Looking to the Future
The new Law Society President

Rory McShane assumes the presidency of the Society at a crucial time in its history, at the onset of what will be a considerable period of change for the profession in Northern Ireland. Too often such phrases are trotted out as a cliché by enthusiasts to give the new office-bearer a boost, but in this instance the year ahead may justify this description. The incoming review of legal services in Northern Ireland by Sir George Bain is illustration enough.

Rory McShane was born and brought up in South Armagh. He was educated at Abbey CBS Grammar School, Newry and at Queen’s University Belfast, where he took studies. He qualified as a solicitor in June 1973 having been an apprentice in the Newry firm of Collins and Collins.

Newry doing criminal defence work and also pursuing civil litigation vigorously. I directed myself to those areas.” He has acted as Solicitor to Newry & Mourne District Council for many years. His main areas of legal work today are civil litigation and commercial property.

To my mind it is absolutely essential for the modern solicitor’s practice to be run along business lines but in a way which upholds highest professional and ethical standards.”

Rory McShane is married to Angela, a graduate. Rory welcomes the opportunity to serve as President at a time of change and challenge for the legal profession in Northern Ireland.

News in Brief

NEW LABOUR RELATIONS AGENCY GUIDANCE

The Labour Relations Agency (LRA) has published on its website sample letters and six easy to follow flow charts to guide employers and employees through the disciplinary and grievance process contained in the LRA’s Code of Practice on disciplinary and grievance procedures.

To download go to www.lra.org.uk and go to “Publications” and click on “Discipline and Grievance…”

PRISONER VOTING BAN BREACHES ECHR

The European Court of Human Rights has ruled that the UK’s automatic restriction on prisoners who wish to vote in elections is in breach of Protocol 1 of Article 3 of the Convention.

By a majority of 12 to 5, the judges held that the ban across all prisoners “irrespective of the length of their sentence and irrespective of the nature or gravity of their offence was general, automatic and indiscriminate” and went against the Convention.

The government has accepted that legal changes will have to be made to comply with the terms of the judgement.

ANNUAL REPORT ON PUBLIC APPOINTMENTS

The Ninth Annual Report on Public Appointments in Northern Ireland has been published. The Report is in two volumes. Volume 1 provides information on the public appointments process and reports on progress during 2004/2005. Volume 2 lists those individuals who held public appointments in Northern Ireland at 31 March 2005 and the bodies on which they served.

WOMEN ARE BETTER ORGANISED THAN MEN

A new survey for Driver Vehicle Licensing Northern Ireland has found women are better organised than men.

The DVLNI survey asked if motorists were aware of the new registration document and how people look after such important papers. The new V5C registration document replaced the old green registration book in July 2005. Results confirm what women have always claimed: that they are better at filing important household papers and are more likely to take on the responsibility for this themselves rather than relying on their partner to do this for them.

Rory McShane

The new Code is vital because it proves that motorists are the registered keepers of their vehicles. More importantly, if they sell the vehicle and if they cannot send the document to DVLNI, they will remain liable for taxing the car. Obtaining a replacement copy will cost motorists £15.

NORTHERN IRELAND ANNUAL ABSTRACT OF STATISTICS 2005

The 2005 edition of the Northern Ireland Annual Abstract of Statistics has been compiled and produced by the Northern Ireland Statistics and Research Agency (NISRA). The Annual Abstract is a comprehensive publication that brings together a wide range of recently issued data from across the public sector. It is the statutory publication to offer this detailed overview of the key areas of regional administration in Northern Ireland and includes sections focusing on health, education, industry and the environment.

The Annual Abstract is available on-line at www.nisra.gov.uk

PHYSICAL PUNISHMENT OF CHILDREN

Children in Northern Ireland will soon be entitled to the same protection under law as their counterparts in England and Wales.

Following a review of the law on the physical punishment of children in the home, the Secretary of State has decided that Section 58 of the Children Act 2004 should apply in Northern Ireland.

Section 58, which came into operation in England and Wales in January of this year, updates the law on physical punishment of children by making it an offence to hit a child if it results in lasting harm or marks. This restricts a parent’s defence in law of ‘reasonable chastisement’ to the charge of common assault.

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Rory McShane was able to do something which he had never done before: he was admitted as a solicitor in the Republic of Ireland in June 1992.
New guidance on discussions between judges and advocates as to possible sentence

The Northern Ireland Court of Appeal has recently issued Guidelines dealing with the question of how discussions between judges and advocates as to possible sentence should be conducted in this jurisdiction.

In the case of Attorney General’s Reference (No. 1 of 2005), the Lord Chief Justice, delivering judgment, states that on this issue there should be consistent practice, “the basic elements of which should be unfailingly applied to all advance indication situations, whether they arise in the Crown Court or the Magistrates’ Courts in any of their divisions.”

Guidelines

“The following rules of practice should be observed by all courts where advance indication of sentence has been sought:

1. The judge should only give advance indication of sentence when this has been requested by the defendant. He should not otherwise offer such an indication but he may, where he is satisfied that to do so would not create pressure on the defendant, remind counsel in open court of the defendant’s entitlement to seek an advance indication of sentence.

2. All applications for advance indication of sentence, if they do not take place in open court, should be conducted in court in an ‘in chambers’ hearing with the defendant and advocates for the prosecution and the defence present.

3. The judge may refuse to give an indication of sentence and should refuse if he considers that to do so would create pressure on the defendant to plead guilty. Alternatively, he may postpone the giving of an indication until such time as he considers it appropriate to do so.

4. The judge should not indicate his view of the maximum possible level of sentence following conviction by the jury.

5. An indication should only be given where there is an agreed factual basis on which the plea of guilty is to be made. The judge should not give an indication on a basis of hypothetical facts. Where there has been a dispute on the facts, the judge should refrain from giving an indication until that dispute is resolved and an agreed, written basis of plea has been furnished. If relevant material that might affect the judge’s decision as to the advance indication is outstanding, the judge should postpone giving an indication until that information has been obtained.

6. The judge should treat the application for a sentence indication as a request to indicate the maximum sentence to be passed on the defendant if he were to plead guilty at the stage that the application is made.

7. An indication, once given, will be binding on the judge who gives it or on another judge who carries out the sentencing exercise provided that there has not been a material change in circumstances between the time of giving the indication and the time that sentence is to be imposed. In this context a material change in circumstances would arise, for example, by the receipt of information which alters the basis on which the indication was given. Generally, this should not happen (see 6 above). The judge who gives the indication will also be the sentencing judge unless exceptional circumstances arise.

If a defendant is given a sentencing indication and fails to enter a plea of guilty after a reasonable opportunity to consider his position in the light of the indication, it will cease to have effect. In any event where, after the indication has been given, it is not acted upon before the trial resumes, it will no longer have effect.

The advocate who appears for the defendant is responsible for ensuring that his client is fully advised on the following issues: (a) he should only plead guilty if the plea is voluntary and he is free from any improper pressure. (b) The Attorney General will remain entitled to refer an unuly lenient sentence to the Court of Appeal. (c) any indication given by the judge is effective only in relation to the facts as they are then known and agreed. (d) if a ‘guilty plea’ is not tendered after a reasonable opportunity to consider it, the indication ceases to have effect.

It is the duty of the prosecutor to ensure that the judge is in possession of all material necessary for him to give a properly informed indication. If there is a dispute as to the basis on which the proposed plea is to be made, the prosecutor should make the judge aware of this.

The prosecutor should draw to the judge’s attention any relevant guideline cases and, where they exist, any mandatory or mandatory statutory sentencing requirements.

Where an advance indication has been given by a judge, he should provide a summary of the application in his sentencing remarks.”

Proposed reform of liquor licensing laws

The Department for Social Development has published proposals for reforming the law on the sale and supply of alcohol in Northern Ireland by way of possible changes to the Licensing (NI) Order 1996 and the Registration of Clubs (NI) Order 1996.

The proposals recommend changes in two stages. The first could take effect by mid-2007. These include a modest extension to opening hours for those who wish to apply. This will provide for potential opening up to 2am from Monday to Saturday, with no change to the existing midnight closing time on Sundays. Extensions beyond 2am may be granted for special circumstances/ major events. Additional enforcement powers for police such as temporary closure powers and a penalty points system for breaches of the legislation are also proposed.

More fundamental changes are expected to take place following the outcome of the Review of Public Administration which is due for completion by 2009.

These include:

• the transfer of responsibility for granting and renewing licences to courts to district councils as in England & Wales

• the introduction of a dual system of personal and premises licences to replace the existing 12 categories of licence. This will require applicants for premises’ licences to provide detailed operating plans, describing the type of business they want to carry out and how they will maintain standards in line with proposed new licensing objectives

The Consultation Paper also proposes simplifying the accounting and auditing requirements for registered clubs. This would lead to the revocation of the existing financial controls and account formats prescribed in the Registration of Clubs (Accounts) Regulations (NI) 1997 and make provision for best practice guidance in their place.

A copy of the Consultation Paper may be downloaded from www.dsdni.gov.uk. The consultation period runs to 31 January 2006.

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Contact Marc Fitzgibbon (Partner)

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Contact Marc Fitzgibbon (Partner)
Equity Monitoring Pilot Scheme launched

Background
The Criminal Justice Review, which flowed from the 1998 Belfast Agreement, highlighted the need for the community to have confidence in the criminal justice system, and for that system to treat people fairly and equitably regardless of their background. Within this context, the Review recommended the establishment of a monitoring system, which would record any potential differential in the treatment of various groups of people as they are processed through the system. The Criminal Justice Board, which is comprised of the heads or senior representatives of the 7 main statutory criminal justice agencies, has driven forward this work, developing a pilot system to collect self classified Section 75 data from eligible defendants who come into contact with the system.

Aims
The aim of the pilot, which commenced on 5th December, is to test the processes by which self classified data can be collected. The actual data collected will not be used for monitoring purposes as the size of the sample would not support statistical analysis; rather it is the methodology of self classified data collection which is being tested. All data will be stored in accordance with data protection legislation at an independent monitoring unit.

Processes
The pilot will be implemented through interviews conducted by independent researchers in 3 custody suites:
- Musgrave Street, Belfast;
- Strand Road, Londonderry, and
- Banbridge.

Participation in the scheme is entirely voluntary, and anonymity is guaranteed. It is not related to the PSNI interview, and should only last between 5 and 10 minutes.

Once police interviewing is complete, all eligible detainees will be informed that they are free to leave the custody suite, but invited to take part in an equity monitoring interview. If they agree to take part, they will have to sign a declaration stating that they are aware that this process is entirely voluntary and separate from their PSNI interview, and aware all information will be stored in complete confidence. The independent interviewers will then pose a series of questions to establish classifications in accordance with particular Section 75 categories. All data will be collected and stored anonymously, using unique record identifiers.

Eligibility
There are a number of categories of detainees who will be ineligible for the purposes of the pilot, and therefore not approached for an interview. These are:
- juveniles;
- those unfit due to alcohol or drug consumption;
- those with mental health difficulties;
- those with language difficulties (this category is being excluded from the pilot on a cost-benefit basis; any complete Equity Monitoring Process would make provision for the usage of interpreters, signers and any specialist audio and text facilities required);
- those who exhibit disruptive or unruly behaviour;
- those who have been arrested under the Terrorism Act 2000 and
- those who have been arrested by Immigration or Customs Services.

Results
An evaluation report on the self classified data collection pilot will be compiled and presented to the Criminal Justice Board in Spring 2006. Further consideration will then be given to the implementation of the scheme across Northern Ireland.

Further information can be obtained from Mairaid McMahon in the Criminal Justice Reform Division of the NIO on 028 9052 7562.

Background

The Criminal Justice Review highlighted the need for the community to have confidence in the criminal justice system.
New telephone system at Legal Services Commission

The Legal Services Commission is radically updating its phone system to allow callers more choice, more flexibility and the ability to be directed quickly and efficiently to the specific group or section they require.

The Commission will be issuing confirmation of the number changes via its website (www.lscni.org.uk) and a written circular to the profession before Christmas. These changes will be coming into effect on the 2nd of January 2006.

Legal Opportunities

Brightwater is a leader in the Northern Ireland Recruitment Market. Our success has been based upon our level of expertise and professional service. Our specialist Legal Division recruits professionals into practice and in-house roles from Partner to Paralegal level. We guarantee a full confidential service to our candidates, identifying suitable career opportunities with genuine prospects.

Corporate/Commercial Solicitor £Neg.
Belfast * Min 2 yrs PQE Ref: 8837

Commercial Property Solicitor £Neg.
Belfast * Preferably English Qualified Ref: 7234

Locum Matrimonial Solicitor £Neg.
Co. Tyrone * Min 2 yrs PQE Ref: 21235

Conveyancing Solicitor £25,000
Co. Tyrone * Min 2 yrs PQE Ref: 21235

General Practice Solicitor £24,000
Omagh * Min 2 yrs PQE Ref: 24998

General Practice Solicitor £22,000
Newry * Suitable for 1 yr PQE Ref: 23412

Legal Secretary £16,000
Belfast * Corporate experience desirable Ref: 7234

Legal Secretary £14,000
Belfast City Centre * Min 2 yrs exp. Ref: 9663

For further information on these roles and other opportunities, please contact Sarah Baird for a confidential discussion on 028 90 325 325 or email s.baird@brightwaterNI.com

抄录截止日期

1月刊年第 6 期 2006

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98 维多利亚街,贝尔法斯特, BT1 3GN

查看所表达的观点不一定代表北爱尔兰律师协会的观点。

CPD 提醒

随着我们进入圣诞节派对季节，CPD 可能是大多数人最不关心的事情之一。然而，CPD 年是新的一年开始，这是一个提醒，如果没有完成并发送他们的 CPD 卡的人。它对每个律师都是强制性的，他们目前拥有一个有效的律师证。律师证的完成是送到律师协会与所有相关部分完成，但我们希望你会考虑到这个。

这是一个提醒，那些还没有完成并发送他们的律师证卡到律师协会。

要完成 15 小时的 CPD，并且将他或她的律师证卡发送到律师协会。有一些例外情况，例如那些律师将工作不足 200 小时的人，或者正在退休并在 2005 年的律师证卡。其他例外情况在第 3 页的红律师证卡。完成的律师证卡应该送到律师协会与所有相关部分完成，但我们希望你会考虑到这个。

如果你有关于 CPD 的任何疑问，请联系 Eleanor McCabe 于北爱尔兰律师协会 028 9023 1614 或电子邮件 eleanor.mccabe@lawsoc-ni.org
Family Proceedings Rules (NI) 2005 SR 2005 No.497


They also make a number of minor amendments to forms prescribed by the Family Proceedings Rules to ensure that allegations of domestic violence are raised at the commencement of proceedings under Article 8 of the Children (NI) Order 1995.

The Civil Partnership Act 2004 introduces a statutory civil registration procedure to allow same-sex couples to make a formal, legal commitment to each other by entering into a civil partnership.

The Rules amend the Family Proceedings Rules to prescribe procedures for proceedings under the Civil Partnership Act.

These procedures are similar to those which currently exist for comparable proceedings relating to marriage.

In summary, these procedures are prescribed in relation to applications under the following provisions of the 2004 Act:

- section 181 (dissolution order; nullity order; presumption of death order or separation order);
- section 181 (declarations);
- Schedule 15 (financial relief in the High Court or a County Court in Northern Ireland); and
- Schedule 17 (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership).

The Gender Recognition Act 2004 provides for transsexual persons to obtain legal recognition in their acquired gender. A person may apply to a Gender Recognition Panel if the applicant meets the statutory criteria and is unmarried, the Panel will issue to him a full gender recognition certificate. If he is married, the Panel will issue to him an interim gender recognition certificate.

The Gender Recognition Act amended the Matrimonial Causes (NI) Order 1978 to add two new grounds of nullity, where an interim or full gender recognition certificate has been issued to a party to the marriage.

The amendments to the Family Proceedings Rules in consequence of the Gender Recognition Act 2004 make provision:

- in relation to the new grounds of nullity, in particular, to require a copy of the relevant gender recognition certificate to be attached to the pleadings in proceedings under either ground and require the Secretary of State to be notified of proceedings brought on the ground of issue of an interim gender recognition certificate;
- for an application for a corrected certificate, where the court has issued a full gender recognition certificate containing an error;
- for an applicant who has been refused a gender recognition certificate to appeal to the High Court on a point of law; and
- for a reference to the High Court by the Secretary of State where he considers an application to have been granted by fraud.


The 2005 Order also amended the 1998 Order so as to allow exclusion zones of defined areas to be attached to non-molestation orders and to make it clear that protective orders made ex-parte can only be made for a short period and that, if a court makes such an order, it must specify a date for a full hearing.

The Rules make consequential amendments to the Notes for Guidance in Forms F2 and F3 in the Family Proceedings Rules.


They also make provision:

- for a stay under the Council Regulation of children proceedings;
- to prescribe the procedure for applications under Article 15 of the new Council Regulation; and
- relating to certificates under Article 41 of the Council Regulation.

Freedom of Information - Friend or Foe?

The Freedom of Information Act 2000 came into force on 1 January 2005. Under this Act, anybody may request information from a public authority that has functions in England, Wales and/or Northern Ireland. The Act provides opportunities for access to information that previously may have been difficult or impossible to obtain. However, the Act also opens up areas previously held sacrosanct by lawyers.

This lunchtime seminar will give attendees an insight into the impact of the Act one year after its implementation. Geraldine Dersley, will give an overview of the Act and an update on some of the decisions made by the Information Commissioner’s office over the past year. Marie Anderson, Assistant Information Commissioner for Northern Ireland will look at the influence of the Act in a Northern Ireland context.

If you would like to attend please complete and return the booking form below to Eleanor McCabe at Law Society House, 98 Victoria Street, Belfast, BT1 3Z along with a cheque (made payable to Law Society of Northern Ireland).
Preliminary Notice

A date for your diary

1st March 2006
The Hilton Templepatrick

A conference:

“Getting it right for children when parents are separating”

An opportunity to reflect on services available to children and families going through parental separation and/or divorce.

Conference coordinating agencies:
- Parents’ Advice Centre
- Children in Northern Ireland
- Association of Directors of Social Services
- Association of Collaborative Family Lawyers
- Northern Ireland Legal Services Commission

To register your interest contact:
Parents’ Advice Centre
Tel: 028 9031 0891

Belfast 2006 - The Right Justice

A major international conference dedicated to promoting children’s rights

The organisation of this major international event - anticipated to assemble in excess of 500 important delegates from around the world - is being undertaken by a Local Organising Committee comprising members of the judiciary and senior representatives from organisations across the justice sector in Northern Ireland. The Local Organising Committee is chaired by the Honourable Mr J judge Gillen - the senior Family J udge for Northern Ireland.

The congress programme will incorporate addresses by a superb range of international speakers, plenary sessions, workshops, poster displays, round table discussions and presentations. Issues touching on the administration of justice as it affects the main influences on children: family, community, society, and youth justice will be considered within the overall context of a set of themes that reflect the rights enshrined within the United Nations Convention on the Rights of the Child.

To be held under the aegis of an important international judicial association, Belfast 2006 will be a multi-disciplinary conference of significant interest to solicitors, barristers and all those court-connected professionals whose work supports the courts in dealing with children and families.

Law Society of Northern Ireland
CPD Allocation: 17 hours
Bar Council of Northern Ireland:
Accredited for 17 CPD points

For further information on the World Congress and to register online, please visit the congress website at:
www.youthandfamily2006.com

Apology

Medical and Legal Training Services (MLTS) had planned to present a full day course in Belfast on the 29th of November. The promotional literature for the course was inserted into the last issue of The Writ. The last issue was delayed from the planned publication date of the 28th October until the 10th of November. MLTS have decided to reschedule the course day because the delay gave insufficient notice for delegates.

The course will be presented on February 2nd 2006. The day will be identical to that planned on the 29th of November. Entitled “Specialist medical course for Lawyers” the course aims to improve the understanding of medical evidence.

If you wish to register to attend the course, please contact:
Medical and Legal Training Services
email: mlts@mnn.com
Tel: 0121 440 7098
Fax: 0121 442 4850

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The statutory procedures provide for two systems, the Disciplinary and Dismissal procedures (DDP) and Grievance Procedures (GP). Both the DDP and GP consist of a standard and modified procedure. The standard procedures are a three stage process, while the modified procedures are a two stage process. The modified DDP and GP preclude a meeting stage.

### Operational Difficulties

Set out below is a summary of 10 difficulties in the operation of the procedures.

1. The timing of the Step 1 (DDP) letter:
   
   "Contemplation" triggers the sending of the Step 1 letter. The definition of "contemplation" is "having in mind a possibility" which in respect of redundancies can be too early as it would coincide with the consultation process. There are no cases to clarify the meaning of "contemplation" in the DDP context.

2. The content of the Step 1 (DDP) letter:
   
   The content of a Step 1 letter is the most significant change for employers in applying the DDP. A poorly drafted letter could give rise to a finding of unfairness in a dismissal case where, for example, in a conduct matter the letter fails to sufficiently set out the allegations or it pre-judges the outcome.

3. When and how to provide the basis of the allegations under the DDP:
   
   The basis of the allegation must be provided before the Step 2 meeting and in reality this tends to be given with the Step 1 letter, i.e. when the allegations are set out in writing. How to provide the basis for the allegation has been the subject of debate, particularly whether witness statements must be provided. An alternative to providing witness statements is to provide a resume of the evidence or an investigation report.

4. Does one DDP system fit all cases of dismissal?
   
   Although the DDP lends itself better to conduct issues it does not do so in other dismissals, for example and more particularly, in redundancy situations (less than 20). The CBI Report has heavily criticised the DDP in redundancy dismissals - the criticism being that the employee would hear that they were at risk of being redundant, not at a face-to-face meeting but rather by way of a 1. The Step 1 letter. In a CBI survey the majority of employers found this cold and not good HR practice.

   The Report also identified unease regarding the ending of fixed term contracts. For example, applying a 3 step procedure to students employed on one year full-time contracts as part of their university degree is laborious and unnecessary.

5. Timing of the meetings:
   
   Real problems emerge when considering the employment of long term sick employees. The difficulty arises in relation to the "nth degree". Minor disputes are now becoming over formal and taking up a significant amount of employers' time.

   In Cooke v Secure Move Property Services Ltd (reported in IDS Employment Law Brief 788) the Tribunal held that the GP did not apply when the employee who was invited to a disciplinary meeting for misconduct resigned and claimed constructive dismissal. This denied the employer the opportunity to internally resolve the matter.

6. When must an employee raise a grievance?
   
   A grievance can be raised informally provided it is in writing. It need not refer to the GP or use the word grievance. Two cases (Aspland v Mark Warner Ltd, ET 2200483/05 and Stewart v Barnett's Motor Group Motor Ltd, ET 5/100276/05) held that a grievance can be raised in a Solicitor's letter. It can also be raised in a witness statement (Emore v Romec Ltd 2305757/2004). Therefore it is not always obvious to the employer that a grievance has been raised and by failing to act on it the employer will have contravened the GP.

7. How can a grievance be raised?
   
   A grievance can be raised informally provided it is in writing. It need not refer to the GP or use the word grievance. Two cases (Aspland v Mark Warner Ltd, ET 2200483/05 and Stewart v Barnett's Motor Group Motor Ltd, ET 5/100276/05) held that a grievance can be raised in a Solicitor's letter. It can also be raised in a witness statement (Emore v Romec Ltd 2305757/2004). Therefore it is not always obvious to the employer that a grievance has been raised and by failing to act on it the employer will have contravened the GP.

8. Informality of dealing with grievances has been lost:
   
   Dealing with grievances informally is mutually beneficial to both employer and employee. However since the implementation of the statutory procedures requiring grievances to be put in writing, the number of formal grievances has risen. The CBI found that employers are under greater pressure and employees have become more tuned to the "nth degree". Minor disputes are now becoming over formal and taking up a significant amount of employers' time.
From January 2005, all solicitors in Northern Ireland were subject to the Compulsory Professional Development Scheme (CPD).

AFP Consulting provides a range of 3-hour seminars, which meet the Law Society of Northern Ireland’s Client Care and/or Practice Management CPD requirements. The 2006 seminar programme is targeted at 3 different levels of experience within a law firm:

- Level 3 Senior Partners and Managers
- Level 2 Staff and Solicitors who have some level of management responsibility
- Level 1 Junior staff who need basic understanding of managing their work and the law firm environment

Please see below for forthcoming events between February and March 2006:

CRISIS AND REPUTATION MANAGEMENT (Level 3)

Wednesday 15th February 2006 - The King’s Hall Exhibition Centre

This seminar will provide you with a definition of a crisis and determine an appropriate level of response. It also examines the consequences and impact your plans, strategies and actions will have on your practice and your reputation following a crisis.

CLIENT CARE AND COMPLAINTS HANDLING (All levels)

Wednesday 15th March 2006 - The King’s Hall Exhibition Centre

This is an introduction to the principles of client care, the main causes of complaints and how to deal with them.

Qualifies for 3 hours CPD

All seminar times: 2.00 pm - 5.00 pm

Cost per seminar: £125.00 + VAT per delegate

To reserve your place on any CPD seminar please contact us on:

Tel: 0845 600 2729 or
Email: afpconsulting@aforbes.co.uk

Changing CPD Requirements

The Pre-Action Protocol for the Resolution of Family Provision Claims

The Pre-Action Protocol for the Resolution of Claims under the Inheritance (Provision for Family and Dependents) (NI) Order 1979 (“the 1979 Order”) became effective on 1 September 2005. While such pre-action protocols are now commonplace in England and Wales, this is the first to apply in any of the Divisions of the High Court of Justice in Northern Ireland.

In broad terms, the Protocol aims to encourage the resolution of family provision disputes without recourse to hostile litigation and, where litigation is unavoidable, to ensure it is simplified by maximising the exchange of relevant information before the litigation process has commenced. Failure to comply with the provisions of the Protocol may result in a costs sanction:

“Para 1.03 Parties will be expected to follow the spirit of this Protocol and seek to achieve its aims so far as is practicable in the particular case. The court may take an unjustified failure to follow the Protocol into account in the exercise of its powers and discretions relating to costs.”

The full text of the Protocol is available on the Court Service website (www.courtsni.gov.uk – under Services and then Chancery Division). This brief article outlines the key provisions by way of introduction.

1. Commitment to pre-proceedings negotiations

The Protocol underlines the obligation on parties to enter into meaningful negotiations prior to starting proceedings: “Parties should bear in mind that the courts increasingly take the view that litigation should be a last resort and proceedings should not be issued prematurely when settlement is a reasonable prospect (para 7.01).” More specifically, the Protocol seeks to facilitate pre-proceedings negotiations in two main ways, that is, in respect of time limits and the early exchange of information and documents.

2. Extension of time limit by agreement of parties

Under the 1979 Order, applications must be made within six months of the date on which the grant of representation is first taken out, unless the leave of the court is obtained (article 6). However, where an applicant is seeking to have included within the estate property which the deceased held concurrently with another as joint tenants, the time limit is 18 months from the date of death or six months after the date on which the grant of representation is first taken out, whichever is sooner. This time limit is absolute and the court has no discretion to extend it.

It is generally agreed that the six month time limit achieves a fair and proper balance between giving applicants sufficient time to secure agreement and ensuring that the administration of the estate is not unnecessarily delayed. The fact that out of time applications can be made is designed to ensure that no grave hardships are caused, save in situations involving property which the deceased held as a joint tenant.

However, a not insignificant problem for parties who have been attempting to negotiate a pre-action compromise is the danger of the time limit expiring before the conclusion of the negotiations.

Unfortunately, the Court has no discretion to extend the time limit where the applicant is seeking to sever the deceased’s “share” of a joint tenancy. In this case, the Court will be sympathetic to an extension of time where genuine negotiations have been on-going and no party has been prejudiced, the cautious adviser may have no option but to issue proceedings of itself can cause parties to entrench their positions and may make a settlement less likely.

The Protocol effectively allows parties to extend the time limit in order to facilitate further negotiations if there is a realistic chance of settlement. Paragraph 1.02 of the Protocol provides:

“There is no reason why the parties cannot agree that, following the intimation of a claim, proceedings can be withheld unless and until the parties have exhausted the appropriate means of seeking to secure a settlement, which may include the appointment of a valuer or mediator”.

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3. Exchange of information and documents

The Protocol encourages the early exchange of all pertinent information and documents. As soon as sufficient information is available to formulate a reasoned claim the claimant is required to send a letter of claim to each of the personal representatives and, if known, to each beneficiary likely to be adversely affected by the claim. The use of a standard form letter of claim is recommended and a sample is annexed to the Protocol. The claimant is required to outline a clear summary of the claim and the facts upon which it is based, including, to the best of his ability, details of the matters set out in article 5 of the 1979 Order which are considered relevant.

It will be recalled that in any 1979 Order application, the court is required to have regard both to general matters, which apply to all categories of claim (eg the size of the estate, the resources of the claimant and any beneficiaries, any relevant disabilities) and to specific matters which apply only to that particular claimant. At this stage copies of documents in the claimant’s possession which he wishes to rely upon should, if possible, be enclosed with the letter of claim.

Each potential defendant is expected to reply within 21 days or provide an explanation for the delay and an indication of when a full reply can be expected. The other parties have 14 days to lodge an objection and suggest alternatives so that ultimately a mutually acceptable expert may be instructed. All parties are entitled to send through their solicitors written questions to the agreed expert about any relevant issue of his report. Any party who fails to object to an expert who has been suggested by another party will generally not be entitled to rely on their own expert evidence within that field.

If jointly agreed experts cannot be instructed, it will be for the court ultimately to decide how it should deal fairly with the costs incurred by the appointment of such experts.

4. Experts

The Protocol encourages the use of jointly appointed experts as far as is possible by requiring all potential parties to notify to the other parties the name or names of one or more experts in the relevant discipline whom he considers suitable to instruct (Paragraph 6). The other parties have 14 days to lodge an objection and suggest alternatives so that ultimately a mutually acceptable expert may be instructed. All parties are entitled to send through their solicitors written questions to the agreed expert about any relevant issue of his report. Any party who fails to object to an expert who has been suggested by another party will generally not be entitled to rely on their own expert evidence within that field.

If jointly agreed experts cannot be instructed, it will be for the court ultimately to decide how it should deal fairly with the costs incurred by the appointment of such experts.

5. Mediation

Finally the Protocol endorses mediation as an alternative to litigation and commends its use, in appropriate cases, both before and after proceedings have been issued. We are grateful to Sheena Grattan BL for this article.

Practitioners should be aware of the judgment of the European Court of Human Rights in J.A.Pye (Oxford) Ltd v United Kingdom (2005) The Times, 23 November. This case has serious implications for the doctrine of adverse possession in Northern Ireland. In short, the court held by a majority (4-3) that the combined effect of the provisions of the English Limitation Act 1980 and the Land Registration Act 1925 infringed the European Convention of Human rights in dispossessing, without compensation, a registered owner and transferring title to a trespasser.

The relevant provisions in Northern Ireland are contained in the Limitation (NI) Order 1989 and the Land Registration Act (NI) 1970. The primary ramifications of the case will relate to registered land and practitioners will now have to consider the case in the following circumstances, namely:

- Applications pursuant to section 53 of the 1970 Act.
- Defences to claims for possession by registered owners.
- Statutory declarations in conveyancing and lending transactions.
- Past judgments of either a court or the Land Registry in favour of a “squatter” against a registered owner.

Determining the appropriate remedy (including potential claims for damages for breach of the HRA and/or the ECHR) will depend upon the particular circumstances of each particular case. It may also be relevant to have regard to the English decision of Beaulane Properties Ltd v Palmer (2005) EWHC 1071, where an English deputy High Court judge held that English law relating to adverse possession, as it stood before October 2003, was incompatible with the ECHR.

We are grateful to E.J. David McBrien, LLB, LLM, Barrister-at-law of the Inn of Court of Northern Ireland and of the King’s Inns, Dublin for this casenote. See also Recommended Reading at page 49.

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The Office of Law Reform is currently conducting a review of the Ground Rents Act 2001. The aim of the Act, which, for the most part, came into operation on 29th July 2002, is to eliminate the ground rents on residential property in Northern Ireland, thereby simplifying title ownership and the conveyancing process.

The Act contains schemes for the voluntary and compulsory redemption of ground rents. The voluntary scheme has been operating since 2002. However, the compulsory scheme will not be commenced until the voluntary scheme has been reviewed.

The Office of Law Reform has produced a discussion paper which sets out the background to the Act and invites comment on the voluntary scheme’s operation. The paper may be obtained from the Office of Law Reform, Lancashire House, 5 Linenhall Street, Belfast BT2 8AA, or online at www.olrni.gov.uk. All comments will be welcome.

Fee estimate forms

The Home Charter Committee considers it appropriate to clarify the point at which the fee estimate forms attached to the Solicitors Advertising (Amendment) Regulations 1994 are issued.

Although the Home Charter Code of Practice (paragraph 3 of part 1) says:

“Following receipt of instructions write to the client setting out the terms of business, including an estimate of costs and outlay in such manner as may be prescribed...”.

the Committee considers that for the avoidance of doubt and in the interests of good business practice, it would be considered prudent to issue the fee estimate form upon the receipt of an enquiry about costs and prior to the receipt of instructions. However, once firm instructions are received the estimate must be reissued and if necessary updated to take account of any information becoming available in the interim period.

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Insolvency Update

1. INSOLVENCY (NI) ORDER 2005

The Insolvency (NI) Order 2005 received Royal Assent on 7 June 2005. The order falls into four main areas:

- Corporate insolvency: the abolition of Crown preference; individual insolvency (bankruptcy and IVA) and the provisions relating to the financial regime of the Insolvency Service.

- Work is underway to make the rules and other secondary legislation necessary to implement the Order's provisions. It is expected that the Order's provisions and the rules and other secondary legislation will be commenced early in 2006.

- The corporate insolvency provisions are aimed at facilitating the rescue of viable companies, and if that is not practicable, or would not provide the best outcome for creditors, achieving a better result for the company's creditors as a whole than would likely if the company were wound up. The Order seeks to achieve this through restricting the use of the administrative receivership in favour of administration, which is a collective procedure and takes account of the interests of all creditors. The Order introduces a streamlined system of administration by providing out-of-court routes into administration for floating charge holders, companies and their directors and introducing an overall time limit for the process, imposing a new duty on the administrator to perform his or her functions as quickly and efficiently as reasonably possible, as well as reducing time limits generally.

- The abolition of Crown preference will remove the Government's right to claim unpaid taxes ahead of other creditors and will bring real benefits to unsecured creditors, including many small firms.

- The individual insolvency provisions will provide a fresh start for those who have failed by reducing the discharge period to a maximum of 12 months for most bankrupts. This is set against the need to protect the public against the small minority of bankrupts who abuse their creditors. This counterbalance is achieved through the new Bankruptcy Restrictions Order regime. The provisions will also ensure that those who can pay their creditors, do so.

- Income payment orders (and new floating charge and will not be payable ahead of the floating charge security. The implications of this decision for insolvency practitioners are that they face the prospect of not being paid their costs and expenses in respect of the winding up.

- A student or former student may have a liability to repay a loan taken under:

  1. Regulations made under the current Education (Student Support) (NI) Order 1998 (S.I. 1998 No. 1760) or

  2. Regulations made under the former Education (Student Loans) (NI) Order 1990 (S.I. 1990 No. 1506)

- Change in status in bankruptcy of a liability to repay a loan made under regulations under the current Education (Student Support) (NI) Order 1998.


- Regulation 8 of these regulations replaces regulation 40 in the Education (Student Support) Regulations (NI) 2003 (S.R. 2003 No. 298)

- The result is that, with effect from 15 January 2005, any liability to repay a loan under the Education (Student Support) (NI) Order 1998 is no longer a provable debt in bankruptcy and will no longer be written off on the bankrupt's discharge.

- Modernisation of the financial regime of the Insolvency Service will bring increased transparency and simplicity to the fee structure while reforms to the Insolvency Account will mean that creditors, including many small firms, receive the maximum possible investment return.

- Article 11 of this Order came into operation on 13 April 2005.

- With effect from that date, in the case of bankruptcies which commenced on or after 13 April 2005 any liability to repay a loan under the Education (Student Loans) (NI) Order 1990 is no longer a provable debt in bankruptcy and will no longer be written off on the bankrupt's discharge.

- Loans received after the date of commencement cannot be treated as after acquired property and should not be taken into account when assessing whether or not to seek an Income Payment Order Agreement.

- The DTI Insolvency Service is currently attempting to have provision included in the forthcoming Company Law Reform Bill which would counteract the effects of the Decision.

- A House of Lords judgement on 4 March 2004 in re Leyland Daf Limited alters the way in which liquidators of companies may attempt to recover the payment of liquidation expenses and pay the (liquidation) preferential creditors, where the companies have granted floating charges over their assets.

- The Crown departments in England and Wales, whilst understanding the predicament that the insolvency practitioners may find themselves in, have made it clear that they cannot deviate from the underlying principles of this judgement. They have however indicated that, in practice they will take no action to disturb cases where costs/fees etc. were paid before the date of the House of Lords judgement.

- In all other instances they expect the terms of the judgment to be strictly applied.

- The DTI Insolvency Service is currently attempting to have provision included in the forthcoming Company Law Reform Bill which would counteract the effects of the Leyland Daf Limited decision.

2. STATUS OF STUDENT LOAN DEBTS IN BANKRUPTCY

A student or former student may have a liability to repay a loan taken under:

1. Regulations made under the current Education (Student Support) (NI) Order 1998 (S.I. 1998 No. 1760) or

2. Regulations made under the former Education (Student Loans) (NI) Order 1990 (S.I. 1990 No. 1506)

3. PAYMENT OF LIQUIDATION EXPENSES AND PAYMENT OF PREFERENTIAL CREDITORS WHERE COMPANIES HAVE GRANTED FLOATING CHARGES OVER THEIR ASSETS

The following is adopted from a statement issued on behalf of HM Revenue and Customs and the DTI Insolvency Service (“The Crown Departments”). The original statement can be seen on the DTI Insolvency Service website at www.insolvency.gov.uk

A House of Lords judgement on 4 March 2004 in re Leyland Daf Limited alters the way in which liquidators of companies may attempt to recover the payment of liquidation expenses and pay the (liquidation) preferential creditors, where the companies have granted floating charges over their assets.

In cases where the company has granted a floating charge, the costs and expenses of the liquidation will rank after sums payable to both the preferential creditors and to holders of a floating charge and will not be payable ahead of the floating charge security.

The implications of this decision for insolvency practitioners are that they face the prospect of not being paid their costs and expenses in respect of the winding up.

3. PAYMENT OF LIQUIDATION EXPENSES AND PAYMENT OF PREFERENTIAL CREDITORS WHERE COMPANIES HAVE GRANTED FLOATING CHARGES OVER THEIR ASSETS

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Legal Costs Drawer

Would like to thank all Solicitors who have supported him during 2005 and wishes you all a very prosperous 2006.
Before the Guide was last revised in January 2004, the amounts recommended by the Guide had fallen significantly below what was being allowed on taxation. A database kept by the senior Costs Drawer who advised the Committee showed that, on taxation, overall an average of 28% more than the amounts recommended by the Guide was obtained. This apportioned as to 18% for road traffic accidents and industrial injury cases and 28% for industrial disease cases such as chest, dermatitis and stress cases etc. The Committee decided to limit any increase on the Guide to the lesser amount of 18% and to recommend to members that they increase the amounts recommended by the Guide by 10% when applying same to industrial diseases cases.

**AFTER WRIT** | **AFTER STATEMENT OF CLAIM** | **AFTER DEFENCE** | **AFTER WARNED LIST** | **WITHIN 21 DAYS OF TRIAL**
---|---|---|---|---
£0-£14,999 | £2,515 | £3,165 | £3,565 | £4,230 | £4,885
£15,000-£19,999 | £2,910 | £3,565 | £3,960 | £4,755 | £5,680
£20,000-£24,999 | £3,435 | £4,090 | £4,485 | £5,012 | £6,075
£25,000-£29,999 | £3,690 | £4,360 | £4,755 | £5,140 | £6,470
£30,000-£34,999 | £3,960 | £4,620 | £5,155 | £5,805 | £6,870
£35,000-£39,999 | £4,230 | £4,885 | £5,410 | £6,205 | £7,260
£40,000-£44,999 | £4,485 | £5,155 | £5,805 | £6,600 | £7,655
£45,000-£49,999 | £4,720 | £5,410 | £6,205 | £7,000 | £8,050
£50,000-£54,999 | £5,015 | £5,680 | £6,600 | £7,395 | £8,450
£55,000-£59,999 | £5,280 | £5,940 | £7,000 | £7,795 | £8,845
£60,000-£64,999 | £5,550 | £6,205 | £7,395 | £8,190 | £9,245
£65,000-£69,999 | £5,805 | £6,470 | £7,975 | £8,580 | £9,640
£70,000-£74,999 | £6,075 | £6,730 | £8,190 | £8,975 | £10,035
£75,000-£79,999 | £6,330 | £6,985 | £8,580 | £9,370 | £10,435
£80,000-£84,999 | £6,600 | £7,290 | £8,975 | £9,770 | £10,830
£85,000-£89,999 | £6,870 | £7,525 | £9,370 | £10,165 | £11,220
£90,000-£94,999 | £7,130 | £7,795 | £9,770 | £10,560 | £11,615
£95,000-£99,999 | £7,395 | £8,050 | £10,165 | £10,960 | £12,010

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two stages: the amounts recommended by the Guide were increased by 1.3% for cases settling after 1st January 2004 (which is the previously published Guide) and it had been intended that a further increase of 5% would be applied to cases settling after 1st January 2005. That second increase was not made but is now incorporated in the figures in the Table overhead.

In addition, since the Guide was last revised the Taxing Master has twice increased the hourly rate payable on a standard basis taxation, which is the basis on which party and party costs are paid: in April 2004 the rate was increased from £76.00 to £78.00 per hour and, more significantly, a rate of £85.00 per hour has been set by him for work after 1st April 2005. This is an increase of £9.00 or 11.84% over the hourly rate of £76.00 payable when the Guide was last revised.

In order therefore to maintain parity with what will now be allowed on taxation, the Committee has decided to implement the above mentioned increase of 5% which ought to have been made in January 2005 together with a further 11.84% to correspond with the increase in the hourly rate; a total increase of 16.84%. The table set out overheads incorporates that cumulative increase.

The increase in the hourly rate made by the Master in April of this year is in anticipation of the findings of the survey into the overheads of running a solicitor’s practice which is presently being carried out by the Law Society. We understand that the Master has indicated a willingness to further increase the rates should the findings of the survey justify same and the Committee will keep a careful watch over the survey as, should its results find that a higher rate, further revision of the Guide may be necessary.

This Guide is intended to apply to personal injury actions settled after 1st January 2006. However, as the data base kept by the Costs Drawer from which the increases on taxation/settlement have been drawn relates entirely to personal injury actions arising out of road traffic accidents and industrial injury/disease cases, it is not recommended that the Guide should apply to the following categories of cases:

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

The BSA recommends 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. In cases of industrial disease, particularly “chest” cases, the appropriate figure on the Guide to be increased by 10%.
2. If there are Interlocutory proceedings an extra £190.00 should be added for each such application. This £190.00 reflects an additional 1½ hour’s work, which is the average time spent. If the Interlocutory applications become complicated and lead to matters such as a remittal appeal in the High Court, the BSA recommends that time is recorded and that extra costs are added to the guide to reflect time spent.
3. 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.
4. If the case runs to trial we are informed that the Taxing Master will normally allow an average of £720.00 for each additional day of Trial and £595.00 for each half day for an ordinary case. Again this figure should be added to the attached Guide.
5. The attention of members is drawn to the guidelines given by Lord Justice Carswell, as he then was, in Poots [1995] NI 428 as to the proper approach to be taken in a case which is compromised for significantly less than its potential. His Lordship held that in such circumstances the “worth” of a case was neither the knockdown value of the settlement nor its full potential. His judgment supports an approach that an amount halfway between the settlement and the potential of the case should be taken as the point on the Guide for the appropriate costs.

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 maintained a category to remunerate cases settled on or within 21 days of Trial whether or not they are commenced on the day of trial to avoid costs. We would also encourage Solicitors to co-operate with the reasonable Insurer when such an offer is made.

The annual BSA Dinner Dance is to be held on Saturday 4th February 2006 at the Europa Hotel, Belfast. Drinks reception commences at 7.30pm followed by dinner at 8.30pm, with dancing till late with The Booze Brothers.

Tickets are £36.00 per person and members are asked to note that the following arrangements apply:

- Bookings are on a “first come - first served” basis and must be made in writing addressed to:
  - BSA Administrator
  - Suite 7, 58 Howard Street
  - Belfast BT1 6PL

Any enquiries should be made by e-mail to:
info@belfast-solicitors-association.org

A reservation cannot be made unless a cheque (made payable to Belfast Solicitors’ Association) is received with the booking request. Confirmation of the booking will be sent out in writing.

Tables are for 10 people and any requests for vegetarian meals should be made at the time of booking.

In keeping with previous years, a donation from every ticket sold will be made to the Solicitors’ Benevolent Association and members are encouraged to show their support by attending.

As there is always a high demand for places members are recommended to book as early as possible to avoid disappointment.

The Europa Hotel is offering a preferential accommodation rate of £40.00 per person sharing in a twin or double room including breakfast. Room reservations should be made direct with the hotel on 028 9027 1066, requesting the preferential rate for the BSA Dinner Dance.

We look forward to seeing you there.
It’s surprising how often a well-managed retainer for a long-standing client can turn sour months, if not years, after the file was closed, simply because the practice did not have properly policed file closure procedures.

Professional indemnity insurers are more than familiar with claims resulting from oversights and omissions during file closure. Examples could include incomplete applications to court, missed dates for exercising options or cases where a file is closed on a seemingly abandoned matter without properly informing the client.

Procedures for closing files need not be onerous or time-consuming, but they are a useful safety check and can avoid storing up problems for the future. The following suggestions work well for many practices, but firms should develop procedures that work effectively for them.

Introduce peer-to-peer file checking before a file is closed and sent for storage. Check that no important documents remain unactioned, such as a signed application for a court order that has never been made to the court.

Where there are important documents on file, such as a will or property deeds, make sure that they are dealt with in accordance with the client’s wishes. This may include returning the documents to the client or removing them from the file for separate, secure storage.

Where documents are stored separately, make sure that a note is added to the file clearly identifying what has been stored and where. Write to clients to make sure they are aware of where their documents are held.

Finally, introduce a system of counter-signatures where the case handler and the fee-earner who checked the file both sign off the file. You will be surprised how asking people to sign for their work brings out an extra burst of diligence.

Establishing file closure systems may seem an obvious and simple procedure. Unfortunately, professional indemnity insurers frequently see negligence claims that could have been easily avoided if more firms had taken simple steps to ensure their procedures were watertight.

This column was prepared by AFP Consulting, a division of Alexander Forbes Risk Services UK and first appeared in The Gazette, the journal of the Law Society of England and Wales, 102/13 1 April 2005

An open and closed case
How many times, over the years, have you had clients in your office describing a difficult situation to you, when you have thought to yourself: “If only they had come to see me earlier, it would have been so much easier to help them?”

It has been said that people change for one of two reasons: Inspiration or Desperation. When it comes to recovery from alcohol abuse, desperation is almost always the driving force. Everyone has heard the stories of the need for an alcoholic abuser to hit “Rock Bottom” - that moment in an alcoholic’s life when he or she is forced to face the devastating consequences of continued drinking and faces an agonising decision, to continue on a path of self-destruction and chaos or to make a commitment to sobriety and change.

Rock Bottom does not have a road map. It is unique to each individual and may be as simple as a routine medical examination that reveals liver problems or making a fool of oneself at office functions, on a regular basis. It could be the break-up of a marriage and loss of family, or a drunken bout of physical violence of which the individual can remember virtually nothing. Whatever the trauma, it will be of a great enough magnitude to act as a wake up call and to steer the alcoholic toward reality, and the possible beginnings of recovery.

Sometimes, an alcoholic in recovery may be able to look back on one darkest day and recall that it was the catalyst to recovery. However, not everyone has to experience serious or tragic consequences before facing up to a drinking problem. Traditionally, Rock Bottom has been associated with the most serious and chronic of consequences and lifestyles, but there are many alcoholics who maintain relatively high functioning lifestyles and this lifestyle is part of the denial process, fooling not only the individual concerned, but also his/her family and friends, into thinking that the drinking is not a real problem.

With such individuals, rather than a serious specific event or consequence which finally causes them to take stock, there is a more progressive, subtle and degenerative process which gradually impacts on their lifestyle. Imagine the lawyer who ostensibly has it all - successful practice, luxury home, fast car. Surely this person could not be an alcoholic? Surely an alcoholic would not remain so successful? Would he be unable to work? Obvously an alcoholic would never function at the level required by the legal profession?

All of these assumptions are wrong. “High bottom” alcoholics will delude themselves in to thinking that even though they drink every day, or only binge at the weekend, they only do it as a necessary social part of their career. They tell themselves things like “If it were not for my job, I wouldn’t drink at all.” They will genuinely believe that they have their drinking under control and that they are entitled to unwind from the stresses of work with a drink. They will believe that the “edge of and anxiety” they feel can be wholly attributed to their demanding career and long hours and has nothing to do with the alcohol that they are consuming.

Although to the outside world such individuals can appear to have idyllic lifestyles, behind closed doors the partner, family and colleagues may be feeling / expressing considerable concern about the amount of drinking that is taking place. This will require the alcoholic to reassure them, although there may be times when the alcoholic has difficulty in reassuring (him/herself).

There may be nagging doubts and a struggle to maintain the façade of a successful lawyer, family member and work colleague. There may also be a growing realisation that there is increasing difficulty to perform at the level required, or to have clarity of thought to process complex legal problems. There may be lack of motivation, and clock watching until escape from the office, for some liquid stress relief, becomes possible. Unpredictability and mood swings may also become the norm at work and at home. The ability to rationalise almost any alcohol-induced situation becomes second nature. With the absence of any apparent major consequences, the alcoholic does not believe that help is required. Is this an advantage or a disadvantage?
The answer is really a bit of both. It is not necessary to hit Rock Bottom, but it is vital to honestly look at how the drinking is negatively affecting career, relationships, emotional and physical health and quality of life. If the warning signs are heeded early it is always easier to rectify the problems at an early stage.

**WARNING SIGNS**

- Feeling the need to cut down
- Testing by occasionally abstaining from alcohol
- Becoming annoyed and defensive when questioned about drinking
- Drinking in morning or early afternoon to steady nerves or nurse a hangover
- Concern from family and friends
- Lying to self or others about alcohol consumption
- Anticipating next drink
- Apologising for inappropriate alcohol induced behaviour
- Justifying alcohol as appropriate for stress relief
- Being overwhelmed by the thought of stopping drinking

The denial of these types of warning signs is a critical part of the progression into alcoholism. Whether the alcoholic is brought to his/her knees by a thundering blow, or slowly sinks into the depths of despair; recovery is the only sane road to a healthier and fulfilled life. The earlier that recovery is attempted, the more chances of success there will be.

The road to recovery does not have to be travelled alone. LawCare is there to confidentially support and assist; to refer to professional treatment centres and/or counsellors, as needed. For confidential, non-judgemental help, ring:

**Helpline:** 0800 279 6888

9am - 7.30pm Monday to Friday and 10am - 4pm Saturday and Sunday / Bank Holidays.

Still Celebrating?
if you are concerned about how much you are drinking, call LawCare for free and confidential advice.

Northern Ireland Young Solicitors’ Association

The annual visit from European students to Northern Ireland for a week long study tour will take place in February this year. The NIYSA will be hosting a dinner at Belfast Castle on Wednesday 15th February 2006. A limited number of places will be available to our members (all solicitors under 36). All those who have attended in previous years will know that this is a lively, social occasion with good food, wine and entertainment on offer!

If you are interested in attending, tickets priced £15.00 are available from Darren Toombs c/o Carson McDowell, Murray House, Murray Street, Belfast, email darren.toombs@carson-mcdowell.com

BRITISH COUNCIL VISIT DINNER

BELFAST CASTLE
Wednesday 15th February 2006

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**WARNING SIGNS**

- Feeling the need to cut down
- Testing by occasionally abstaining from alcohol
- Becoming annoyed and defensive when questioned about drinking
- Drinking in morning or early afternoon to steady nerves or nurse a hangover
- Concern from family and friends
- Lying to self or others about alcohol consumption
- Anticipating next drink
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Northern Ireland Young Solicitors’ Association

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION PRESENTS A LUNCHTIME LECTURE ON:

THE CIVIL PARTNERSHIP ACT 2004

SPEAKER: Mrs Margaret-Ann Dinsmore QC

DATE: Tuesday 28 February 2006

TIME: 12.30pm - 2.00 pm (tea, coffee and sandwiches from 12.30pm)

VENUE: Law Society House, Victoria Street, Belfast.

COST: £10 for members of the NIYSA* and £20 for non-members.

Attendance at this Seminar will provide one hour CPD entitlement.

Cheques and Booking Forms to NIYSA c/o Barbara Johnston, Hewitt & Gilpin Solicitors, Belfast BT2 7GA. Tel: 028 90573573 E Mail: bjohnston@hewittandgilpin.co.uk

* All Solicitors aged 36 or under are automatically members of the NIYSA.

BOOKING FORM

NAME

FIRM

ADDRESS (DX if possible)

E-MAIL ADDRESS

TEL

NUMBER OF PERSONS ATTENDING

I ENCLOSE REMITTANCE OF £

NORTHERN IRELAND YOUNG SOLICITORS’ ASSOCIATION IN ASSOCIATION WITH BRIGHTWATER RECRUITMENT SPECIALISTS PRESENT:

LEGAL TABLE QUIZ 2006

DATE: Thursday, 9 March 2006

TIME: Drinks Reception 6.30pm with quiz starting promptly at 7.00pm

VENUE: Europa Hotel, Belfast.

ENTRANCE FEE: £40 per table of five

Cheques and Booking Forms to NIYSA
c/o Aleric Turtle, Carson McDowell Solicitors, Murray House, Murray Street, Belfast.

E-Mail: alicer.turtle@carson-mcdowell.com

BOOKING FORM (TEAMS OF FIVE)

1. (Captain)

Name:

Firm:

Contact No:

2. Name:

Firm:

3. Name:

Firm:

4. Name:

Firm:

5. Name:

Firm:

E-MAIL ADDRESS: I ENCLOSE REMITTANCE OF: £40.00

Commercial Litigation Solicitor

Belfast

Up to £38k

Our client has significant experience in litigation and dispute resolution and has assisted a wide range of clients in all types of commercial and technology disputes. This prestigious and expanding legal practice wishes to recruit a Solicitor with excellence in Commercial Litigation, experience with Construction Litigation advantageous. This position will require a senior solicitor who can take on a very busy workload. Suit 3 yrs + PQE. Ref: 3456.

Commercial Property Solicitor

Belfast

Up to £40k

Our client wishes to recruit an experienced Solicitor to join their busy and lucrative commercial conveyancing department which has a highly successful client base. This is a superb opportunity to join a thriving practice where career advancement is encouraged. Suit 5 yrs + PQE. Ref: 3457.

General Solicitor

Co Tyrone

Up to £30k

Friendly medium sized general practice seeks an experienced solicitor with expertise in Litigation and/or Conveyancing. Family experience advantageous. This is a superb opportunity to join a vibrant firm that offers great working conditions and lucrative benefits package. Suit 3 yrs + PQE. Ref: 3372.

Conveyancing Solicitor

Mid Ulster

Up to £33k

General Country practice has an exciting opportunity to join their well known firm. You should have experience in dealing with Residential Conveyancing, Commercial Conveyancing advantageous. This position would suit a candidate who is looking for a firm where they can grow and develop. Suit 3 yrs + PQE. Ref: 3496.

Conveyancing & Litigation Solicitor

Co Down

Up to £26k

Highly reputable solicitors practice with a superb reputation wishes to recruit an experienced Solicitor who can take on a busy and forever growing work load. This is an ideal opportunity for a Solicitor who has general practice experience and is looking for an opportunity to join a progressive firm. Career advancement is encouraged. Suit 2 yrs + PQE. Ref: 3382.

For more details please call Orla Stewart at PRG Lawsearch on 02890 314644 or email orlastewart@prglawsearch.com

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Law Centre (NI)

IMMIGRATION - Free movement of workers and the right to bring non-EEA family members to the UK - Part 1

This article by immigration solicitors, Fidelma O’Hagan and Ellen Weaver, which will be published over two editions, aims to explain the rights of European Economic Area (EEA) citizens and non-EEA family members. Part 1 sets out which EEA citizens qualify to have their non-EEA family members reside with them. Part 2, to be published January/February, will define ‘family member’ and explain the decision of the European Court of Justice in the case of Chen & Zhou and the recent amendments to the UK Immigration Rules.

As a member of the European Union, the United Kingdom recognises the right of ‘free movement’ for workers provided by European Directives and Regulations. The purpose of these provisions is to enable EEA citizens to move from one Member State to another in order to seek work without hindrance. One such hindrance would be the requirement that the worker’s family members must go through what can be quite lengthy and onerous domestic immigration procedures in order to qualify for permission to enter a State.

These regulations have particular relevance in Northern Ireland because of the large proportion of the population which has both Irish and British citizenship by birth.

Free movement

The European Economic Area (Immigration) Regulations 2000 (‘the EEA Regulations’) give effect to certain provisions contained in European Directives and Regulations by confirming rights of residence in the UK for non-EEA family members of EEA citizens. These are distinct from those derived from UK domestic Immigration Rules and legislation. It should be noted that citizens of the eight accession countries (AB) which joined the European Union in May 2004, excluding Malta and Cyprus, do not enjoy the benefit of full EEA rights during the twelve month registration period under the Workers’ Registration Scheme.2

To be able to benefit from the associated rights of free movement, EEA citizens must be outside of their country of nationality. However, it is important to note that the term free movement can be misleading as there may be no requirement to actually move. For example, a dual Irish/British citizen resident in Northern Ireland can elect to rely on her/his Irish citizenship even if she has never lived outside Northern Ireland. The nationality laws of each Member State must be recognised by the other EU States.3

Although most States accept their citizens holding dual nationality, there are exceptions and this should be checked for each country in question. Clearly, in relation to the UK and Ireland, it is lawful to hold citizenship of both EEA Member States and therefore both passports. The EEA citizen can elect to rely on either citizenship.

Those who hold single British citizenship and have never been outside of the UK cannot benefit from these rights while in the UK. However, British citizens can benefit from Community law provisions if they have returned from exercising treaty rights in another EEA Member State. This is known as the Surinder Singh principle, following the decision in this case in the European Court of Justice. Here the EJC held that where a British citizen has exercised Community rights in another EEA country and returns to the UK with non-EEA family members, the British citizen and the non-EEA family members retain their right to benefit from EU law provisions. Furthermore, in the case of Akrich the EJC held that, subject to the marriage being genuine and the EEA citizen pursing effective and genuine activity in the other Member State, it is irrelevant whether the couple moved to the other Member State specifically with a view to obtaining the benefits of the rights conferred by Community law. Reg.13 of the EEA Regulations expressly deals with this point. However, Akrich also held that if the non-EEA family member was not lawfully resident within the EU then she could not rely on Community law when returning to the UK with her/his EEA citizen partner. Accordingly, the EEA Regulations were amended to insert Reg.112(8b) to this effect. However, this was an unexpected opinion of the Advocate General in that this issue was not put to the parties at any stage during the proceedings and it conflicts with previous decisions of the EJC.

Unsurprisingly, reference has been made to the EJC for clarification of the decision in Akrich in Case C-1/05 Jia.4

Qualifed persons

In order for an EEA citizen to be entitled to bring her/his non-EEA family member to the UK to reside she must be a ‘qualified person’. Reg.5 of the EEA Regulations defines a ‘qualified person’ as an EEA national who is in the UK exercising Treaty rights as:

- a worker;
- a self employed person;
- a provider of services;
- a recipient of services;
- a self-sufficient person;
- a retired person;
- a student;
- a self-employed person who has ceased activity; or
- in certain circumstances, the family member of a self-employed person who has died.

A broad definition of worker

European Regulation 1251/70 provides a broad definition of the term ‘worker’ and this is reflected in EEA Regulations 5 (2)-(6) which includes people who are permanently unable to work because of industrial injury or disease. The latter are defined as EEA nationals who have ceased to be employed owing to a permanent incapacity for work arising out of an accident at work or an occupational disease entitling them to a state disability pension. In this category there is no length of residence requirement. The definition also includes EEA nationals who have been continuously resident in the UK for at least two years and who have ceased to be employed owing to a permanent incapacity for work.

Cases decided by the EJC have expanded the definition of ‘worker’ further and include the following categories:

- work seekers who can demonstrate that they are involuntarily unemployed;
- people who are employed on a part-time basis;5
- people who take a job for the purpose of fulfilling the requirements of the EEA regulations so long as the work is not merely marginal and incidental;
- people who have a low income, even if it is so little that it is not sufficient to live on. However, the work must be ‘genuine and effective’ and remuneration is essential, although it may be in kind, rather than for money. There is no requirement that the work be ‘commercial’ in nature, voluntary sector or public service work does count for EEA purposes.

This is an interesting and dynamic area of law which is open to imaginative applications by lawyers and creative decisions by the EJC. While Member States may apply a restrictive approach to the definition of the term ‘worker’, the task of the EJC is to give full effect to the rights of EEA nationals by providing clear interpretations of European provisions in decisions which must be followed by individual States.

In the second part of this article, we will look at the rights of non-EEA family members and the effect of the decision of the EJC in the case of Chen and Zhou on the domestic immigration rules.

Footnotes

1. Case C-200/02 [2004]
2. For a full discussion of this see the Wiltshire Journal June 2004.
3. Case C-38/90 [1992]
4. Case C-370/90 [1992]
5. Case C-109/01 [2003]
6. Case C-292/91 [1991]
7. Case C-153/81 [1982] Case 75/6 [1964]
8. Case C-139/85 [1986]
9. Case C-196/87 [1988]
Age-related payments

Age-related Payments for those aged 65 or over are now available. The Government is making two payments this year to help pensioners with their rates bills or other living expenses.

- People aged 65 or over and in receipt of the guaranteed pension credit element of Pension Credit, could receive £200 per household to help with their living expenses.
- People aged 70 or over and in receipt of the guaranteed credit element of Pension Credit, could receive £50 to help with their living expenses.
- People who are eligible for one of these payments should receive it automatically with their Winter Fuel payment. Payments will be made throughout November and December.

The amount of Age-Related payments people are eligible for depends on their age and circumstances during the qualifying week 19-25 September 2005. People cannot qualify for both Age-Related payments.

Those not eligible will include people aged under 70 who are in receipt of the guarantee credit element of Pension Credit.

People getting the guarantee credit element of Pension Credit should be eligible for Housing Benefit. People who have not applied for Housing Benefit should contact their local council.

People who have questions about Age-related payments should call the office that normally pays their benefit, or call the helpline on 08459 151515.

Further information is also available at the Department for Social Development’s website at www.dsdni.gov.uk

Changes to the Disability Discrimination Act 1995

The Disability Discrimination Act 1995 (DDA) brought in measures to prevent discrimination against disabled people in a range of areas including employment or when seeking employment.

Since 1st October 2004 there have been substantial changes to the law in relation to employment and occupations and for trade organisations and qualification bodies, which are listed below (Part II of the DDA).

(4) There is now a freestanding definition of disability harassment comparable to race and sex.

(5) Other occupations such as barristers, partners in firms, people on vocational work placements, contract workers and office holders are covered by the legislation for the first time.

The concept of direct discrimination has been introduced to join disability discrimination, failure to make a reasonable adjustment and victimisation.

Trade Organisation and Qualification Bodies Code

This Code of Practice gives practical advice on how to prevent discrimination against disabled people seeking or already in work.

(1) That all employers (bar the armed forces) are now covered. Small businesses will be affected by this law for the first time. Prior to the 1st October 2004 only employers with 15 or fewer employees had duties under the DDA. Therefore today over 90% of employers in NI who did not previously have duties under the DDA now do so.

(2) That people working in the uniformed Fire, Prison and Police services are protected by the DDA for the first time. Civilian workers within these organisations were already protected by the DDA.

Qualification Bodies - such as the Law Society and the General Medical Council - will, for the first time, have much broader responsibilities under the DDA in relation to the awarding of qualifications.

A disabled person’s prospects of getting work, or of progressing in a career, may be affected by their ability to obtain a professional or trade qualification.
As we set off across the border into our second jurisdiction I realised that I desperately needed sleep because our... bar and Nobbys Nuts as “lunch” as midnight approached, but we were suitably grateful and headed off up the mountain.

Wales’ finest hour – other than Gavin Henson’s waxed legs – must undoubtedly be the lofty peaks of Snowdon. Although it starts with a tarmac road, it ascends into steep rock faces, and at its summit, you need to have a fully working head torch, so I made sure I was with lots of other ‘head lit’ walkers when I got up there.

The main object of this established and registered charity is the support and furtherance of the vitally important treatment, both medical and surgical, provided for patients in the Cardiology Centre in the Royal Victoria Hospital Belfast, and the equally important work of research into heart disease carried on there. The charity is authorised to use its fund to provide that support, or achieve that furtherance when, (but only when) public funds are not available, or are insufficient, for the purpose.

The Royal’s splendid record in the fight against heart disease is too well known to need advertisement, and by an immediate cash gift or a legacy or bequest to this charity in your will, you can help directly to reduce the grave toll of suffering and death from this disease in Northern Ireland. The grim fact is that the incidence of coronary artery disease in Northern Ireland is one of the highest in the world.

The administration of the charity is small and compact and the trustees are careful to ensure that its cost is minimal. As a result donors and testators can be assured that the substantial benefit of their gifts and bequests will go directly to advance the causes of the charity.

Further details about this charity and its work will gladly be supplied by the Secretary, The Heart Trust Fund (Royal Victoria Hospital), 9B Castle Street, Comber, Co. Down BT23 5DY. Tel: (028) 9187 3899.  

These are the first part-time appointments to the Resident Magistracy in Northern Ireland. Ms Prytherch and Mr McCourt will work three days each a week.

**HEART TRUST FUND**  
**(ROYAL VICTORIA HOSPITAL)**

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As I had promised my family and myself that I wasn’t going to put my body through another Ironman this year, I was... I had accomplished something, other than participating in the daily struggle otherwise known as “The Solicitor’s Life.”

I remember the “Four Peaks.” Apparently I had ticked it off nine years ago but had forgotten all about any pain associated with it. I seem to remember it was a lot of fresh air, with a bit of gentle hill walking. I was also hoping to raise a few quid for the much needed work of the Ulster Cancer Foundation.

Di-Da quickly dawned i.e. 4.00am on the Thursday when a very comfortable Chambers bus took us from the Maiden City to Belfast to pick up the main contingent - then it was off to sunny Newcastle. I was about to start the event (a) fatigued, (b) with a bad back and (c) suffering from asthma. We gazed up in awe through the clouds at our first objective – Sliive Donard, Northern Ireland’s highest peak at 852 metres.

By this stage there are 100 of us. We are to pick up the other 100 on the other side of the Channel. My good friend Mark Kinkladze, of Fisher and Fisher has kindly sacrificed a few billable hours to join me for the first peak.

We had been warned that although it was 18°C at the bottom, there was a wind chill factor of minus 2°C at the top with 50 mile an hour winds. By half way up the first peak, with my pulse racing, I realised...
we passed the yellow coated ubiquitous marshals - for once I was content to exist in the shadows and not bathe in the spotlight. … At about 1.30am on Friday we scaled the dizzy heights and congratulated each other.

The euphoria of the summit is always replaced by the plop of the descent. However, on the way down as we looked round a full moon emerged from behind the clouds and bathed Northern Wales in the most beautiful light.

You can get away without a head torch for so long but my luck ran out and about 3.00am I took a big tumble. I was lying on the ground like a ‘stranded turtle’ with my rucksack on my back, with my feet pointing up the mountain and my head downwards. I had escaped with a few cuts and bruises and swollen fingers - it certainly woke me up and the adrenaline rush kept me safe until we reached ground level.

By this stage it was 3.00am and I was drenched in sweat - it was a bit like being in front of Mr Justice Gillen when you hadn’t filed some important Affidavit. Unlike his court however there was a very sandy river near the finish line so there was a quick bit of ‘skinny dipping’ in the cool, cool waters of Northern Wales - I emerged shaken, not stirred. The offending sweaty clothes were binned (hey, the alternative was to carry them on my back to the top of the next peak and attract even more flies).

I made it onto the first bus i.e. I was amongst the first 50 people up and down. This was a quiet source of pride. There were 200 people taking part and 4 buses and it was an unwritten rule that everyone wanted to be in the top 50 and get on the first bus to leave. I duly ran onto the bus, even smugger and cleaner than after Donard. There were 49 other people on the bus. However, none of them had had the benefit of a refreshing river experience in the medicinal waters of Snowdonia.

God bless the air conditioning system on the coach!

I didn’t need much invitation to try to sleep. For two blissful hours I was out of it, only to be startled by the coach driver announcing that it was breakfast time - the nearest shower was a long way away in terms of time and distance, I dashed over a fence with the dexterity of a skilled Court Room Advocate and divested my sweaty garments, into the clear cool waters of a very welcoming river. The relief of Mafeking was as nothing compared to the relief that the Jack body felt.

Fortunately or unfortunately there was a pub while we waited for the bus - a pint of Stella never tasted as sweet. I may love the smell of Napalm in the morning, but the smell of a pint of Stella after your third mountain is even more welcome.

Back on board the first bus to leave (of course) we started the long journey across the border to the top of the fourth peak. We crossed the border, leaving behind the lands of Sheriffs and Procurator Fiscals and “Not Proven” verdicts - I wondered if my attempt to climb the UK’s highest mountain would end up “Not Proven”. We were facing the most forbidding of all the 4 Peaks, Ben Nevis which claims several deaths every year, particularly in bad weather.

Our bus was like the Tardis – but unlike its name sake seemed a hell of a lot smaller on the inside when it was festooned with rucksacks, climbing gear, packed lunches and empty Nibbys Nuts packets. Very soon it was time for the last jaunt. This was ‘The Big One’ - The toughest peak of all was reserved for when your energy levels were at their lowest. It was dark - we were meant to start at midnight, but we were delayed. It was now 1.30am. Nine people were too knackered and stayed on the bus. It suddenly seemed a very tempting option.

It was time for fear or flight. Are you a man or a mouse Pete? (put down that piece of cheese and we will soon find out). We reluctantly strapped on our ruck...
I staggered home and looked forward to standing on the scales. Surely 18 hrs of toil, 1,000 miles of travel, snatched cheese sandwiches and 3 hrs sleep would mean I had lost a few kilos?

I couldn’t believe it – the scales don’t lie. I had actually put on a kilo. As the man in the dock often says, “There is no Justice”.

By this stage I thought I had a chance of beating the 48 hr barrier since we kicked off only 2 days previously and I also speculated on whether I could beat 6 hrs for the last peak. Ergo, I started to sprint down the mountain. I reckoned ... all night. The nirvana of the finish line mercifully came to my rescue and I wearily but triumphantly crossed it.

The seductive waters of the local river were of course beckoning me in, so it was off with the gear for the final plunge. More sweaty gear was binned as I grabbed the last seat on the first bus back to Glasgow. As I was in the front seat the bus driver seemed fairly keen on a chat, but after a while the claxon call of oblivion took over and everything faded to black.

I tried to party that night but quickly crashed and burned. Our odyssey was nearly over. The next day, two hundred stumbling hangovers very quietly performed ... second home ie the bus. This time we slept and before we knew it we were back in the Jurisdiction That We Love So Well.

I staggered home and looked forward to standing on the scales. Surely 18 hrs of toil, 1,000 miles of travel, snatched cheese sandwiches and 3 hrs sleep would mean I had lost a few kilos?

I couldn’t believe it – the scales don’t lie. I had actually put on a kilo. As the man in the dock often says, “There is no Justice”.

by PETER J ACK

P.S.

Thanks to my colleagues for their charitable donations resulting in over £600.00 being raised for the Ulster Cancer Foundation. Most generous was Gavin Campbell of Campbell Fitzpatrick and the most astute Lawyer who correctly guessed my winning time of just under 18 hrs was the well deserving Liam Campbell of Dickson and McNulty, to whom a bottle of Bubbly is on its way.

P.P.S.

On my safe return and having completed several other challenges including the Tour of Ireland 106 mile bike ride so expertly organised by Ciaran Hampson of Campbell Fitzpatrick and also the Seven Squeers in The Seven Peaks in the Mourne all over 700 metres, Mark Kincaid presented me with another challenge for April 2007. Mark’s idea is that we go and do the toughest foot race in the world i.e. the legendary and Bizarre Marathon Des Sables. This consists of a marathon every day in the Sahara when the mercury hits 50°C – where you carry everything you need for a week and where you sleep at night in the freezing cold desert accompanied only by scorpions and lizards with the smell of camels dung wafting through your flimsy tent. Surely I would not be stupid enough to sign up to this...??? (But just watch this space...)

Over £22,000 raised for CLIC Sargent

Further to an initiative from John McGettrick of Flynn and McGettrick Solicitors, the Society decided to adopt Sargent Cancer Care for Children (now CLIC Sargent) as its sponsored charity for 2005. We are delighted to report that the Society’s fund-raising efforts for the year have resulted in a cheque for £22,072.05 being presented to the charity.

A number of different events to raise money had been organized throughout the year

A special word of thanks however is due to Janet Patterson of the Camelot Foundation, to Joe Donnelly, Chairman of the Access to Justice Committee, to the Northern Bank, to Marsh and to those local associations who gave so generously in aid of this worthwhile cause.

All money raised goes to assist and support children suffering from cancer and leukaemia and their families.
But law was his other great love. He became Bankruptcy Master in 1987. And what a Master he became. It brought out all his virtues: dignity - because he felt that administration of the law should be dignified; poise - on thousands of occasions that I was in his Court, I never heard him be impolite to anyone, whatever the provocation, and there was often provocation. He listened quietly, never interrupting. When litigants were unrepresented by a lawyer he leant over backwards to explain the procedures and allow the person to make his case. No one ever went into Basil's Court and felt humiliated and no one ever left without feeling that at least they had a fair hearing, even if they did not like the decision.

Basil had the law and practice of insolvency at his fingertips because he made it his job to learn it. He expected all lawyers appearing before him to know the law. Basil qualified as a solicitor in 1950. He was for a period a partner in the firm of Glass & Lavery and later set up his own practice as Basil Glass & Company. Under his leadership the firm became known for its intellectual ability and expertise. Basil had a great love - politics. He was a founder member of the Alliance Party – its first Chairman and later its President. He was an elected member of the 1973 Stormont Assembly and joint whip to the Power Sharing Administration of 1974. He was again elected to the Constitutional Convention in 1975 and was for some years a Belfast City Councillor. For some years he was deputy Party Leader at the end of his working life - Master.

Basil qualified as a solicitor in 1950. He was for a period a partner in the firm of Glass & Lavery and later set up his own practice as Basil Glass & Company. He became a household name in the profession due to his hard work, his knowledge of the law and perhaps more importantly his reliability. Basil’s word was his bond. Colleagues relied on him. Basil had the law and practice of insolvency at his fingertips because he made it his job to learn it. He expected all lawyers appearing before him to know the law and perhaps more importantly his reliability. Basil’s word was his bond. Colleagues relied on him. Basil had the law and practice of insolvency at his fingertips because he made it his job to learn it. He expected all lawyers appearing before him to know the law.

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High Court, Court of Appeal and Tribunal Decisions

**IN THE MATTER OF AN APPLICATION BY C, A MINOR, BY HER MOTHER AND NEXT FRIEND FOR JUDICIAL REVIEW**

Application for judicial review of a decision of the Principal of Mearscull Feirste school detaining applicants for stealing and being involved in stealing school property. - conflict of evidence in proceedings. - whether there was adequate investigation and communication by school. - whether disciplinary procedures and penalties were adequate and reasonable. - whether applicants had legitimate expectation of right of appeal. - HELD that no grounds for judicial review were established and applications dismissed

HIGH COURT
28 SEPTEMBER 2005
WEATHERUP J

**IN THE MATTER OF AN APPLICATION BY STEPHEN CORR FOR JUDICIAL REVIEW**

Construction Industry Scheme. - Sub-Contractors’ Tax Certificate (STC). - application for judicial review of decision of General Commissioners of Income Tax rejecting applicants’ appeal against decision of Inland Revenue refusing the applicant on STC. - whether there was procedural irregularity in that a written submission prepared by the Inland Revenue was allegedly furnished to the Tribunal without notice to the applicant. - whether Tribunal had erred and failed to give reasons for dismissal of applicants’ appeal. - whether decision unreasonable. - HELD that decision of Tribunal quashed on the basis of procedural irregularity and appeal ordered to be reconsidered by differently constituted Tribunal

HIGH COURT
21 SEPTEMBER 2005
WEATHERUP J

COUNCIL FOR THE REGULATION OF HEALTH CARE PROFESSIONALS V THE NURSING AND MIDWIFERY COUNCIL AND CLAIRE MCCONNELL

Order sought that decision of Professional Conduct Committee of the Nursing and Midwifery Council made in relation to respondent that no further action should be taken be substituted by an order that she be cautioned, or alternatively her case be remitted with directions for disposal. - circumstances and means by which a person may be removed from the professional register. - respondent found guilty of misconduct in her failure to maintain proper and accurate health visiting records. - whether Professional Conduct Committee decision was unduly lenient in not imposing a penalty and that members of the public required better protection. - HELD that the decision on penalty is manifestly inappropriate and unduly lenient, decision quashed and remitted to the PCC for reconsideration on penalty

HIGH COURT
25 OCTOBER 2005
WEATHERUP J

GRANSHA HOSPITAL AND STAFF SOCIAL CLUB V DAVID CANNING AND JOSEPH MONTEITH TRADING AS MC CONSTRUCTION AND JT CROTHERS

Application pursuant to o.16 r.2 giving leave to first named defendant to issue third party notices joining proposed third parties in their defence of the third party proceedings had already occurred prior to the delivery of the defence and defendants permitted to issue third party notice against proposed third parties

HIGH COURT
1 JUNE 2005
COGHLIN J

VICTOR MALLEN V DEPARTMENT FOR REGIONAL DEVELOPMENT

Negligence and nuisance. - failure to maintain road and grating in breach of art. 8 Roads (NI) Order 1993. - applicant stepped on uncovered gully and fell, sustaining personal injuries. - whether accident happened as alleged by applicant. - HELD that Department had made out statutory defence available to it, and action dismissed

HIGH COURT
14 OCTOBER 2005
DEENY J

IN THE MATTER OF AN APPLICATION BY PETER NEILL FOR JUDICIAL REVIEW

Application for leave to appeal sentence for manslaughter of police officer operating stinger device. - murder conviction ... - whether judge took guilty plea into account. - whether discount for guilty plea was sufficient. - application dismissed

HIGH COURT
7 OCTOBER 2005
GIRVAN J

Anti-Social Behaviour Order. - challenge to validity of 2004 Order. - whether Secretary of State failed to give proper consent to draft legislation. - whether breach of section 8 of the Northern Ireland Act 1998. - duty to have regard to need to promote equality of opportunity. - whether duty broken. - NIO equality scheme. - whether breach of scheme. - investigation by ECNI. - whether ECNI report legally flawed. - whether ECNI had discretion to carry out investigation. - whether complaint to ECNI made by a party directly affected

HIGH COURT
28 SEPTEMBER 2005
WEATHERUP J

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

R V HENRY CHRISTOPHER MICHAEL MARLEY

Application for leave to appeal against conviction of causing death by dangerous driving, dangerous driving and driving whilst disqualified. - whether evidence was safe. - whether judge was wrong to have refused application to visit locus of the accident. - whether verdict unsafe. - whether judge was right in his refusal of a direction of no case to answer. - application for leave to appeal dismissed

COURT OF APPEAL
11 OCTOBER 2005
GILLENE J

GRANSHA HOSPITAL AND STAFF SOCIAL CLUB V DAVID CANNING AND JOSEPH MONTEITH TRADING AS MC CONSTRUCTION AND JT CROTHERS

Application pursuant to o.16 r.2 giving leave to first named defendant to issue third party notices joining proposed third parties to the action. - defective building works. - negligence make good detections plus loss of profits accrued while club was closed pending repairs. - third parties were personal representatives of deceased who was an architectural technician who prepared contract documents and administered the contract. - whether delay and prejudice resulting from death of deceased. - HELD that any prejudice accruing to the potential third parties, in their defence of the third party proceedings had already occurred prior to the delivery of the defence and

HIGH COURT
21 SEPTEMBER 2005
WEATHERUP J

R V WILLIAM JAMES FULTON, MURIEL GIBSON, RAIN LANDRY AND TALUTHA LANDRY

Application by prosecution seeking orders that undercover police officers give evidence screened from public, but not the defence or legal representatives, and that the officers retain their pseudonyms by which they are known to defendants. - tape recordings of conversations. - all officers except one still involved in undercover operations. - if identities and appearance were to be revealed, whether effectiveness and the effectiveness of further operations jeopardised. - whether personal safety of officers and their families would be jeopardised. - HELD that applications granted

CROWN COURT
6 OCTOBER 2005
HART J

R V MARTIN DOMINIC PATRICK PILUS HUME AND J O H N MARIE HUME

Application for third party disclosure orders which may assist defence. - allegations of sexual offences committed by accused. - prosecution's duty of disclosure of material obtained from third party disclosure applications. - whether documents should be produced to court or prosecution in order to decide whether disclosures should be made. - whether documents disclosed to the defence should also be disclosed to other parties. - HELD that if any of the documents fall to be disclosed they should be disclosed to both the prosecution and defence

HIGH COURT
10 OCTOBER 2005
DEENY J

R V CHARLES MALACHY OLIVER POLLOCK

Application for leave to appeal sentence for manslaughter of police officer operating stinger device. - murder conviction ... - whether judge took guilty plea into account. - whether discount for guilty plea was sufficient. - application dismissed

COURT OF APPEAL
27 OCTOBER 2005
KERR LC

R V RYAN QUINN

Manslaughter. - sentencing. - four years imprisonment. - guilty plea and previous good character

CROWN COURT
10 OCTOBER 2005
DEENY J

R V ROBERT JOHN BENSON YOUNG, LORRAINE YOUNG AND SUSAN FERGUSON

Order made restraining appellant from disposing of his assets. - appellant guilty of obtaining property by deception. - whether appeal was justified. - whether appeal was frivolous and vexatious. - whether grounds for appeal were not frivolous. - definitions of “property”, “amount that might be realised” and “realisable property”. - appeal dismissed

COURT OF APPEAL
11 OCTOBER 2005
GILLENE J

GRANSHA HOSPITAL AND STAFF SOCIAL CLUB V DAVID CANNING AND JOSEPH MONTEITH TRADING AS MC CONSTRUCTION AND JT CROTHERS

Application pursuant to o.16 r.2 giving leave to first named defendant to issue third party notices joining proposed third parties to the action. - defective building works. - negligence make good detections plus loss of profits accrued while club was closed pending repairs. - third parties were personal representatives of deceased who was an architectural technician who prepared contract documents and administered the contract. - whether delay and prejudice resulting from death of deceased. - HELD that any prejudice accruing to the potential third parties, in their defence of the third party proceedings had already occurred prior to the delivery of the defence and
High Court, Court of Appeal and Tribunal Decisions

IN THE MATTER OF AN APPLICATION FOR A JUDICIAL REVIEW BY TP A MINOR BY HIS FATHER AND NEXT FRIEND
Application for judicial review of decision of the Youth Justice Agency that applicant, while on remand at a Juvenile Justice Centre, be detained in the Intensive Support Unit for 5 months. - whether decision unlawful and in excess of powers of supervision and control conferred on the Agency by the Juvenile Justice Centre Rules (NI) 1999. - whether in breach of s.6 Human Rights Act 1998 and arts 5 + 8 ECHR. - whether Agency acted unreasonably. - HELD that Agency failed to advise applicant and his father about, or provide copies of, the Complaints and Representation procedure and that ongoing detention of applicant in ISU was not a proportionate response to threats originally made by applicant
HIGH COURT 29 SEPTEMBER 2005 WEATHERUP J

IN THE MATTER OF AN APPLICATION BY DAVID TWEED ON HIS OWN BEHALF AND ON BEHALF OF ALL OTHER MEMBERS OF DUNLOP LOL 496 FOR A JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE PARADIES COMMISSION FOR NORTHERN IRELAND
Application for judicial review of decision of the Paradies Commission’s determination that conditions should be imposed on organiser and participants of proposed public procession. - discovery of documents referred to in affidavit of Commission Chair. - whether principles applicable to discovery in judicial review proceedings were affected by the need to determine proportionality in respect of Convention rights. - whether discovery was in the interests of justice and necessary for fairly disposing of issues. - appeal against decision of Technical Tribunal. COURT OF APPEAL 7 SEPTEMBER 2005 KERR LCJ, CAMPBELL LJ, MORGAN J

EUGENE ANTHONY BEGGAN AND PATRICK MONAGHAN V MCALOON CONSTRUCTION LIMITED 269/05ST, 20 SEPTEMBER 2005, INDUSTRIAL TRIBUNAL
Whether claimants were contractually entitled to holiday pay for the Christmas period 2004. - claimants were represented by solicitor and instructed to accept paid annual leave when their employment ended in October 2004. - Tribunal did not have jurisdiction as claims were outside 3 months time limit. - Claims were dismissed
MARY GREW V THOMAS GILPIN T/A GILFRESH PRODUCE 37/03FET, 12 OCTOBER 2005, FAIR EMPLOYMENT TRIBUNAL
Applicant claimed constructive dismissal, religious discrimination, sex discrimination and victimisation. - applicant was the sole female opera and complained that bad language and sexual discussions made her uncomfortable. - applicant resigned due to stress. - Tribunal found no evidence of harassment and dismissed constructive dismissal. - claim of religious discrimination was established and was dismissed. - In respect of claim for sex discrimination tribunal found respondent unlawfully discriminated against a claimant and awarded the sum of £1861.00. - victimisation claim dismissed.
DOMINIC O'DOHERTY V SEAGATE TECHNOLOGY (IRELAND) LTD 234/G04T, 26 OCTOBER 2005, INDUSTRIAL TRIBUNAL
Unlawful deductions from wages. - whether claimant suffered unlawful deductions from his wages when the Respondent withheld contractual sick pay. - claimant had failed to notify the Respondent on a daily basis that he was unable to work as required by his terms and conditions of employment. - Tribunal found that claimant was aware of the procedure but failed to follow it. - Tribunal decided that respondent did not act unlawfully in withholding contractual sick pay and dismissed claim.
ROBERT PAUL V CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND
Unlawful, direct or indirect discrimination. - claimant was police inspector who was placed on the reserve list for recruitment of Chief Inspectors within the PSNI. - practice of “borrowing” of officers from the UK to help fill skills deficit in detective work left the claimant out of the pension scheme and affected his ability to retire. - claimant applied to attempt for post but told only transference from other police forces would be accepted. - whether this was discrimination on the grounds of national origin. - whether the respondent applied a condition to the claimant and if so, when such a condition or requirement was imposed. - whether condition was imposed other than to discriminate on prescribed grounds. - whether conditions were proportionate and necessary. - tribunal ruled that the claimant was unlawfully discriminated against by the respondent on the grounds of national origins and application dismissed. - respondent ordered to pay claimant £750 costs

Library Update

Recommended Reading

PYE AND ADVERSE POSSESSION

Caselaw

Mary Grew V Thomas Gilpin T/A Gilfresh Produce 37/03FET, 12 October 2005, Fair Employment Tribunal


A search for compatibility with Convention rights (comments on the Beaulane case and the doctrine of adverse possession).

Why not find out more about the new legislation in the Library?

Legislation

European Convention on Human Rights 1950 Protocol 1 Article 1
http://www.hrl.org/docs/ECHR50.html

Protocol 1 – Enforcement of certain Rights and Freedoms not included in Section I of the Convention

ARTICLE 1
Every natural or legal person is entitled to the peaceful enjoyment of his property.

The preceding provisions shall not, however, in any way impair the right of

1. the State to expropriate or nationalise property and to fix the indemnification on conditions that shall be determined by law; and

2. the State to exercise restrictions in the interests of public order or public health in the cases provided for by law.

A search for compatibility with Convention Rights (comments on the Beaulane case and the doctrine of adverse possession). Williamson: 2005, EG, 0518, 143

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Missing Wills

Re: Andrew Hanna (deceased)
Late of: Hillview, Knockshallet, County Antrim
Date of death: 18 November 1964
Would any person having knowledge of the whereabouts of the Will for the above-named deceased please contact:
Leo P. McKee
Campbell McKee Solicitors
19 High Street
Ballymoney BT53 6AH
Tel: 028 2766 6698

Re: Margaret Elizabeth Kenolty (deceased)
Late of: 11 Beechfield Court, Belfast
Date of death: 11 Beechfield Court, Belfast
BTS 4DY
Would any person having knowledge of the whereabouts of a Will made by the above-named deceased please contact:
Aidan McGrenaghan
Sheridan & Leonard Solicitors
25 Fountain Street
Antrim BT41 4BG
Tel: 028 9442 8271

Re: James McKeown (deceased)
Late of: 18 Recreation Road, Larne,
Date of Death: 13 November 2005
Would any person having knowledge of the whereabouts of any Will for the above-named deceased please contact:
Maureen McGarel
MacAllister Keenan & Co Solicitors
20 High Street
Larne County Antrim BT40 1HA
Tel: 028 2827 8844
Fax: 028 2826 0004

Re: Thomas Haggan (deceased)
Late of: 18 Bengore Gardens, Larne,
County Antrim BT40 2AW
Date of Death: 22 October 2005
Would any person having knowledge of the whereabouts of any Will for the above-named deceased please contact:
Maureen McGarel
MacAllister Keenan & Co Solicitors
20 High Street
Larne County Antrim BT40 1J N
Tel: 028 2827 8844
Fax: 028 2826 0004

Re: Catherine Brimelow (deceased)
Date of death: 16 February 2005
Would any person having knowledge of the whereabouts of the original Will of the above-named deceased dated 24 December 1979 or any information as to the particulars of any subsequent will or codicil please contact the undermentioned Solicitors:
Reavey & Company Solicitors
Castle House
4-6 Castle Street
Caricdargus BT38 7BE
Tel: 028 9335 5535
Fax: 028 9335 5588

Re: Albert Mitchell Ferris (deceased)
Late of: 49 Glenbank Drive, Ballysillan,
Date of death: 14 October 2005
Would any person having knowledge of the whereabouts of a Will of the above-named deceased please contact:
Aidan McGrenaghan
Sheridan & Leonard Solicitors
25 Fountain Street
Antrim BT41 4BG
Tel: 028 9442 8271

Re: William John Davison (Deceased)
Registered Owner:
Antrim
County:
1961 SDL
Folio:

Re: Catherine Brown (nee) Preston (deceased)
Late of: 33 Burnside Avenue, Saintfield
Road, Belfast BT6 6HW
Date of death: 10 October 2005
Would anyone holding a Will for the above-named deceased or any knowledge of the whereabouts of the same, please contact:
Keenan Solicitors
54 Knockbreda Road
BELFAST BT6 0J BTel: 028 9049 3349
Fax: 028 9049 3500

Re: James McKeown (deceased)
Late of: 18 Recreation Road, Larne,
Date of death: 13 November 2005
Would any person having knowledge of the whereabouts of any Will for the above-named deceased please contact:
Maureen McGarel
MacAllister Keenan & Co Solicitors
20 High Street
Larne County Antrim BT40 1HA
Tel: 028 2827 8844
Fax: 028 2826 0004
Folio: AR 16893
County: Armagh
Registered Owner: Edward Duffy (deceased)
Address of Premises: Lands at Faughiletra Mountain
Notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.
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 the publication of this notice, a duplicate Land Certificate may be applied for for:
Paul M Graham & Co
70 Andersonstown Road
BELFAST BT11 9AN
Tel: 028 9060 3223
Fax: 028 9060 2678
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 the publication of this notice, a duplicate Land Certificate may be applied for:
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36 Benson Street, Lisburn
County: Down
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Richard George Cadden & Sharon Ann Cadden
32 Castle Park, Eglinton, County Londonderry
County: Londonderry
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Philip J Smith & Co
1A Lisburn Avenue
BELFAST BT9 7FX
Tel: 028 9039 1722
Fax: 028 9039 1722
Take notice that any person having custody of or information as to the whereabouts of the Title Deeds to the premises situated at 194 Stockman’s Lane, Belfast, Please contact:
Fitzsimons Kinney Mallon Solicitors
6 J ohn Mitchell Place
Newry
County Down
BT34 2BP
Tel: 028 3026 2269
Fax: 028 3026 5660
Take notice that any person having custody of or information as to the whereabouts of the Title Deeds to the premises situated at 194 Stockman’s Lane, Belfast, Please contact:
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6 J ohn Mitchell Place
Newry
County Down
BT34 2BP
Tel: 028 3026 2269
Fax: 028 3026 5660
The Elliott-Trainor Partnership
3 Downshire Road
Newry
County Down
BT34 1ED
Tel: 028 3026 8116
Fax: 028 3026 9208
Notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the undermentioned Solicitors.
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 the publication of this notice, a duplicate Land Certificate may be applied for:
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3 Downshire Road
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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 the publication of this notice, a duplicate Land Certificate may be applied for:
Maura Mclroy
253 Finaghy Road North, Belfast
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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 the publication of this notice, a duplicate Land Certificate may be applied for:
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For a free consultation/quotation or further information contact;

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