Law Centre has identified various issues on which the HRA may be an appropriate remedy and further possibilities are being suggested continuously. Among the current problems in social welfare law to which the Act may offer a solution are:

- The exclusion from access to public housing (or limited housing benefit) for parents with shared custody or staying access rights:
- Treatment of cohabiting partners under social security law:
- Reduced income for incapacity claimants during appeal delays:
- Delays in hearing of industrial tribunal discrimination cases:
- Limitations on family reunion rights under immigration law:
- Checks by Immigration Officers on grounds of race which lead to detention:
- Immigration detention without clear provision of reasons:
- The exclusion of benefit entitlement from students forced to suspend their studies due to pregnancy or disability:
- The restrictions applied to housing adaptations for disabled persons.

The scope for creative interpretation is illustrated by the fundamental provision on the right to life, which goes much further than might as first be thought: the European Court has interpreted Article 2 to cover the right to health. Therefore, if a person’s income is so low, heating system so inadequate or housing conditions so defective that there is a detrimental impact on their health, Article 2 may provide a remedy. Human Rights need not be a remote and exotic area of law: We can draw them down to the needs of our clients as from October 2000.

While the new challenge is daunting, and the unknown is always alarming, especially for overloaded practitioners, we have no choice but to rise to the challenge. Once we immerse ourselves in the new medium, it may prove stimulating. It is hard to think of any previous occasion when legal scope has opened up on such a scale, since the passing of the Convention itself. At that time the practical drawbacks of the slowness of the remedy were a profound impairment to ECHR actions for most clients. The HRA changes this and we can look forward to achieving greater human rights for our clients, as a matter of domestic law. Albert Einstein was not talking about law when he said “Imagination is more than knowledge,” but in this particular instance we may need both.

Ellen Weaver
August 2000

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INTERPRETERS FOR DEAF AND HEARING IMPAIRED LITIGANTS AND WITNESSES IN CIVIL COURTS

The Northern Ireland Court Service (NICts) will in future arrange and pay for interpreters for deaf and hearing impaired litigants and witnesses appearing in civil and family courts. The provision of this service is managed in association with the Royal National Institute for Deaf People (RNID) and interpreters used will be members of the Council for the Advancement of Communication with Deaf People. Solicitors wishing to arrange the provision of an interpreter in these circumstances should advise the court office concerned, giving at least 3 weeks’ notice. It should be noted that the NICts will not be responsible for the provision of interpreters in relation to any preparation work involved in the course of the case or, for the payment of an interpreter not arranged through the relevant court office.

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McCann & McCann, Solicitors
10 Royal Avenue
Belfast BT1 1DB

LUNCHTIME SEMINAR

The Association of the Family Solicitors for Children have arranged for the attendance of representatives from the Legal Aid Department at Law Society House on Wednesday 11th October, 2000 to address Family Law Practitioners on the following Areas:

- The completion of Legal Aid applications in Children Order proceedings;
- The preparation and completion of Legal Aid reports in Children Order Proceedings;
- Legal Aid assessment of costs.

The talk will commence at 12.30 and will take place in the Lecture Theatre at Law Society House. Tea/Coffee and sandwiches will be served from 12 noon in the Lecture Theatre.

Booking forms should be sent to:
Claire Doherty
c/o McCann & McCann, Solicitors
10 Royal Avenue
Belfast BT1 1DB

A fee of £10 per person is payable and a cheque should be enclosed with the completed Booking Form.

BOOKING FORM

Meeting at Law Society House, Wednesday 11th October, 2000 at 12.30 pm

Please return the form below, duly completed, together with cheque made payable to Association of Family Solicitors for Children, to Clare Doherty, c/o McCann & McCann, Solicitors, 10 Royal Avenue, Belfast. BT1 1DB

I enclose a cheque for £10.00 made payable to Association of Family Solicitors for Children.

Name ____________________________
Firm ____________________________
Address ____________________________
Tel no (work) ____________________________

I enclose remittance of £ ______

Notice
Membership renewals for 2000-01 are now due. Please send your membership subscriptions (£10 per member per year) to the treasurer, Orla Murray, at the address above.
The above named Rules come into operation on 2nd October 2000.

The Rules insert a new Order 121 into the Rules of the Supreme Court (Northern Ireland) 1980 (“the principal Rules”) which prescribes the practice and procedure to be used in proceedings in the High Court or Court of Appeal under the Human Right Act 1998 (“the Act”). In summary, Order 121:

- prescribes the procedure to be followed where the Court is considering making a declaration of incompatibility under section 4 of the Act (rules 2 and 3);
- provides that proceedings against a public authority under section 7(1)(a) of the Act may be brought in the High Court in accordance with normal procedures (rule 4(1));
- provides that proceedings under section 7(1)(a) in respect of a judicial act shall be brought in the High Court (rule 4(2));
- prescribes the information which a party is required to provide where he intends to raise a Convention point in any proceedings (rule 5);
- makes provision in relation to the giving of notice to the appropriate Minister or Department in respect of any proceedings relating to a judicial act and for the joinder of that person or Department (rules 6 and 7).

The Rules also make some consequential amendments to the principal Rules.

The full substantive text of the Rules is as follows:

Citation, commencement and interpretation

1.- (1) This Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment No. 2) 2000 and shall come into operation on 2nd October 2000.

(2) In these Rules, “the principal rules” means the Rules of the Supreme Court (Northern Ireland) 1980 and an Order referred to by number means the Order so numbered in the principal rules.

Arrangement of Orders

2. The Arrangement of Orders at the beginning of the principal rules shall be amended by adding after the entry relating to Order 120 the following: “121. The Human Rights Act 1998”.

Amendment of the principal rules

3. Order 15, rule 6 shall be amended by adding after paragraph (6), the following new paragraph-

“(7) This rule shall not apply to any joinder of parties to which Order 121 applies.”.

4. Order 32, rule 11 shall be amended by adding after sub-paragraph (n) of paragraph (1), the following new sub-paragraphs-

“(o) proceedings under section 7(1)(a) of the Human Rights Act 1998 in respect of a judicial act, as defined in section 9(5) of that Act;

(p) proceedings in which there is an issue which may lead to the Court considering whether to make a declaration of incompatibility under section 4 of the Human Rights Act 1998.”.

5. Order 42 shall be amended by inserting after rule 3 the following new rule-

“3A. Where on an application or appeal in respect of-

(a) an order of committal;

(b) a refusal to order release on an application for Writ of Habeas Corpus;

(c) a refusal to grant bail;

(d) a secure accommodation order made under Article 44 of the Children (Northern Ireland) Order 1995, the Court determines that a Convention right, as defined in section 1 of the Human Rights Act 1998, of the applicant or appellant have been infringed by the making of the order to which the application or appeal relates, the Court shall so specify in its judgement.”.

-6. Order 78 shall be amended as follows-

(a) in rule 2,

(i) by deleting the word “and” at the end of sub-paragraph (g);

(ii) by adding the word “and” at the end of sub-paragraph (h); and

(iii) by adding after sub-paragraph (h), the following new subparagraph- “(r) whether the making of a declaration of incompatibility under section 4 of the
Human Rights Act 1998 has arisen or may arise in the proceedings.“; (b) in rule 3,

(i) by deleting the word “and” at the end of sub-paragraph (c);

(ii) by adding the word “and” at the end of sub-paragraph (d); and

(iii) by adding after sub-paragraph (d), the following new subparagraph- “(e) whether the making of a declaration of incompatibility has arisen or may arise in the proceedings.”.

7. After Order 120 there shall be added the Order set out in the Schedule to these Rules.

SCHEDULE
ORDER 121 THE HUMAN RIGHTS ACT 1998
Interpretation

1. In this Order- -
“the Act” means the Human Rights Act 1998;
“appropriate person” has the same meaning as in section 9(5) of the Act;
“Convention rights” has the same meaning as in section I of the Act
“the Court” means the High Court or the Court of Appeal as appropriate;
“declaration of incompatibility” means a declaration of incompatibility under section 4 of the Act;
“judicial act” has the same meaning as in section 9(5) of the Act;
“originating process” means a writ, originating summons, originating motion or any other method of bringing civil proceedings in the High Court;
“public authority” has the same meaning as in section 6(3) of the Act.

Declaration of incompatibility: Notice to the Crown

2.- (1) Where at any time in proceedings before the High Court or the Court of Appeal, the Court is considering whether to make a declaration of incompatibility it shall give notice-

(a) to the Crown; and

(−) to each of the parties to the proceedings as soon as practicable thereafter.

(2) Notice to the Crown under paragraph (1) shall be given by the Court having had regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of the United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947(b).

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Declaration of incompatibility: Notice of intention to be joined as a party

3.- (1) In any case to which section 5(1) of the Act applies, a Minister, Northern Ireland Department or other person entitled under section 5(2) of the Act to be joined as a party to the proceedings shall be so joined on giving notice in adherence with paragraph (2).

(2) The notice referred to in paragraph (1) -

(a) shall be in writing and shall be filed in the Central Office and a copy shall be served as soon as practicable thereafter on each of the parties to the proceedings;

(b) where a Minister has nominated a person under section 5(2)(a) of the Act, shall be accompanied by a copy of that nomination in writing.

(3) Where a party has been joined to the proceedings under paragraph (1), the Court may give such directions as it considers necessary for the further conduct of the proceedings.

Commencement of proceedings

4.- (1) Subject to paragraph (2), proceedings under section 7(1)(a) of the Act may be brought in the High Court in accordance with such provisions of these rules as relate to the application or other type of proceeding which it is sought to bring.

(2) Proceedings under section 7(1)(a) of the Act in respect of a judicial act, other than proceedings referred to in section 9(1)(a) and (b) of the Act, shall be brought in the High Court and may be commenced by writ or originating summons.

Proceedings

5.- (1) A party who intends to rely on a Convention right or rights in proceedings before the High Court or the Court of Appeal shall state that fact and shall specify such details as are referred to in paragraph (2) -

(a) if he is a plaintiff or petitioner, in the originating process or in the case of an action begun by writ, the statement of claim;

(b) if he is a defendant or a respondent to a petition, in the defence, counterclaim or answer;

(c) if he is an applicant for leave to apply for judicial review, in the statement required under Order 53, rule 3(2)(a);

(d) subject to paragraph (3), if he is an appellant under Order 55 Part II or Order 60, in the notice of motion;

(e) subject to paragraph (3), if he is an appellant under Order 59 or an appellant from the Country Court, in the notice of appeal;

(19 in any other case, in a notice filed in the Central Office and served on each of the other parties to the proceedings.

(2) The following shall be specified in accordance with paragraph (1) -
(a) details of the Convention right or rights which it is alleged have been (or would be) infringed and details of the alleged infringement;

(b) the relief sought;

(c) whether the relief sought includes-

(i) a declaration of incompatibility; or

(ii) damages in respect of a judicial act to which section 9(3) of the Act applies;

(d) where the relief sought includes a declaration of incompatibility, details of the legislative provision (or provisions) alleged to be incompatible and the grounds on which it is (or they are) alleged to be incompatible;

(e) where the proceedings are brought following a finding by another court or tribunal that a public authority has acted in a way which is made unlawful by section 6(1) of the Act, details of that finding;

(f) where the proceedings relate to a judicial act which is alleged to have infringed a Convention right or rights of a party as provided by section 9 of the Act, details of the judicial act complained of and of the court or tribunal which is alleged to have performed that act.

(3) Paragraph (1) shall not apply to an appellant in any appeal brought to the Court of Appeal or the High Court, except where such an appellant intends to rely on a Convention right or rights or grounds of incompatibility not relied upon by him before the court or tribunal from whose decision the appeal is brought.

Proceedings in respect of judicial act: Notice to appropriate person

6.- (1) Where proceedings under section 7(1)(a) of the Act in respect of a judicial act are brought in accordance with section 9(1)(a) or (b) of the Act or rule 4(2), the Court shall give notice to those proceedings to the appropriate person.

(2) The notice referred to in paragraph (1) shall be given by the Court having regard to the list of authorised Northern Ireland Departments or authorised Departments of the Government of United Kingdom published in pursuance of section 17 of the Crown Proceedings Act 1947.

(3) The notice referred to in paragraph (1) shall contain such information and be in such form as the Court considers necessary.

Proceedings in respect of judicial act: joinder of appropriate person

7.- (1) Subject to paragraph (3), where notice has been given under rule 6, the appropriate person shall be joined as a party on giving notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1) shall be in writing and shall be filed-

(a) in the Central Office, not later than 21 days, or such other period as the Court may specify, after the date of service of notice under rule 6; and

(b) a copy shall be served on each of the parties to the proceedings as soon as practicable thereafter.

(3) Where the appropriate person does not give notice within the time allowed by paragraph (2), the Court may direct that the appropriate person be joined as a party to the proceedings.

(4) Where the appropriate person is joined as a party to the proceedings under paragraphs (2) or (3), the Court may give such directions as it considers necessary for the future conduct of the proceedings.
Eplani Programme

Autumn 2000

Tuesday 10 October – Green Room, Belfast Waterfront Hall
Time: 5.30pm
David Bell – Reforms of the Water Legislation
The Water (Northern Ireland) Order 1999 was enacted in March 1999 but the main provision has still to come into place. David Bell is the Deputy Principal in the Environmental Policy Division of the Department of the Environment. His talk will deal with the main changes that the 1990 Order will bring and will be of direct relevance to environmental consultants, solicitors and those working in local government.

Tuesday 14 November – Belfast Waterfront Hall
Time: 5.30pm
‘Judicial review – the new method of development control?’
Michael Burroughs and William Orbinson
The use of judicial review by third party objectors has increased considerably in the last number of years. Michael Burroughs, planning consultant and William Orbinson, barrister will examine how the risk of judicial review influences the development control process. This will be of interest to developers, interested parties and their legal and professional advisers.

BOOKING FORM

Please reserve the following number of places at the above seminar(s).
10 October
14 November
Members
Non-Members
Unwaged

£10.00   £15.00   £5.00

I enclose a cheque for £_____________ as a non-refundable fee made out to the Environmental and Planning Law Association for Northern Ireland.

Please return completed Booking Form to Karen Blair, Chair, EPLANI, c/o Cleaver Fulton Rankin, Solicitors, 50 Bedford Street, Belfast, BT2 7FW, DX 421 NR Belfast

Membership Form

I/we wish to join/re-join EPLANI and enclose a cheque made out to EPLANI for the appropriate fee/confirm that the attached standing order form have been forwarded to my bank (please delete as appropriate).

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IN THE MATTER OF THE ESTATE OF WILLIAM MAGEE DECEASED
LATE OF 24 MOUNTAINVIEW GARDENS, BELFAST

We are trying to locate the whereabouts of the aunts and uncles and first cousins of the late William Magee who died on 02 February 2000.

The late William Magee’s father who was also called William Magee, Shopkeeper, late of 6 Danube Street, Belfast born 1898 and died at the Mater Hospital, Belfast on 03 April 1936 aged 38 years.

The late William Magee’s mother was Dorothy Priscilla Magee (nee Hynes) born Belfast 02 January 1900 and died 06 December 1974.

Any person with information regarding the whereabouts of the above persons are asked to contact the undersigned Solicitors.

John Reavey
Solicitors
22 The Diamond
Rathcoole
Newtownabbey
BT37 9BJ

NORTHERN IRELAND YOUNG SOLICITORS ASSOCIATION

New NIYSA Committee 2000/2001

The new NIYSA Committee are as follows:-
Tracey Diamond – Chairman Tel.: 028 7965 9111
Blaney & Diamond
Maureen Bell – Vice Chairman Tel.: 028 9032 5229
Bigger & Strahan
Nessa Agnew – Secretary Tel.: 028 9031 8477
NIHE Legal Department
Andrew Small – Treasurer Tel.: 028 9027 1433
Cleaver Fulton Rankin
Nuala Sheeran- Membership Secretary Tel: 028 9024 3878
Mills Selig
John Bell Tel.: 028 9127 0313
Bigger & Strahan
Catherine Calvert Tel: 028 9043 9389
Samuel D Crawford & Co
Patrick Oliver Tel: 028 90223333
White McMillan
Jonathan Hewitt (Co-opted) Tel.: 028 9020426
L’Estrange & Brett
Declan Magee (Co-opted) Tel: 028 9024 4951
Carson & McDowell

INFORMATION REQUIRED

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John Reavey
Solicitors
22 The Diamond
Rathcoole
Newtownabbey
BT37 9BJ

Northern Ireland Young Solicitors’ Association
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Invite you to a

WINE TASTING EVENING

On

Tuesday 17th October 2000
7.30pm

at Direct Wine Shipments, 5 Corporation Square, Belfast

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Please contact
Committee Members for tickets
After nearly two and a half years of the old Guide the BSA Committee have considered and arrived at a new High Court Guide.

This guide is intended to apply to personal injury actions settled after 1st July 2000. It is not intended to apply to the following categories:

- Negligence.
- Medical Negligence
- Commercial Litigation and Chancery.
- Actions against the Crown.
- Industrial Disease Actions.
- Defamation.

The BSA recommend to all practitioners that the above guide is fair and reasonable in the majority of personal injury actions.

Solicitors are advised that even in the majority of ordinary cases increases in the guide should be sought in the following situations:

1. If there are interlocutory proceedings an extra £150.00 should be added for each such application. This £150.00 reflects an additional 1 1/2 hour’s work, which is the average time spent. If the interlocutory applications become complicated and lead to matters such as remittal appeals in the High Court the BSA recommends that time is recorded and that extra costs are added to the guide to reflect time spent.

2. Multiple Defendants.

If there is more than one Defendant at Defence stage and each Defendant is being separately represented we recommend that for the first Defendant an extra 20% be added to the guide and for every Defendant thereafter a further 10%. This is to reflect the payment for additional time.

3. If the case runs to trial we are informed that the Taxing Master will normally allow an average of £600.00 for each additional day of Trial for an ordinary case. Again this figure should be added to the attached guide.

4. It is important for Solicitors to be aware that the settlement figure does not necessarily reflect the value at which the costs are to be fixed. The Committee is of the view that in cases settled involving a compromise, the fee should reflect the value of the case overall as in accordance with the decisions in McMahon v. Donaldson and Carr v. Poots. This necessitates the fee being marked at a higher band than the settlement or judgement figure.

In cases where liability is admitted at or before the service of the Defence, a 10% reduction should be allowed.

Please note that we have introduced a new category to remunerate cases settled on or within 21 days of Trial whether or not they are commenced on the day of Trial. We recognise the extra work and time taken for the day of Trial as we are informed that the Taxing Master makes allowances for this. This is also to encourage insurers to put their best foot forward at an earlier stage and hence seize the opportunity to avoid costs. We would also encourage Solicitors to co-operate with the reasonable insurer.

Whilst the attached guideline has been arrived at after much consideration of various arguments, we believe that all practitioners need to educate themselves in relation to costs. The fact of the matter is that those Solicitors whose time is recorded are in a position to achieve higher costs. We would also point out that we have considered the increased costs of the Bar, and the removal of the lower scale is in line with the Bar’s removal of the their lower scale.

A word of warning to all solicitors must be wherever possible to ALWAYS agree costs either prior to consultation or settlement.


As a result of the interest already shown we have made a preliminary reservation of accommodation in a hotel near Limerick. We now need to ascertain which other members of the profession would like to participate in the Games. Please do note that intending participants should be prepared to join in and/or organise fundraising activities and sponsorship. There will be approximately 20 sports on offer including:- Badminton, Soccer6-a-side, Basketball 3-on-3, Squash, Golf, Triathlon Dragonboat Racing, Tennis, Field Hockey, 7-a-side Touch Rugby, Road Running Indoor Karting, Volleyball, Netball, Tenpin Bowling, Table Tennis

Would anyone who is interested in competing an any of these sports please contact either Patrick White of Crawford & Lockhart, Solicitors. Telephone 9032 2204; or Oonagh McClure Thompson Solicitors. Telephone 9032 0148.

Forward to either of the above.

UK and Ireland Corporate Games 2001 Limerick

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Contact Tel no: ____________________
Sport: _____________________________
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## NORTHERN IRELAND COURT BUSINESS

Lord Chancellor's Directions give after consultation with the Lord Chief Justice in accordance with Section 47(2) and (3) of the Judicature (Northern Ireland) Act 1978
Crown Court - Division of Armagh and South Down

The schedule to the Lord Chancellor's Directions dated 1 May 2000 and published in the issue of "Northern Ireland Court Business" No 3/00 should be amended as follows:

### Crown Court sitting at Newry Courthouse

**Commencement Date of Trials**

- Delete: Monday 18 September
- Insert: Monday 4 September

### Lord Chancellors Directions under Article 11(3) of the Magistrates' Courts (Northern Ireland) Order 1981

**Magistrates' Courts**

**Amendment**

Schedule 2 to the Lord Chancellor's Directions dated 24 May 1990 and published in the issue of "Northern Ireland Court Business" No 4/90 shall be amended with effect from Monday 2 October 2000 as follows:

**Page 7: Petty Sessions District of North Down**

**Column 2: PLACE AND TIME**

- Delete: Other Business and Youth sittings commence at 10.30 am
- Insert: All sittings commence at 10.30 am

### SCHEDULE 2

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<th>Petty Sessions District</th>
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Solicitors required

Assistant Solicitor Required
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Solicitor
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Carson & McDowell
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Missing Wills
Re: Matthew McGivney Deceased late of 11 St James Street, Belfast 14
Obit: 16th June 2000
Would any Solicitor who is aware of a Will made by the above named deceased please contact Francis Crilly Solicitors, 24 Antrim Road Belfast BT15 2AA, Telephone: 9075 5722 (ref: JC / 4311)

FOLIO NO: 1879 and 4198
COUNTY LONDONDERRY
REGISTERED OWNER: JOHN COWAN
PERRY O’CONNOR
Lands of Drumsum Upper, Limavady, County Londonderry
TAKE NOTICE that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios should forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
AND TAKE FURTHER NOTICE that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this Notice a duplicate Land Certificate may be applied for.

Messrs Hewitt & Gilpin Solicitors
Thomas House
14-16 James Street South
BELFAST
BT2 7GA.

INFORMATION REQUIRED
A Translink Service - returning to Belfast from Glasgow was involved in a road traffic accident on 23 February 1999. Would any Solicitors acting on behalf of claimants arising from this accident please contact the firm of PAUL M GRAHAM & CO SOLICITORS of 70 Andersonstown Road, Belfast Telephone (02890 603223)

FOIL 29078 COUNTY ANTRIM
REGISTERED OWNER: MARY McCulloch Fraser
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AND TAKE FURTHER NOTICE that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this Notice a duplicate Land Certificate may be applied for.

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Solicitors
13 Main Street
Limavady
Co. Londonderry

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- A legal executive for litigation and mortgage work
I.T. skills would be an advantage.
Both positions offer attractive salaries and an opportunity for career development in a friendly, well-resourced and modern office.

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The Personnel Partner White McMillan Solicitors 50 Knockbreda Road Belfast BT6 OJB Tel: 028 90 223333

Missing Land Certificate
Recommended reading

SELF INCRIMINATION AND HUMAN RIGHTS

Cases

Brown (Margaret) v Stott
drink driving
2000 SLT 379 (HCJ Appeal)

R v Chauhan and Hollingsworth
speeding
Unreported, Birmingham Crown Court 13th July 2000

R v Hertfordshire CC Ex p. Green Environmental Industries Ltd
waste disposal
2000 2 WLR 373 (HL)

Saunders v United Kingdom
financial crime
1997 23 EHRR 313 (ECHR)

Condron v United Kingdom (no.2)
criminal proceedings
2000 TLR 9 May (ECHR)

Articles

In the dock (impact of ECHR on criminal justice system and
defendants’ rights, including rule against self incrimination and
adverse influence, bail and rights under Art.5, obligation of
disclosure and Art.6 and police surveillance and Art.8)
O’May: 2000 LSG 97 (28), 24-27

Finding the right balance (between exercise of power of
investigation and privilege against self-incrimination, in light of
recent English and Scottish experiences)
Fisher: 2000 NLJ, 150(6942), 988-989

Is speeding a human right? (whether admission of evidence of
identity of driver obtained under s.172 in drink driving case
would be in breach of privilege against self incrimination in Art.
6 ECHR and relevance of decision to speed camera cases)
Kerrigan: 2000 JP, 164 (16), 298-301

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