

President's Report

In the first of an occasional series the President reports and reflects on some matters of topical interest and activity within the Society.

One of the most enjoyable aspects of the Presidency is the opportunity to attend Local Association functions throughout the Province, and, indeed, further afield. In January I attended the justly popular Belfast Solicitors' Association Dinner Dance and later that month I had a most enjoyable evening as guest of the Derry Association. I feel that there is great benefit for our members in partaking in active local associations. Apart from a valuable social dimension, there are advantages for the profession, particularly at a time of great change and challenge, for solicitors in any given area to promote themselves more effectively and to deliberate on matters of current concern. Again there is scope for organising local seminars, particularly in the context of compulsory continuing professional education (which has been adopted as a policy by Council). Our Scottish colleagues advise us that having taken a similar step in Scotland, there has been a strong revival of interest and activity within local associations.

The advent of a local Assembly in Northern Ireland has already had considerable impact on the activities of the Council, with an evident increase of involvement by the Society in local and public affairs. We have already been consulted by departmental committees, sometimes at short notice, on current legislation, and we have attended before and given evidence to a number of statutory committees on proposed measures, including the Ground Rents Order and the draft Financial Investigations (N.I.) Order. We have been

requested to give a presentation at Stormont on the house buying process and we are preparing a detailed report in response to the General Consumer Council Report on the house buying process. We are working closely with the Lord Chancellor's Advisory Committee on Legal Aid Reform, and we are currently consulting within the profession on a wide basis on this vitally important topic. In this new context it is therefore all the more important that we should be in a position to assess opinion throughout the profession on these matters from local associations as well as from special interest groups within the profession.

Council is well aware of both the threat and the opportunity afforded by current changes. It is vitally important that our involvement in the conveyancing process keeps up to date and relevant. We must all avail ourselves of the opportunities afforded by computerisation within the public sector, with particular reference to the Land Registry, Searches and Property Certificates. At the forthcoming Annual Conference an introductory talk will be given on the revised General Conditions of Sale which are designed to improve certain aspects of practice. I have already made reference to the changes in Legal Aid practice, which have already been effected in Great Britain. A strategy steering group from within the Council is currently studying this matter, as well as the linked area relating to claims for personal injury compensation. Again, this topic will feature at our conference. We as a profession must respond to the very real challenge in this field presented by the activities of specialist claims companies and the insurance industry in general.

I recently paid a visit to the Law Societies' Joint Brussels Office and was greatly



impressed by the facilities which are now made available to all of us. The staff is highly skilled and approachable and they would very much like to hear from any of you in connection with work with a European dimension. The take-up from our members has been slow to date but this is similar to the experience whenever the Scottish Law Society first became involved. Apparently our Scottish colleagues, after a slow start, are now greatly appreciating this facility.

JOHN G. NEILL

President

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CHILDREN ARE UNBEATABLE!

The Children's Law Centre are members of The Children Are Unbeatable Alliance which is lobbying for effective legal reform to ensure that children and young people are given the same protection from assault as adults. In our view this means that legislative change will be necessary to protect children who are subjected to physical punishment. This needs to be done in conjunction with the promotion of positive, non-violent discipline and education programmes about positive discipline.

The Office Of Law Reform in N Ireland is about to issue a consultation document on the use of physical punishment on children and we are seeking to extend the Northern Ireland membership of Children Are Unbeatable in an attempt to positively influence the debate which will be going on over the next 12 months about the physical punishment of children in N Ireland. We would encourage solicitors representing children to become involved in this debate and respond to the consultation document from a legal perspective.

THE CURRENT LAW IN N IRELAND

Although the Children and Young Persons Act 1968 created offences of assault, neglect, ill treatment and abandonment, it continued to allow for the parental right to administer punishment.

The current law in N Ireland allows parents to use the defence of reasonable chastisement if they are prosecuted for assaulting their child ie punishment which it is reasonable for a parent to inflict. The burden of proof is on the prosecution to establish beyond reasonable doubt that the punishment inflicted went beyond the limits of reasonable chastisement.

This defence has been developed through the common law. Chief Justice Cockburn, in the case *R v Hopley* in 1860 first laid down the principle of reasonable chastisement. In this case a young boy of 13 at a boarding school

was flogged with a stick and skipping rope for over two hours and died as a result of his injuries. The headmaster who inflicted the injuries was convicted of manslaughter. It was held that physical punishment cannot be reasonable where it is "administered for the gratification of passion or rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life or limb, in all such cases the punishment is excessive, the violence is unlawful."

This is cold comfort indeed to children and young people who need to be protected by our law against physical punishment. In the 1990's parents were acquitted who had beaten their children with riding crops, used belts to discipline their children in a way that caused severe bruising and used electrical flex and garden cane against their children.¹

CHILDREN'S RIGHTS AS HUMAN RIGHTS

Pursuant to Article 3 ECHR which is now part of our domestic law (since Oct 2000) everyone has the right to protection from inhuman and degrading treatment or punishment.

One of the acquittals referred to above led to a case being taken to the European Court Of Human Rights in the case of *A v UK* 1998.² The facts of this case were that a nine-year-old boy was beaten repeatedly with a garden cane by his stepfather, causing severe bruising on the child's thighs, injuries that were consistent with the use of considerable force. The stepfather was acquitted by a jury which had received a direction from the judge that "it is a perfectly good defence that the alleged assault was merely the correcting of a child by his parent". An application was made to the European Court Of Human Rights on the grounds that the UK government had failed to protect the child from inhuman

and degrading treatment because the law (for which the government is responsible) did not protect children in this situation. The European Court of Human Rights stated that the application of the defence of reasonable chastisement does not provide adequate protection to children who are subjected to physical punishment of this nature, which amounted to inhuman and degrading treatment under Article 3 ECHR. The Court considered that children and other vulnerable individuals are entitled to State protection, in the form of effective deterrents against such serious breaches of physical integrity and that the law should be amended.

This led to the consultation in England, Scotland and Wales about amending the law to give children better protection. The consultation process in N Ireland should be underway soon. The consultation process was disappointing in certain aspects in England, Scotland and Wales particularly with the wording of some of the questions asked. For example, one of the questions asked in the English consultation paper was whether physical punishment that causes, or is likely to cause injury to the head (including damage to the brain, eyes and ears) should never³ be deemed reasonable. We would not wish to see such an inhumane question repeated in the consultation in N Ireland, as it surely is not a matter for debate whether such treatment of a child could ever be deemed reasonable. The consultation document in England was also unnecessarily restrictive in terms of the options for reform proposed and withdrawing the defence of reasonable chastisement or outlawing all forms of physical punishment of children were not put forward as options in the consultation. Again we would like to see these options included in the consultation document published in this jurisdiction.

The position in Sweden is that there has been no increase at all in prosecutions for parental assaults on children since the ban 20 years ago. There has also been a

marked decline in the use of care orders and an emphasis on positive discipline with help being provided to parents in this regard when necessary.⁴ The pattern of reform in other European countries (including Sweden, Finland and Denmark) has been that defences similar to reasonable chastisement have been removed from statute and then family law / civil law has explicitly banned physical punishment. These reforms must be accompanied by educational programmes in order to be effective.

THE UN CONVENTION ON THE RIGHTS OF THE CHILD

It is useful to look at the relevant provisions of the United Nations Convention on the Rights of the Child for further guidance as to international human rights obligations in relation to children. The European Court of Human Rights has recently looked to the United Nations Convention on the Rights of the Child for guidance in cases such as *T & V v UK*.⁵ Although the United Nations Convention on the Rights of the Child is unenforceable in our local courts, it is likely that reference will be made to its provisions in future cases involving children's human rights. In particular, Article 19(1) United Nations Convention on the Rights of the Child says;

"State parties shall take all appropriate legislative and administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse whilst in the care of parents, legal guardians or any other person who has the care of the child"

This is obviously a much wider obligation in terms of the protection of children than protecting them against inhuman and degrading treatment under Article 3 ECHR.

The United Nations Committee On The Rights of the Child in 1995 recommended that additional measures should be implemented to overcome the problem of violence in society. It recommended that physical punishment of children in families be prohibited in light of the provisions laid down in Articles 3 and 19 of the Convention and that public educational campaigns should be launched to emphasise the child's right to physical integrity.

THE NORTHERN IRELAND CONTEXT

It is essential that the Northern Ireland context is carefully considered throughout this debate. The Human Rights Act, which has been discussed above, was incorporated into our domestic law in October 2000, which means that all the ECHR rights are now arguable before our domestic courts. However in addition, unlike the legal position in England and Wales, we also have the equality provisions under Section 75 of The Northern Ireland Act 1998.

Pursuant to the equality provisions equality of opportunity must be promoted between various different categories, one of which is people of different ages. One of the main arguments which we will be putting forward on behalf of children and young people is that the legal position impacts negatively on children and young people and that there needs to be legislative change accompanied by prosecution guidelines to remedy this situation.

There is also a further ongoing consultation taking place about a Bill of Rights for N Ireland which means that there will be additional rights over and above the Human Rights Act 1998 brought in to protect individuals. We would like to see Article 19 United Nations Convention on the Rights of the Child incorporated into this Bill of Rights, together with a right to physical

integrity for children and young people.

CONCLUSION

When one five year old was asked in a study in 1998 what it was like to be smacked he replied;

" It makes me feel sick inside and it breaks your heart"⁶

We hope to see widespread consultation with children and young people in N Ireland about the use of physical punishment and their views given due weight and validity. We would also like to see a clear explanation given to the public in the consultation document about what a ban on physical punishment would mean in practical terms, with some reassurance that positive help and assistance would be given to parents to help them with positive disciplining methods and to support families adequately in times of stress.

We also hope that solicitors will respond to the consultation document and engage in the consultation process. The Children's Law Centre will be preparing a written submission and welcomes the views of solicitors for inclusion in our response, which should be forwarded to Tara Caul at Philip House, 123-137 York Street, Belfast, BT15 1AB.

Tara Caul, Children's Law Centre, on behalf of "Children Are Unbeatable"

"Children Are Unbeatable" is an alliance of organisations seeking legal reform to give children the same protection under the law on assault as adults and promoting positive, non -violent discipline.

If you would like to join or support the Children Are Unbeatable Campaign in N Ireland, please contact Margaret Mc Taggart at our campaign office at Childcare (NI), 216 Belmont Road, Belfast BT4 2AT, telephone 028 90652713.

¹ *It Hurts You Inside, Save The Children*, NCB, Caroline Willow and Tina Hyder, 1998, page 15

² *A v UK judgment of 23 Sept 1998, reports1998-VI, no 90*

³ "never" was the wording used in the consultation document

⁴ *A Generation Without Smacking: The Impact of Sweden's Ban On Physical Punishment; Save The Children JE Durrant Feb 2000*

⁵ *T & V v UK Eur Ct HR Judgment of 16 Dec 1999*

⁶ *It hurts you inside; children talking about smacking; Caroline Willow & Tina Hyder Save The Children and National Children's Bureau*

LETTER TO THE EDITOR

Brussels - Louvaine Visit. February 2001.

I have recently returned from a study visit organised by the Law Society to the European institutions. Some twelve solicitors, ably led by Ms Suzanne Bryson, Deputy Secretary, were treated to a whirlwind tour and hectic series of presentations by officials from the various institutions in Brussels, our own representatives in the Law Societies' Brussels office, June O'Keeffe and Che Odlum, and a Brussels - based Irish Solicitor specialising in agriculture.

The visit was efficiently organised, keenly priced and provided a welcome stimulus for those of us ground down by the treadmill of legal practice in the depths of winter.



The delegates, who came from varied legal backgrounds, not only participated fully in the lectures and visits to the institutions, but enjoyed immensely the social events arranged in the evenings and at the weekend at the conclusion of the visit.

I will retain fond memories of this visit and would hope that the Society can ensure that it becomes an annual event for local solicitors. All of us who were on the trip will whole heartedly recommend all our members to avail of this opportunity to visit the Law Societies' own Brussels office and to familiarise themselves with those institutions and legal systems that, in the words of Bernard O'Connor the Brussels-based solicitor, impact on every single aspect of legal work of Northern Irish Solicitors.

Yours faithfully

TONY CAHER
Campbell & Caher Solicitors

Legal Advice and Assistance (Amendment) Regulations (Northern Ireland) 2001 (SR 2001 No, 9)

These Regulations, which came into force on 19 February 2001, amend the Legal Advice and Assistance Regulations (Northern Ireland) 1981 (S.R. 1981 No. 366) to provide that non- means and non-contribution tested assistance by way of representation under Article 5 of the Legal Aid, Advice and Assistance (Northern Ireland) Order (S.I. 1981/228(NI 8) is extended to persons in respect of whom an application for warrant of further detention or for an extension of such a warrant is made under paragraph 29 or 36 of Schedule 8 to the Terrorism Act 2000.

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ATTENTION ALL PROSPECTIVE MASTERS

It's that time of year again when your offices are besieged by young enthusiastic students seeking apprenticeship places.

A student must, in order to take up his/her Institute place, register with the Society by the 20th August 2001. This is the final date for registration and will not be extended. Those students who do not register by the 20th will be unable to take up their place at the Institute.

As you will appreciate the fact that there is a cut-off date puts students under pressure and the Education Committee would ask that you bear this in mind when organising interviews. Please try to avoid having interviews in the last few days before the deadline as the uncertainty only puts the students under more pressure.

The Society each year draws up a list of members who are qualified and willing to act as masters. This list will be provided on request to students who are seeking apprenticeships.

If you have -

1. practised as a solicitor for at least 7 years, and
2. been a principal for at least 3 years, and
3. are willing to act as a master for the 2 year term commencing September 2001.

Please complete the attached form and return it to Mrs. Yvonne Blackstock at Law Society House.

At present the minimum wage for apprentices is as follows:

(a) for the first 16 months of the apprenticeship £150.00 per week.

(b) for the last 8 months of the apprenticeship £180.00 per week.

(c) During the Institute term, when the apprentice is in his/her master's office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £30.00 per week).

The question of whether apprentices are paid in full during the Institute term shall be a matter for the discretion of the master.

The level of minimum wage payable is due for review by the Council of the Society. Any changes made will be effective from September 2001.

MASTERS 2001/2002

I confirm that I am interested in acting as a master as and from September 2001 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master _____

Name of firm _____

Date _____

HOME CHARTER

Please note that up-to-date Home Charter Leaflets are now available from the Law Society at £3.50 for 50.

LAY OBSERVER FOR NORTHERN IRELAND

Professor Vincent Mageean OBE has accepted the Minister for Finance's offer of a 2nd term as Lay Observer for Northern Ireland. This is an appointment made under Article 42 of the Solicitors (Northern Ireland) Order 1976. Professor Mageean's re-appointment is effective from 2nd February.

FAMILY PRACTITIONERS LOOK OUT!

BRUSSELS II

JURISDICTION AND JUDGMENTS IN MATRIMONIAL MATTERS

The Brussels Convention 1968, which lays down uniform law for jurisdiction and for the recognition and enforcement of judgments, applies only to commercial and civil matters and has no application to matrimonial affairs. An attempt was made to produce a parallel matrimonial convention, but ultimately this was not accepted by all Member States. The convention was abandoned, and has now been replaced by Council Regulation 1347/2000/EC 'on jurisdiction and the recognition and enforcement of judgments in matrimonial matters of parental responsibilities for children of both spouses'. The Regulation is a revised version of the convention, and comes into force on 1 March 2001. As is the case with the insolvency Regulation, the measure is directly effective and does not require implementation in the UK.

SCOPE

The Regulation applies to: divorce, legal separation and annulment proceedings; and civil proceedings relating to parental responsibility for the children of both spouses which are closely linked to divorce, separation and annulment proceedings. Purely religious proceedings are excluded. The Regulation is not concerned with the consequences of divorce, including distribution of the matrimonial property and enforcement of maintenance orders.

JURISDICTION

A spouse who is habitually resident in, or a national of, (or in the case of the UK and Ireland domiciled in), a Member State can be sued in another Member State only if the jurisdiction rules of the Regulation so permit. Jurisdiction over divorce, legal separation and annulment proceedings lies with the courts of the Member State in whose territory the parties are habitually resident, or the

respondent in the proceedings is habitually resident, of the courts of the Member States of the nationality of both spouses. What is required, therefore, is a real link between the parties and the Member State the courts of which are seized of the proceedings.

Where a court is seized of matrimonial proceedings, it is also to have jurisdiction over issues relating to parental responsibility for any children of both spouses, providing that the child is habitually resident in that Member State. If that is not the case, the court possesses jurisdiction if the child is habitually resident anywhere in the EC, at least one of the parents has parental responsibility and the parents have accepted jurisdiction of the court. The significance of the habitual residence test is that the court does not lose jurisdiction in the regularly encountered situation where one of the parents abducts the child. All of this complies with the provisions of the Hague Convention 1980 on 'Civil Aspects of the International Abduction of Children'.

EXCLUSIVITY OF JURISDICTION

Two provisions found in the Brussels Convention are repeated in the Regulation. First, the courts with jurisdiction have exclusive jurisdiction: any court before which the same dispute involving the same parties is raised must stay its own proceedings. The court first seized thus has exclusive jurisdiction. However, the courts of any other Member State are empowered to grant provisional, including protective, measures in support of proceedings being carried on in another Member State. The provision can, presumably, be used to prevent a child being abducted by one of the parents outside the Member State which has jurisdiction over the proceedings involving that child.

RECOGNITION AND ENFORCEMENT

Any judgment concerning divorce, legal separation or marriage annulment, and any judgement relating to parental responsibility, given by an EC Court with jurisdiction under the Regulation, is to be recognised and enforced throughout the EC. The jurisdiction of the court giving the judgment, and the substance of the judgment, cannot be challenged in any other Member State. A small number of narrow grounds of non-recognition of a judgment dealing with divorce, legal separation or annulment are nevertheless set out in the Regulation. Non-recognition is possible:

- if recognition would be manifestly contrary to public policy;
- if the judgment was given in default of appearance by the respondent;
- if there is an earlier judgment in that Member State or some other state which is irreconcilable with the judgment to be recognised.

Non-recognition of a judgment relating to parental responsibility is possible:

- If recognition would be manifestly contrary to public policy;
- If the judgment was given, except in the case of urgency, without the child having the right to be heard;
- If the judgment was given in default of appearance by the respondent;
- If the judgment allegedly infringes parental responsibility of one or other party and that party was not given the opportunity to be heard;
- If there is an earlier judgment in that Member State or some other State which is irreconcilable with the judgment to be recognised.

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NEED HELP WITH YOUR LIBRARY?

For several years the library has offered a consultancy service to firms who have approached us and requested some assistance with various aspects of their libraries.

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- Knowledge management
- Current awareness
- Electronic retrieval and dissemination of legal information

The service consists of a visit to the library, consultation with the 'library' partner to establish the objectives of information provision throughout the firm and a thorough follow-up report.

We also provide ongoing assistance in the form of regular indexes and directories from the Law Society library.

So, to make sure you are making the most of your library and the services provided by the Law Society library, why not give us a ring and find out more?

Heather Semple
Librarian



NEWS FROM THE BRUSSELS OFFICE

As you saw in the July/August 2000 edition of the Writ, the Law Society, Northern Ireland has joined a combined Brussels office with the Law Society of England and Wales and the Law Society of Scotland.

As well as benefiting from lobbying presence in Brussels, we are also regularly updated on events and activities in Brussels which may impact on the legal profession over here.

Accordingly, we are establishing this regular column to keep our members abreast of what is happening in Brussels.

MONITORING REPORT

In December 2000 the joint Brussels Office produced a monitoring report to the Society on EU Professional Practice and Law reform issues and EU funding opportunities. This detailed 4-volume publication contains a wealth of information and supporting documentation and is available in the Society's library.

A full list of the contents is included as an insert to this edition of the Writ.

SAMPLE DEVELOPMENTS IN JANUARY 2001.

24.1.2001 DRAFT MONEY LAUNDERING DIRECTIVE 2ND READING.

The Commission and Parliament debated lawyer/client confidentiality as well as whether to exclude the giving of legal advice from the scope of this directive.

29.1.2001 REFORM OF THE EUROPEAN COURTS

The reforms agreed at the Nice Summit in December 2000 regarding the Court of First Instance, The European Court of Justice and the Community legal system in general are to go forward for the ratification process.

[This information has been collated by the Society's librarian in conjunction with the European and External Relations Committee as examples of current topics under discussion in Brussels. If you are interested in any particular European topic, or would like to know more about the issues mentioned above, contact the library.]



NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

**PLACES ARE STILL AVAILABLE FOR THE CONFERENCE (APPROX £120)
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**ANYONE NOW WISHING TO ATTEND MUST MAKE OWN TRAVEL
ARRANGEMENTS**

NIYSA ANNUAL CONFERENCE

We are pleased to announce that our Conference for 2001 will be taking place in conjunction with the Liverpool Young Solicitors Group in Liverpool, Friday 18th May – Sunday 20th May 2001.

Although our Conference Agenda has yet to be finalized it is anticipated that it will run as follows:

Friday 18th May 2001	am	Welcome and Registration
	pm	Social Event.
Saturday 19th May 2001	am	Lectures
	pm	Black Tie Ball
Sunday 20th May 2000	am	City Tour
	pm	Brunch and Goodbyes

All those wishing to attend should complete and return the attached Booking Form together with a deposit cheque in the sum of £40.00 made payable "NIYSA" .

Demand for our Belfast Conference in March 2000, (attended by over 380 delegates), greatly exceeded available places and so early booking is advised, places will be allocated on a first come first served basis.

Booking Form

18th – 20th May 2001, NIYSA Conference.

(Please complete in type or block letters)

Name _____ Firm Name _____

Address _____

Cost (approx £120.00 excluding travel) _____

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I will be sharing with _____

I wish to book for the NIYSA Annual Conference. I prefer a double/twin room *(Please circle your preference)*. I accept that all payments are non-refundable and that my booking is subject to availability and to written confirmation by the Organisers. The remaining balance shall be payable by me to the NIYSA on request. I shall be responsible directly to the Hotel for any incurred room tab on check out.

Note We regret that we cannot accept bookings at the Conference Hotel for single rooms or single nights. All bookings must be made through NIYSA.*

Please tick if vegetarian

Signed _____ Date _____

Please return completed booking form and £40.00 deposit cheque in an envelope marked "NIYSA Conference" to: Maureen Bell, Vice Chairman, NIYSA, c/o Bigger & Strahan Solicitors, Sinclair House, 89 Royal Avenue, Belfast, BT1 1EX.



NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION

**BELFAST SOLICITORS ASSOCIATION AND NORTHERN IRELAND
YOUNG SOLICITORS ASSOCIATION LECTURES**

"Paying for Residential Care - an update of the recommendations of the Royal Commission"

Speaker

Les Allamby of The Law Centre.

Friday 6th April 2001, Law Society House

Coffee/sandwiches - 12.30pm

Talk 1.00pm-2.00pm

"Charity Law - an update on qualification for charitable status and the duties and responsibilities of Directors and Trustees"

Speaker

Brian Garrett of Elliott Duffy Garrett.

Friday 20th April 2001, Law Society House

Coffee/sandwiches - 12.30pm

Talk 1.00pm-2.00pm

If you would like to attend, please complete and return the slip below to William Cross, Belfast Solicitors Association, c/o Cleaver Fulton Rankin Solicitors, 50 Bedford Street, Belfast, BT2 7FW or DX 421 NR BELFAST, fee £10.00 per person.

I confirm I wish to attend the Lecture(s) on Friday 6th April 2001 and/or Friday 20th April 2001, and enclose cheque for £ _____ payable to the Belfast Solicitors Association.

Name _____

Firm _____

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Risk Management

ADVICE



Don't lose sight of your Client's Instructions

Claims often arise when solicitors overlook their clients' specific instructions. This problem happens more often than one might think, in every area of the law and in all types of firm. Here are some examples:

- An elderly client sent a letter of instruction to his solicitor regarding a will, which included a provision that a legacy of £5,000 was to be left to an old and trusted friend. The solicitor overlooked the request, and the client did not notice the omission. He was asked to sign the will in the reception area of the firm and feeling under pressure did so without reading it.

- Solicitors were instructed in connection with a sale of part of a registered title. The client gave specific instructions that a covenant should be included preventing the purchaser from erecting any residential buildings on the land. The covenant was omitted. Subsequently a dwelling house was erected on the land.

- A solicitor was involved in protracted divorce proceedings. The husband instructed him at the outset to transfer a joint endowment policy into his name - he alone was to receive the surrender value. No reference to the endowment policy was made in the final order, leaving the client's former wife entitled to half of the proceeds.

- Commercial clients sent their solicitors detailed heads of agreement in connection with the sale of a company. It was specifically stated that the purchaser should assume certain liabilities of the company. This was not done.

In each of these cases, clear instructions were ignored. To avoid this happening, practitioners should take the following steps:

- Make a detailed note of any instructions given by the client;
- Incorporate all such instruction in a single document. Treat the instructions sheet as a living document and make amendments when they are necessary;
- Do not make assumptions. Confirm instructions with the client and make sure that you

have understood what the client wants.

- Wherever possible see the client in person;

- Confirm what is needed from the client and when it is needed, both in terms of actions and information, so that you can comply with the instructions;

- Make certain before committing the client (for example by exchanging contracts or obtaining a sealed order) that the final document incorporates all the client's instructions. Compare the instruction sheet with the document in question, and;

- Make sure the client sees and understands the contents of the document. This will help you to be certain that the client's instructions have been carried out.





by *Brian Doherty*

UTV BID TO CONCENTRATE

The UTV bid for County Media, a holder of three broadcasting licences in Cork threatens to run foul of an Irish Independent Radio and Television Commission rule that where a share holding exceeds 27% of ownership it is presumed an abuse of competition because of the dominance it creates.

There are some indications that UTV might be prepared to challenge this approach before the European Court.

E-MAIL PRIVACY: UK/IRISH DIVERGENCE

Whilst Ireland promoted the Electronic Commerce Act 2000 intended to give it a competitive advantage in e-commerce by strictly protecting the privacy of encrypted data and Internet communications, the UK has promoted the Regulation of Investigatory Powers Act 2000 providing for monitoring of Internet communications. Ireland hopes its legislative approach will boost the Irish encryption industry, but European laws such as the Council of Europe's Draft Convention on Cyber Crime may restrict its ability to maintain this approach.

Interesting European case law is appearing in the area, such as the Halford case, in which the European Court of Human Rights held in favour of a right of privacy in the circumstances of a particular employees phone calls.

ENDANGERED SPECIES DIRECTIVE IMPLEMENTATION

The European Commission is pursuing an infringement proceeding concerning Ireland's alleged failure to implement the Habitats Directive

agreed by the Member States in 1992.

INQUESTS AND HUMAN RIGHTS

A Coroners inquest in Northern Ireland has been delayed pending the outcome of the European Court of Human Rights judgment concerning the appropriate scope for inquests in order for human rights compatibility to be maintained.

PART-TIME BILL

Following a European Court judgment the House of Lords has decided a part-time pensions rights case, opening an entitlement to backdated compensation and opening the prospect of an employers overall bill of several billion pounds.

TRADEMARKS IN CYBERSPACE

Lawyers and intellectual property experts are currently trying to crack some of the most difficult IP-IT challenges of the digital age: which law and jurisdiction apply in disputes of the use of copyrights and trademarks in cyberspace, and how legal judgments can be enforced.

A meeting in Geneva involving the World Trade Organisation, the European Community and the World Intellectual Property Organisation are attempting to make progress on the issues.

BILL AND BEN

The English High Court has decided in a test case that plastic flower pots are packaging for the purposes of European recycling laws and are therefore subject to European recycling requirements.

The apparently arcane distinction lead to criminal charges being brought against Hilliers Nursery in England.

DOT COM ISSUES

The correspondent legal practice of Pricewaterhouse Coopers highlights an alarming nonchalance or ignorance of legal risk among Internet start up companies.

Three principal areas of concern highlighted are that dot coms are failing to protect adequately their intangible assets (often their only or

key value), are ignoring international legal issues and finally are exposing themselves to litigation and liability on alarming number of fronts.

LINKING WEB PAGES CASE STEPSTONE

The online recruitment company has obtained an injunction in Germany preventing a rival from creating links to its website pages. This case is important because it restrains the bypassing of home pages and the banner advertising that they frequently contain.

GOLDEN SHARES - GOLDEN ERA?

Against the background of Commission Infringement proceedings against several member states including the United Kingdom regarding the use of Golden Shares and their alleged breach of freedom of establishment and of movement of capital principles in the treaty of European Union, the Commission has now called for a wider debate on the issue and is looking at the possibility of allowing Governments to retain a right of veto of foreign take-overs of newly privatised companies in particular.

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Law Centre (NI)

PAYING FOR RESIDENTIAL CARE: IMPORTANT DEVELOPMENTS

PAYING FOR CARE

Divergence between England and Wales and Scotland in the response to the financing of residential care for the elderly has thrown the impact of devolved government into sharp relief. Solicitors who are well used to advising clients on the likely financial impact of residential care will be interested to see how the Assembly will respond in Northern Ireland. A debate on the issue is being held on 27 February 2001.

The Royal Commission on the long term care of the elderly revealed that one in three women and one in four men aged 60 or over will go into residential care. The Commission, in its report published in February 1999, set out a series of proposals including that care should be split between living costs, housing costs and personal care, with personal care being funded out of general taxation and the rest of the changes subject to a means-test.

The response in England and Wales, finally announced in July 2000, was to end charging for nursing care from October 2001, but to continue to charge for personal care with means-tested arrangements administered by social services and social security authorities remaining in place. Work is now underway to determine in detail what exactly constitutes nursing care. The definition is, however, to be narrowly drawn, casting many people in residential and nursing home care outside of the net. Moreover, the new arrangements are likely to make the rules of governing financing of residential care even more complex.

In addition, the value of a person's home will be ignored for the first three months after a person enters residential care and money currently spent on a residential allowance payable within income support will be transferred to social services departments. Those residents in

residential care since 1993 who are subject to funding through the social security system only will also be transferred to local authority funding.

In contrast, Scotland has opted to abolish charges for personal care as well as nursing care. An expert working group has been set up to report to the Scottish Executive in August 2001 on implementation and cross-border implications of the difference in approach. New arrangements in Scotland are due to be introduced in April 2002.

In Northern Ireland, the Department of Health and Social Services and Public Safety is working on proposals to put to the Executive and Assembly. Though reluctant to be drawn, it appears that Department officials are likely to bring forward arrangements that follow the England and Wales rather than Scotland model. If so, an interesting test of political independence is likely to ensue. The earliest date for any change will be April 2002.

More immediately, one modest change is already in the pipeline. From April 2001, the savings limit applied by social services when conducting the means-test for entitlement to financial assistance is to be increased from £16,000 to £18,500. In addition, the savings at which a set income is assumed to be generated will also rise from £10,000 to £11,500.

WAITING LISTS

Scotland is at the forefront of a second major development in residential care, namely, the legality of waiting lists for financing places in residential care. The issue has recently been considered by the Outer House Court of Session in *McGregor v South Lanarkshire Council* 15 December 2000. The question has a real resonance for Northern Ireland as many health and social services trusts operate waiting lists for places in residential care on financial grounds.

The case concerned a 90 year old man who was admitted to hospital after a fall at home. He was assessed as needing 24-hour care and that nursing home care would be appropriate. The applicant could not afford to pay nursing home fees. As a result, the local authority put him on a waiting list with a prognosis of seven to eight months before the council could afford to pay for a place in a nursing home. The question before the court was whether a local authority owed a specific duty to particular individuals in providing community care services and, if so, what

impact the availability of resources has on the duty to assess and meet community care needs.

Lord Hardie set out the duties contained in Scottish community care legislation. In particular, he held that there is a duty to assess need and where such needs are identified to meet them. Whilst assessing need, the question of availability of resources is irrelevant. The relevant issues are the circumstances of the particular individual and his or her ability to care adequately for him or herself without assistance from an outside agency. The assessment should identify what assistance is then required. At this point, resources come into play inasmuch as an individual may be in a position to pay for the necessary services. The resources available to a local authority are not a relevant consideration.

Having identified the need for particular services, the local authority has to decide whether it should be providing those services. Where it is clear a person cannot live independently even with outside support and that residential accommodation is required, then resources are relevant in taking account of how the need will be met. A range of options, including sheltered accommodation, can be considered. However, doing nothing is not an option and placing a person on a waiting list was held to be an abdication of responsibility. As a result, the failure to make the necessary provision due to a lack of resources was held to be unlawful. Lord Hardie also noted that, even if a waiting list has legitimacy in assisting using resources to the optimum advantage, such a list must seek to prioritise those on the waiting list according to need. A straightforward waiting list based on date order will not suffice.

The framing of the duty to meet community care needs contained in the Health and Personal Social Services Order (NI) 1972 as amended is worded differently to that contained in the Social Work (Scotland) Act 1968. Nonetheless, the two-stage process of first assessing need and then meeting such needs is common to both jurisdictions. Potentially, therefore the decision has substantial ramifications for Northern Ireland.

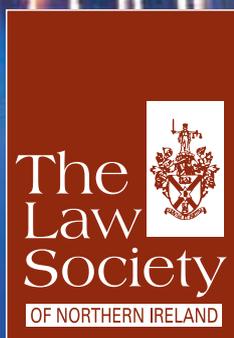
For a copy of the decision click on to website

<http://www.scotcourts.gov.uk/opinions>
Les Allamby, Law Centre (NI)

BELFAST 2001

ANNUAL CONFERENCE

6/7 APRIL 2001



'TOMORROW'S WORLD -
A LEGAL ODYSSEY'

'TOMORROW'S WORLD - A LEGAL ODYSSEY'

Message FROM THE PRESIDENT

Dear Colleague,

I have pleasure in inviting you to join us at the Society's Annual Conference in Belfast on 6th/7th April 2001. It is surely time for us to show off some of the fine buildings and other features of our great City, not only to our visitors from outside the province, but also to many of our members who may not fully appreciate what Belfast has to offer.

I draw your attention to details of the programme which are set out in this brochure.

We will be the first major organisation to hold a Conference at W5 Interactive Science Centre which is part of the exciting new Odyssey complex. The Conference hotel is the Hilton Belfast and a shuttle service will operate between these two venues.

The exhibition at W5 on Saturday will feature providers of services and equipment for our profession, and members will have an opportunity to examine the wide range of items on offer in a relaxed atmosphere.

An extensive social programme has also been arranged. This year's Conference will be semi-residential, in that our members and their families and guests will have the option of either staying at the hotel for all or part of the time, or of attending specific events on a non-residential basis. I draw your attention to the booking form which appears elsewhere in the Writ. I believe that there is something of interest for everyone at this year's conference and I look forward to seeing you there.

Yours sincerely,

JOHN NEILL
President



BUSINESS SESSION

Saturday 7 April

- 10 am Introduction to General Conditions of Sale (re-revised 3rd edition) and other recent developments in Conveyancing Law and Practice
- Speakers Mrs Sarah Witchell, Solicitor and Assistant Secretary, Law Society of Northern Ireland
Donald H Eakin, Solicitor
- 10.35 am Profit from Quality - How to Make Your Practice More Profitable
- Speaker Feargal McCormack of FPM Chartered Accountants, Newry and Dundalk
- 11.05 am - 11.25 am Coffee break
- 11.25 am The Human Rights Act - Topics and Cases in the first seven months
- Speaker Professor Stephen Livingstone, Head of School of Law, Queen's University, Belfast and Director of the Human Rights Centre
- 12 noon Personal Injury Practice after the Insurance Revolution. Recent developments in practice within the field of personal injury claims of litigation and Legal Aid.
- Speaker John Meehan, Solicitor, Senior Vice President, Law Society of Northern Ireland

CONFERENCE EXHIBITION - W5

10 am - 3 pm

This year's exhibition in W5 at Belfast Odyssey looks as if it is going to be better than ever. With over twenty exhibitors expressing a definite interest in exhibiting, the very best in products and services supporting the profession including financial services, pensions, insurance, business equipment and e-commerce will be on show. Not only will this help you to streamline and organise the way you do business, it will help to give your practice the necessary competitive edge. So much is changing in business technology and communication and by coming along to the exhibition, it is a very easy way to keep up to date. The Exhibition will run from 10 am- 3pm in W5 on Saturday 7 April. Visitors to the exhibition can also attend the lectures in the lecture theatre adjacent to the conference exhibition. Tea/coffee / lunch (£10) will be served in the exhibition area throughout the day. Children's lunch (£5) - needs to be prebooked- see booking form.

A special preview of W5 and its wonderful interactive exhibits will be available from 1pm to all those attending the conference exhibition and lectures before W5 museum is open to the public at 2.00pm. This will be a private viewing and is open to all members, families and friends

and is a wonderful opportunity to look around this super inter active science museum avoiding crowds and queuing. Exhibitors confirmed include Blue Chip Technologies, Butterworths, Opsis, AM Systems, E.Practice, Bowring Marsh, GM Associates, SGS Yarsley, Law Society Financial Services, Asdon, Mountain Software, Graham Computer Services, SLS and the Law Society Library.

CONFERENCE PROGRAMME

LAW SOCIETY ANNUAL 'SYNTEGRA' GOLF COMPETITION

Friday 6 April 12 noon start

This annual golf competition now in its third year, will be held on Friday 6 April 2001 at the Hilton Templepatrick. The tee has been reserved from 12 noon to 1.30pm and is open to any members (including spouses and partners). Soup and sandwiches will be available on arrival. The presentation of prizes including the magnificent crystal trophy will be at the Conference Dinner on Saturday 7 April.

We would be delighted to see as many members playing in this very relaxed and enjoyable competition and it is the first event as usual in our annual conference programme. The golf course at the Hilton is regarded as a top grade, varied and interesting championship course.

If you would like to play contact either:

Alan Hewitt L'Estrange & Brett Tel 9023 0426

Or Paddy Kinney Fitzsimons Kinney Mallon Tel 3026 2269



ART – GRAND OPERA HOUSE BELFAST

Friday 6 April 7.45pm

On Friday evening there will be a pre theatre dinner at the Hilton Hotel - £25 including taxi from Hilton Hotel to Grand Opera House.

At the Opera House we have reserved front row circle seats for members and guests at a special conference price of £22. After the performance there will be a post theatre drinks reception in the upstairs Matcham Bar.



W5 WHOWHATWHEREWHENWHY SCIENCE MUSEUM BELFAST ODYSSEY

Saturday 7 April 1pm

Part of the Odyssey Centre – this hi tech science museum is exciting and inspirational. Be amazed by the fire tornado, entertained by the musical stairs, play music with the laser harps, use optic fibres to send your photograph to friends, create animations, build boats, bridges and see the hidden world revealed by microscopes.

Special preview opening of exhibits for members and family and friends – 1pm Sat 7 April- stay on as long as you like!



HISTORICAL WALKING PUB TOUR OF BELFAST

Saturday 7 April 3.30pm

No visit to Belfast would be complete without a trip around its famous and historic pubs. This would be of interest to both our visitors and our residents of Belfast who may indeed see the City in a different light after this tour!

The Tour will start at 3.30pm from the Hilton Hotel and will last about 2 hours.



BELFAST HARBOUR COMMISSIONERS – FORMAL CONFERENCE DINNER

Saturday 7 April 7.30pm

A Champagne Reception and Formal Gala Dinner in the magnificent surroundings of Belfast Harbour Commissioners building. During the pre-dinner reception members and their guests will be able to look around the building with its many wonderful paintings of maritime scenes and ships and interesting furniture including the dining room table designed for the Titanic (which did not make that fateful voyage!).

Musical entertainment provided by the talented Ulster Brass Ensemble.



'TOMORROW'S WORLD - A LEGAL ODYSSEY'

ACCOMMODATION

HILTON HOTEL

Hilton Belfast is the city's only five star hotel located on the Laganside riverfront area - a short stroll to W5 and the Odyssey Centre.

Leisure facilities available – on Saturday for members and guests
Private room for Ireland /Scotland Rugby match 2.45pm Saturday 7 April – (N.B. there will be some of our Scottish colleagues present!)



PROGRAMME

CONFERENCE HOTEL - HILTON BELFAST

Friday 6 April

- | | |
|-----------------------------|---|
| 12 noon – 1.30pm (Tee time) | Law Society Annual "Syntegra" Golf at Hilton Templepatrick |
| 6pm | Pre theatre Supper – Sonoma Restaurant Hilton Hotel |
| 7.45pm | "Art" Grand Opera House – West End Play starring Nigel Havers
Post play drinks – Matcham Bar Opera House |

Saturday 7 April

CONFERENCE VENUE – W5 BELFAST ODYSSEY

- | | |
|----------------|--|
| 10am – 12.30pm | Conference Business Section - Lecture Programme |
| 10am – 3pm | Conference Exhibition - business and services for the legal profession |
| 1pm | Special preview for members and friends at W5 - Belfast's latest inter active Science Museum |
| 3pm | Imax Theatre - Titanic Show-opening date still to be confirmed |
| 4pm | Disney on Ice - Belfast Odyssey |

HILTON HOTEL

- | | |
|--------|--|
| 2.45pm | Ireland/Scotland Rugby match - viewing - Hilton Hotel |
| 3.30pm | Historical Pub Tour of Belfast - assemble Hilton lobby |

BELFAST HARBOUR COMMISSIONERS

- | | |
|--------|---|
| 7.30pm | Reception and Formal Dinner Belfast Harbour Commissioners |
|--------|---|

Law Society of Northern Ireland Conference Booking Form

Friday 6 and Saturday 7 April 2001
 Conference Hotel – Hilton Hotel Belfast
 Conference venue - W5 Odyssey Centre

CONFERENCE PACKAGE

£225 PER PERSON SHARING/£290 SINGLE

2 nights bed and breakfast Hilton Hotel
 Friday pre theatre reception and dinner
 Friday Grand Opera House production "Art" ticket
 Saturday morning keynote lecture and legal business exhibition in W5 Odyssey Centre
 Saturday morning Preview of W5 –new interactive Science Museum
 Saturday Lunch – W5
 Imax Theatre ticket – Saturday afternoon (Date of opening still to be confirmed)
 Saturday night Formal dinner – Harbour Commissioners Belfast
 Reduced conference golf fees – Friday competition at Hilton Templepatrick

Names _____

Firm name _____

Type of room required (see below)

If unable to stay for 2 nights or do not require residential part of conference - please tick accommodation required if any and/or tick which part of conference programme you will be able to attend and total cost accordingly

BED AND BREAKFAST

£58 per person per night sharing – (£116 per room) £96 per person per night single

Children under 16 sharing room with parent - no charge. In own room - £29 per child sharing £48 per child single

- | | |
|---|---|
| <input type="checkbox"/> Friday night | <input type="checkbox"/> Saturday night |
| <input type="checkbox"/> No of rooms required | <input type="checkbox"/> No of rooms required |
| <input type="checkbox"/> Double | <input type="checkbox"/> Double |
| <input type="checkbox"/> Single | <input type="checkbox"/> Single |
| <input type="checkbox"/> Twin | <input type="checkbox"/> Twin |
| <input type="checkbox"/> Family | <input type="checkbox"/> Family |

Babysitting arrangements for resident delegates if required

FRIDAY 6 APRIL

Golf Syntegra Golf Conference Trophy
 Hilton Templepatrick Tee times 12noon – 1.30pm handicap _____

Contact Alan Hewitt L'Estrange & Brett Tel 9023 0426

Paddy Kinney, Fitzsimons Kinney Mallon Tel 3026 2269

6pm Pre theatre dinner in Sonoma Restaurant Hilton Hotel incl. taxi to Opera House £25 (please tick and indicate how many and names)

7.45pm "Art" Grand Opera House West End production with Nigel Havers £22 (tick how many tickets required)

SATURDAY 7 APRIL

W5 Odyssey Centre Belfast
 10.00am-12.30pm Conference lectures Free (please indicate how many and names if possible)
 10.00am-3.00pm Exhibition

Lunch £10 (please indicate how many)

Childrens lunch £5 (please indicate how many)

Special Preview of W5 at 1pm open to members' family and friends Free (please indicate how many and names if possible)

Imax Theatre Show – Titanic Group booking for family and friends (Date of opening still tbc) £tba (please indicate how many and names if possible)

Disney on Ice-Odyssey Arena, 4pm £17.50 (please indicate how many)

Historical Pub Tour of Belfast 3.30pm meeting at Hilton Hotel £5 (please indicate how many and names)

Ireland – Scotland Rugby Match on wide screen in private room Hilton Hotel – 2.45pm Free (please indicate how many)

Reception and Formal Dinner Harbour Commissioners Building Belfast with musical entertainment provided by Ulster Brass (members are welcome to invite guests) £40 (please indicate how many and names)

CHEQUES TO BE MADE PAYABLE TO

Law Society of Northern Ireland and sent with booking form to
 Sheelagh Middleton, 12 Kings Crescent, Belfast BT5 6PR email sheelaghmiddleton@lineone.net

BELFAST SOLICITORS



ASSOCIATION

BELFAST SOLICITORS ASSOCIATION AND NORTHERN IRELAND YOUNG SOLICITORS ASSOCIATION

LUNCHTIME SEMINAR

Friday 20th April at Law Society House at 1.00 pm - Charity Law and Practice - An Update - Brian Garrett of Elliott Duffy Garrett.

Coffee and Sandwiches will be available from 12.30pm.

Fee: £10.00 per person.

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THE BSA ANNUAL DINNER DANCE

The BSA Annual Dinner Dance was held at the Culloden Hotel on 13 January.

GUESTS INCLUDED:-



Mrs Karen Millar; Mr Steven Millar, Chairman BSA; Mrs Bernadette Martin; Mr John Neill, President Law Society of N Ireland; Mrs Cynthia Neill and Mr David Martin, President Dublin Solicitors Bar Association.



Mr Richard Palmer; Mrs Barbara Goldsmith; Mr Steven Millar Chairman BSA; Mrs Rosemary Bailie; Mr John Bailie Chief Executive LSNI and Mr Edward Goldsmith, President Liverpool Law Society.



Mrs Karen Millar; Mr Steven Millar with Mr and Mrs N Millar

BSA On-Line

The BSA website can be found at

www.belfast-solicitors-association.org

THE ART OF ADVOCACY: 'Addressing the Jury'

Ladies and Gentlemen of the jury, this case has taken much longer than it need have done, but this does not of itself explain why most of you chose to ignore the mundane distractions of the evidence by sleeping during the trial. The Prosecution has taken great liberties with your limited understanding of the law by attempting to weave a few threads of coincidence into a shoddy patchwork of speculation. But do not be fooled by the finished cloth for it will blind you with its colour and pattern. Look instead at the threads, the evidence of my client - Mr. Slevin - and weigh it against the, yes, significant evidence of the Prosecution - the eye witnesses, the police, the scientists, the doctors, and even the friends and extended family of the accused. Though his chances of success seem small, Mr. Slevin is asking you to look on him as your David in the shadow of the Prosecution's Goliath. Do not be swayed by his Lordship's remarks that my client's defence requires a permanent suspension of disbelief; happily his fate is in your hands and not those of a man whose mind has been made cynical by 30 years experience of the law.

You have heard how, on the 22nd October 1999, Mr. Slevin missed his bus and began to make his way home on foot. At 2.30am he heard a voice call out from the back garden of 22 Gardiner Place, the premises of Mrs. Mildred Hughes. Coincidentally, the distressed caller was one Mr. Steven Coleman, an acquaintance, who himself has been charged with various offences arising out of these same events. It is common case that Mr. Coleman's irregular girth prevented him from completing an exit through a small upstairs window at Mrs. Hughes' premises. My client misread the predicament as one of a man fleeing the arms of his lover before her more committed partner returned home. He was overtaken by a sense of perceived urgency. He ran straight at the downstairs French window with a large potted geranium. Once inside the living room, Mr. Slevin immediately scoured the house for something to assist Mr. Coleman. He was unable to find anything. All he found were personal items of value. These he placed in a small bag for safe keeping lest some

passing villain take advantage of the new downstairs access and burgle the premises.

Mr. Slevin now plucked a decision from the fog between madness and genius. He rang the police pretending to be a distressed female whose house was being ransacked. The thinking here was this would bring the police to Mr. Coleman's rescue that much quicker. Naturally, my client was astonished and upset when Mrs. Hughes claimed that it was she who called the police from a nearby telephone box. It is true that Mr. Slevin allowed his pride to overcome his composure and that it was his shoe that struck Mrs. Hughes on the ear as she gave her evidence. Likewise, it cannot be denied that my client liberally impugned Mrs. Hughes' chastity and the lineage of the police officers who ushered her out of the witness box to safety. Mr. Slevin's penance and yours was having to listen as the Prosecution tried for several hours to exploit the contents of a paginated booklet of old gossip and tittle tattle described by some as a criminal record. But this publication did not and could not convey the metamorphosis that occurred after the near cremation of my client's grandmother. Had he not been so embarrassed that it was his barbecue that had caused the family home to ignite, he would undoubtedly have called the fire brigade that much sooner. Racked with the guilt of this event, my client abandoned a lucrative if unlucky life of crime and turned all of his energies to doing good deeds. Why else would he have troubled himself to carry a T.V. and video onto the back lawn of 22 Gardiner Place if not to ensure that Mr. Coleman would be kept entertained for the short time it would take to collect two sausage suppers and a can of Coke from the local takeaway?

I know that the borrowing of Mrs. Hughes' car causes some of you difficulty. Many of you are curious to know how Mr. Slevin, having put on his seat belt, checked his mirrors, and moved off slowly in first gear, could have failed to overlook the family dog. Regrettably, my client thought that the long retainer lead attached to the back bumper was a cobweb. Even after my client was

stopped at the road-block, he honestly believed that he had snagged the shoulder strap of an old duffel bag as he passed the train station; obviously the dog collar put the matter beyond doubt.

Ladies and Gentleman of the jury, the Law is a bag of tricks which any amateur magician can plunder to convince you that black is white and white black. You have been given a different bag, the bag of Facts, jigsaw pieces if you like - some of them fit together, some of them don't. The prosecution has asked you to make a jigsaw of 'guilt beyond reasonable doubt'. The Defence asks much less. You can go home after you find a 'reasonable doubt'. To do that you must search your bag for every old doubt you can find. You must hold them, squeeze them, blow on them. Say the words 'alla falla du'. Open your hand. If the doubts are still there, you have found good quality God-fearing doubts which no magic can make disappear. Such doubts are reasonable doubts.

Ladies and Gentlemen of the jury I have no doubt that you will do your duty and acquit Mr. Slevin.

T.C. Smyth, Solicitor, Macauley & Ritchie

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THE IMPORTANCE OF PRIORITY SEARCHES

This case highlights the dangers of not applying for priority searches when acting for a purchaser and of not lodging the transfer for registration immediately after completion.

Ulster Bank Ltd -v- Black, EJO (Master Napier) 12th December 2000

The facts of the case were that the solicitors for the purchaser did not lodge a priority search in the Land Registry after the contract was accepted. The vendor was indebted to the Ulster Bank and after the sale the EJO issued an order charging land which the bank's solicitor lodged in the Land Registry for registration. In the meantime, the purchaser's solicitors had received the executed transfer but did not apply for registration pending the receipt of the vendor's vacated mortgage deed. When the purchaser's solicitors eventually applied to register the transfer they were informed that the order charging land had already been registered. The case turned on issues regarding proper service of the order charging land on the debtor and the innocent co-owner and, because the debtor did not have any interest in the lands at the time the order charging land was made, the Master recalled the order. In this case the purchaser was lucky. However it highlights the problems of the serious potential consequences of not lodging a priority search in every case. It also is a warning of the dangers of waiting for a vendor's release of charge before lodging a transfer to a purchaser in the Land Registry.

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SUPREME COURT OF JUDICATURE OF NORTHERN IRELAND

OFFICES OF THE SUPREME COURT

Pursuant to Order 64, rule 5(1) of the Rules of the Supreme Court (Northern Ireland) 1980, the offices of the Supreme Court will be closed to the public on the following days in 2001:

St Patrick's Day Holiday	Monday 19th March
Good Friday	13th April
Easter Monday	16th April
Easter Tuesday	17th April
Early May Bank Holiday	Monday 7th May
Spring Bank Holiday	Monday, 28th May
July Bank Holiday	Thursday, 12th July
July Privilege Holiday	Friday, 13th July
August Bank Holiday	Monday, 27th August

G W JOHNSTON
Principal Secretary to the Lord Chief Justice
25 January 2001

STATUTORY RULES OF NORTHERN IRELAND

MAGISTRATES' COURTS

Magistrates' Courts (Terrorism Act 2000) Rules
(Northern Ireland) 2001 (SR 2001 NO. 65)

Made	16th February 2001
Coming into operation	19th February 2001

These Rules make provision for the various applications under Part III of the Terrorism Act 2000 in respect of the seizure, detention and forfeiture of cash suspected of to form the whole or part of the resources of a proscribed organisation, suspected to be terrorist property, or intended to be used for the purposes of terrorism. Additionally rule 10 sets out the procedures to be followed where an appeal is to be made under section 29(1) of the 2000 Act (Appeal against forfeiture) and rule 11 provides for the procedure to be followed where an application is made under section 29(3) for the release of cash to meet an appellant's legal expenses

LETTER TO THE EDITOR

Dear Sir

REGISTRATION DELAYS IN THE LAND REGISTRY

As I forecast in LRNI's Business Plan 2000-2001, the process of computerising the Land Registry's archives has led to some delays in registration. Therefore, following discussions with the Law Society, I wrote to all the major mortgage institutions on 3 January 2001 explaining that during the transitional period leading up to computerisation, there will be unavoidable registration delays.

I asked the lending institutions to suspend the practice of sending out regular reminders to firms of solicitors, when they have been informed that the title is being registered in the Land Registry. I have explained that, as a result of this practice, many firms of solicitors feel obliged to contact the Land Registry with position queries, thus diverting Registry staff from registration work.

I suspect that those lending institutions which use computer generated reminders may be reluctant to comply with this request. If so, I would appeal to firms of solicitors not to contact the Land Registry for regular updates but instead to send standard replies to lending institutions, stating the date on which the documents were lodged in the Land

Registry and referring to my letter of 3 January 2001 to the Mortgage Controller of the lending institution.

I am confident that when the new computer system is fully operational, there should be a significant improvement in registration times. However, I would ask the profession to bear with us during the transitional period.

Yours faithfully

ARTHUR H MOIR Registrar of
Titles/Chief Executive

THE LAW SOCIETY OF NORTHERN IRELAND, LEGAL AID DEPARTMENT

NOTICE OF CHANGE

SUPPLY OF LEGAL AID FORMS

From April 2001 the Legal Aid Department will cease to directly supply the Legal Profession with legal aid forms.

As a result more time and resources can be devoted to the core work of processing applications and payments.

Three methods of supply will be available to practitioners.

1. A Master Pack - This will be issued free of charge to all practitioners by LAD.
2. A computer disk - Available directly from the licensed supplier Peapod Solutions
3. Internet site - Currently available to download from www.nilad.org

MASTER PACK

The Legal Aid Department will issue a Master Pack of forms for use by Solicitors and Barristers engaged in legal aid work.

The Pack contains all forms that may be required for submission to the Legal Aid Department and is divided into sections, each with a title page and list of contents for easy reference. The master forms should be reproduced as photocopies as required and should be completed and submitted in the usual way. To prevent damage to photocopiers, the master copies should not be run through a feeder type photocopier and should only be placed on a static scanner. Alternatively, the master forms may be scanned on to PC and reproduced when required. All reproduced forms should be:

- A4 size
- White paper
- Stapled together in the top left corner.
- Photocopied on one or two sides.
- Correctly collated and signed in the normal manner.

The first issue of a Master Pack will be at no cost to practitioners of legal aid work. Thereafter, each pack will be charged for at cost.

If there is a need to update the Master Pack, the Legal Aid Department or its supplier, will issue a new version. All forms will contain a reference to indicate the version.

COMPUTER FORMS ON DISK

The Legal Aid Department has investigated firms with the appropriate level of expertise, technology and support facilities to reproduce the legal aid forms in a digital format.

From April 2001 forms on CD format can be obtained from the approved supplier only. This will facilitate on screen completion of the forms, which can be saved to the users PC before printing and signing. Typed forms will be easily read by Legal Aid Department staff and in turn aid processing.

INTERNET FACILITY FOR FORMS

As an initial stage in the overall development of a web-site for the Legal Aid Department, forms will be made available to legal aid practitioners through the Internet. The facility will be available only to the Legal Profession and accessed by the use of a password supplied by the Legal Aid Department.

Forms displayed on the web-site can be printed for manual completion or downloaded to the PC for future reproduction as required.

NB: Existing forms will remain valid until all stocks are depleted.

FURTHER INFORMATION AND DIRECTIONS WILL ACCOMPANY THE FORMS WHEN MADE AVAILABLE.

MIB

We Are Moving!!!

From 20 February 2001 our address will be:

Motor Insurers' Bureau
Linford Wood House
6-12 Capital Drive
Linford Wood
Milton Keynes
MK14 6XT

Our telephone and fax numbers will be unchanged.

The new DX number will be advised shortly.

This will be the registered office for both Motor Insurers' Bureau, and the Motor Insurers' Information Centre.

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PROFESSIONAL INDEMNITY INSURANCE/RISK MANAGEMENT - PRACTICE ADVISORY SERVICE

Practice Advisory Service - Senior Solicitors Required

The PII/RM Committee would like to have applications from solicitors with a minimum of 15 years post admission experience in private practice, either as a current or recently retired principal with broadly-based experience and a good professional record to become members of the Practice Advisory Service Panel.

The Solicitors will not be current Council members; Co-optees of any this Council's Regulatory Committees; a member of the Disciplinary Tribunal or a Master Policy Panel solicitor.

They will be prohibited from representing any solicitor they advise before Council or at subsequent Disciplinary Tribunal or other proceedings.

If you are interested in joining the Practice Advisory Panel and you satisfy the criteria for appointment to it, please write to the Deputy Secretary (Suzanne Bryson) with a short CV.

Details of the Practice Advisory Services' and thinking behind its establishment was previously published in "The Writ", as follows:

"The handling of civil claims against solicitors under the Society's Master Policy of Professional Indemnity has always been carried out in total confidence by Ulster Insurance Services, a subsidiary of the Society's Brokers, Marsh. This confidentiality is a hallmark of the scheme which is duly expected and appreciated by members and the integrity of which is respected by the Society's Council.

Because of the respect in which the Brokers, Marsh, are held, solicitors sometimes approach them for general practice advice even when they are not notifying PII claims.

The Professional Indemnity and Risk Management Committee of the Society has been concerned for some time to establish a vehicle whereby solicitors with professional problems can seek impartial advice from experienced members of the profession. Such advice may recommend the employment of other professional advisers, especially accountants or to significantly restructure or dispose of practices. Because of the obvious good standing of Tom McGrath and his colleagues at the Brokers and because they are known to be 'distanced' from the Society itself, we

consider it appropriate to organise a Practice Advisory Service through them.

The service will operate in two ways:

1. where solicitors actively seek assistance themselves or
2. where the Brokers, through their claims handling, feel that solicitors would benefit from advice and in particular where the solicitors conduct has been such as to jeopardise their right to confidentiality under Regulation 24(b) and (c) of the Solicitors' Practice (Amendment) Regulations 1995.

In either case, the Brokers will offer a choice of solicitor from the Advisory Service Panel.

Only Tom McGrath, as Chief Executive of Marsh, and his senior colleague Gary Thompson, Managing Director of Ulster Insurance Services, the claims handlers, will be involved in this liaison.

The Society will be responsible for reimbursing the Brokers in respect of the payment of Panel solicitors at a daily rate not exceeding that for a Deputy Resident Magistrate and up to a maximum of 3 days advice to any one firm of solicitors, although it is considered that one day would be entirely adequate in all but

exceptional cases.

We feel that his will be money justifiably spent in the interests of the whole profession to promote good practice and risk management techniques, and may help to avoid future claims against the Master Policy or Compensation Fund.

Where solicitors have requested the assistance of the Advisory Panel (either voluntarily or following discussion with the Brokers) any report or communication between them and the Panel solicitor will be totally confidential and shall remain so.

Only where the Brokers have recommended the involvement of the Panel and where there is a claim under the Master Policy shall the Panel make available to the Broker and report or communication, which may then lead to the Broker recommending to the Society that the confidentiality rule should be broken under Regulation 24(b) and (c) of the Solicitors' Practice (Amendment) Regulations 1995. Willingness by a solicitor to avail of the Advisory Service in such circumstances may be taken into account by the Council if appropriate in due course. Panel solicitors will be expected to advise solicitors of the professional conduct implications of their behaviour."

SUCCESS FOR INSTITUTE CLIENT COUNSELLING TEAM



Winning Team - Anita Hanna and Patrick McGrath.

The Law Society of Northern Ireland regional final of the Louis M Brown International Client Counselling Competition was held in Law Society House on the afternoon of 13th December 2000.

The Law School at Queen's University and the Institute of Professional Legal Studies each fielded a team of two students who were set the task of dealing with a client interview involving an elderly client. Both teams acquitted themselves admirably in the face of a script brilliantly acted out by local actress Laine McGaw (of "Divorcing Jack" fame).

The team from the Institute eventually emerged as winners and the team members Anita Hanna, a pupil with Elliott Duffy Garrett and Patrick McGrath, a pupil with Pascal J. O'Hare will shortly be competing in the International Finals.

Readers may recall that last year's International Finals were held close to home when teams from as far away as Australia and Sri Lanka came to Belfast to do battle for the coveted award. Happily for Anita and Patrick, they have to travel to Dunedin, South Island, New Zealand for the finals. They are very grateful to the Law Society and their respective firms for assistance with the expense involved in such a long trip. If any reader has an inclination to provide additional sponsorship for this very worthwhile excursion Anita and Patrick would be delighted to hear from you.

Anita and Patrick will be accompanied on their trip by Ruth Craig, Associate Director at the Institute, who will act as their coach and will also represent Northern Ireland on the International Committee.

High hopes follow Anita and Patrick and we wish them the very best of luck

HER MAJESTY'S CROWN COURT IN NORTHERN IRELAND

The Lord Chief Justice of Northern Ireland, the Right Honourable SIR ROBERT DOUGLAS CARSWELL has directed that no sittings of the Crown Court in Northern Ireland shall be held on Wednesday 16 May 2001.

23 January 2001

Ex London Metropolitan Police Court Sergeant seeks work as outdoor clerk in North Antrim and North Derry areas. Highest references available. Please contact Jim Bannon, Ballymoney. Tel: 028 276 69397

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ROSEMARY NELSON MEMORIAL LECTURE

The inaugural Rosemary Nelson Memorial Lecture will be given by Edmund Lynch, JD on the subject "Rosemary Nelson and Dr. Martin Luther King Jr. - Common Ground in the Ongoing Struggle for Human Dignity"

Ed Lynch JD is a Lawyer from New Jersey. He is a prominent member of the organisation Lawyers Alliance for Justice in Ireland.

The lecture will be followed by a reception. Everyone welcome.

Date: 7th March 2001 Time: 7.30 pm
 Venue: Lecture Hall, Law Society House, Belfast.

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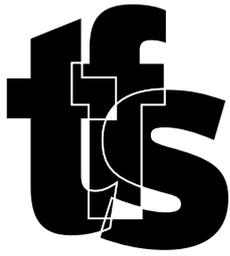
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RE: PRISON VISITS TO CLIENTS
DETAINED IN THE PUNISHMENT
AND SEGREGATION UNIT (PSU)
AND OTHER SITUATIONS
WHERE LEGAL ADVICE IS
URGENTLY REQUIRED

We have been informed by HMP
Maghaberry that the prison recognises
"there may be occasions when
prisoners require emergency
appointments with their legal advisers.
In such situations each case will be
considered on its own merits, with the
prison operating as flexible a system as
possible. In such circumstances, they
will not insist upon 24 hours notice of
legal visits."

Missing Land Certificates

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Lands of Magheragart

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may be applied for.

Crown Solicitor's Office
Royal Courts of Justice, Belfast, BT1 3JY.

FOLIO 33842

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Solicitors
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BT2 8BA

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to its whereabouts is so communicated
within three weeks of publication of
this notice, a duplicate Land Certificate
may be applied for.

O'Toole & MacRandal
Solicitors
489 Lisburn Road
Belfast
BT9 7EZ

Missing Wills

RE: Derek James Leslie deceased, late of 131 Aughrim Road, Castledawson.

Would any solicitor holding a will or other papers for the above named deceased who died on 19/1/2001 please contact Hazel Kennedy, Solicitor at 111 Dunboe Road, Macosquin, Coleraine, BT51 4JS

Telephone: 028 7035 6346

RE: Sarah Marny, maiden name Sarah Brady, deceased late of 37 Alexander Avenue, Whitehead, Co. Antrim.
Obit: 14th December 2000

Would any solicitor who is aware of a will made by the above named deceased please contact Anthony Brady, 32 Beatrice Villas, Bellaghy, Co. Derry, BT45 8JA.

ELIZABETH MARGARET MCCLLOUD

Deceased Late of 25 Hillview Avenue, Doagh Road, Newtownabbay, County Antrim.

DECEASED - 14th June 2000.

Would any person who is aware of a will made by the above named deceased and the whereabouts of same please contact Edward J Lavery & Company, Solicitors, 1 Hightown Road, Glengormley, Co. Antrim.
BT36 7TZ

Tel: 028 9084 3436

Fax: 028 9083 7927

BAR LIBRARY TELEPHONE SYSTEM

The Executive Council has approved the purchase and installation of an automated answering system for the Bar Library. After a pre-set number of rings at the main switchboard number, calls will be automatically answered and callers will be informed that they have reached the Bar Library and will be asked to hold. It is hoped that this will present a more customer friendly image for callers to the Library.

Solicitors required

LITIGATION SOLICITOR REQUIRED

Mills Selig require a junior Litigation Solicitor (not more than one year qualified) to work in their busy Litigation Department. The position is challenging and comes with an attractive salary. The successful applicant will have the opportunity to work on a varied caseload for a range of high-calibre clients. In line with the firm's policy, full training and supervision will be given on an ongoing basis.

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CVs in confidence to Bill McCann marked "Litigation Solicitor" at Mills Selig, 21 Arthur Street, Belfast, BT1 4GA

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Please forward CV to Tara Walsh LLB, 11 Railway Avenue, Newry, Co Down, BT35 6AB.

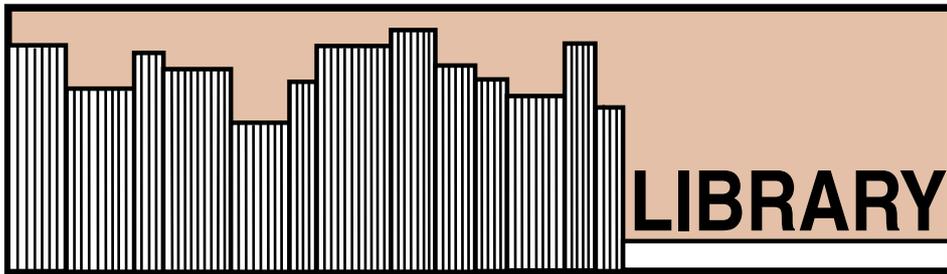
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SELECT SITES

EMPLOYMENT LAW

Employment Law UK.
<http://www.employment-solicitors.co.uk/>

This site claims to be the UK's most popular employment law website. It offers lots of useful up to date information on a host of issues such as maternity matters, redundancy, discrimination, health and safety, to name but a few. The site is geared towards giving employers and employees the necessary facts about their legal requirements and responsibilities, but is also useful to the practitioner as a starting point.

DTI Employment Relations Directorate.
<http://www.dti.gov.uk/er/>

This site deals with relationships between employers and employees, covering individual rights and collective arrangements. It includes consultation papers and regulatory guidance on pay entitlement, hours of work, redundancy arrangements, trade unions, EU directives, and individual employment rights.

The Employment Appeals Tribunal.
<http://www.employmentappeals.gov.uk/>

The jurisdiction of the EAT extends to England, Wales and Scotland, and this site provides full text judgments, indexed by type of case, appellant, respondent and judge.

Employment Law Service
<http://www.cchnewlaw.co.uk/>

A subscription based service from Sweet & Maxwell, which keeps the solicitor up-to-date with employment matters. There is a complete A-Z coverage of employment law linked to a dedicated current awareness service as well as a case database which has summaries, digests and selected full text judgments from the EAT, High Court, Court of Appeal, House of Lords and ECJ. It also has access to the journal *Employment Lawyer* and the headnotes from *Employment Law Reports* with a specialist comment. Solicitors are able to trial the service for a specified time.

Equality Commission for Northern Ireland
<http://www.equalityni.org/home.htm>

The Equality Commission is the body responsible for combating discrimination and promoting equality in Northern Ireland. The site is divided up into different sections including, The Law, News, about the Equality Commission, Publications and Links. The publications link is of particular interest as it has codes of practice, advisory booklets, research reports, consultative responses and formal investigation reports. Although still in its infancy the site is well worth having a look at.

New Books in the Library

- 1) Lundy: Education law, policy and practice in Northern Ireland. SLS. 2000
- 2) Venables: Tax planning & fundraising for charities. 3rd ed. Key Haven. 2000
- 3) Taylor: Bingham and Berrymans' motor claims cases. 11th ed. Butterworths. 2000
- 4) Mowbray: Lewin on trusts. 17th ed. Sweet & Maxwell. 2000

BOOKS FOR SALE

Legal Costs in Northern Ireland (Anderson)
 The Legal System of Northern Ireland (Dickson)
 Northern Ireland Planning Law (Dowling)
 The Licensing (NI) Order 1990.

£75 the lot call Belfast

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NOTICE IS HEREBY GIVEN

that the One Hundred and Thirty-Seventh Annual General Meeting of the Solicitor's Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7 on Monday 9 April 2001 at 12.30 p.m.

1. To Consider the Annual Report and Accounts for the year ended 30th November 2000.
2. To Elect Directors.

To deal with other matters appropriate to a General Meeting.

Geraldine Pearse
 Secretary.

Copy deadline for March Friday 9th March 2001

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Law Society Library Email:
hsemple@lawsoc-ni.org