

# THE WRIT



JOURNAL OF THE LAW SOCIETY OF NORTHERN IRELAND

## Institute Expansion Marks Anniversary

**On 4th February 2002 the Institute of Professional Legal Studies celebrated its 25th Anniversary with the opening of a new extension to its existing premises at Lennoxvale.**

The extension was formally opened by President Mary McAleese, a former Director of the Institute, who unveiled a commemorative plaque in the new lecture theatre.

The extension to the Institute premises includes a new lecture theatre, three seminar rooms and an Information Technology suite.

The new seminar rooms, in common with the existing accommodation, are equipped to allow video recording of trainees, a much used facility in skills courses such as Advocacy.

The new IT suite will enable trainees to improve both their IT skills and Legal Research Skills. It will also provide a vehicle for new opportunities in computer based learning.

The opening was also attended by the Queen's University Belfast

Vice-Chancellor, Professor Sir George Bain who said "This major investment by the University reflects the value which Queen's places upon vocational legal training and its importance to society at large."

In the evening the President returned as guest of honour at a dinner to celebrate the 25th Anniversary in the Great Hall at Queens. The President was welcomed by Lord Justice Campbell, Chairman of the Council of Legal Education, who spoke, not only of the development in the fabric of the Institute over the past 25 years, but also of the developments in legal education. The President pointed to the unique strategic position in which the Institute now finds itself to face the



Photograph supplied by Brian Morrison

*President McAleese unveils plaque at the official opening ceremony*

challenges of legal education in the 21st Century.

The dinner was attended by 160 guests including the Attorney General, Lord Goldsmith and James Russell, a former Director. The evening was also a tribute to the many members of the Judiciary and legal profession who give of their time and expertise to assist in the teaching and development of legal education and with whose continued support the Institute can look forward to the next exciting and challenging 25 years.



Photograph supplied by Media Services QUB

*Sir George Bain, Dr Martin McAleese, President McAleese and Director Anne Fenton*

*President McAleese addresses the assembled guests*



Photograph supplied by Media Services QUB

*President McAleese talking to the Attorney General, Lord Peter Goldsmith, QC*



Photograph supplied by Brian Morrison

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# ATTENTION ALL PROSPECTIVE MASTERS

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

A student must, in order to take up his/her Institute place, register with the Society by 19th August 2002. This is the final date for registration and will not be extended. Those students who do not register by then will be unable to take up their place at the Institute.

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

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

If you have -

1. practised as a solicitor for at least 7 years, and
2. been a principal for at least 3 years, and
3. are willing to act as a master for the 2 year term commencing September 2002.

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

At present the minimum wage for apprentices is as follows:

(a) for the first 16 months of the apprenticeship £165.00 per week.

(b) for the last 8 months of the apprenticeship £195.00 per week.

(c) During the Institute term, when the apprentice is in his/her master's office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £33.00 per week).

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

## MASTERS 2002/2003

I confirm that I am interested in acting as a master as and from September 2002 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master \_\_\_\_\_

Name of firm \_\_\_\_\_

Date \_\_\_\_\_

# PRESIDENT'S NOTES

*"When something goes wrong,  
I'm the first to admit it,  
but the last one to know.  
When something goes right,  
It's apt to confuse me  
It's likely to lose me  
It's such an unusual sight"*  
(Paul Simon)

*"All of life is three to one against"*  
(Damon Runyon)

Damon Runyon was an American, as is Paul Simon, and they may not have heard of "Murphy's Law", but they both articulated it well. Although we may not quite share their pessimism, as solicitors we need no introduction to the principle. We have all met the case in which nothing would go right and the client whom nothing would please indeed, they usually seem to coincide.

In the normal run of things we do the best we can and get through the matter somehow, even if we have to forego any gratitude from the client, or our fee, or both. Occasionally, though, it's more serious than that and there may be a suggestion of negligence. That is when it is important to remember some basic principles:

- If you are in a hole, don't keep digging. The Society has encountered some sad situations recently, where a difficult but possibly soluble problem was allowed to become a total disaster because the solicitor seemed to think that somehow or other by ignoring ordinary procedures the original problem (which had itself been caused in that way) might magically cure itself.
- You can't be objective about your own worst problems. Talk to a colleague about them. If you are a sole practitioner, talk to a friend in the profession.
- As soon as it is clear that there

may have been negligence, or that negligence may be alleged, notify the Master Policy brokers. There are very few situations they haven't seen and they will treat you with respect and sensitivity. They always prefer to know sooner rather than later, and indeed if you don't notify early you may put your cover at risk

Of course, prevention is always better than cure, and we should all spend time constantly reviewing our risk management procedures. May I again commend the Society's Lexcel scheme. Having gone through the process in my own firm last year of obtaining accreditation, I can confirm that it is definitely worth doing. Yes, it is hard work; yes, some of the requirements can be a little irritating; and no, having Lexcel does not guarantee that you will never make a mistake. What it does do is standardise all your office procedures in accordance with generally recognised best practice. In golfing terms (sorry, one of many weaknesses), you can have great technique and practice assiduously but still hit the odd bad shot; however you considerably improve your chances of a reasonable round. As Gary Player once famously said, "The more I practice, the luckier I get". More and more firms are turning to Lexcel, and there is now the added incentive of reduced PI premiums for any firm with a recognised quality standard accreditation.

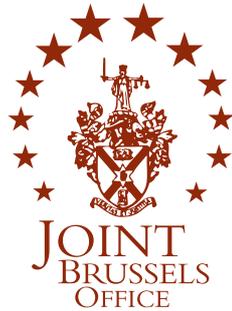
It has been a busy few weeks for the Society. As you now know, the immediate crisis in Legal Aid funding has been averted, although it remains to be seen if the Government will fund the Scheme adequately for the future. The Justice (Northern Ireland) Bill is making its way through Parliament, and a deputation from the Society was received by the Northern Ireland Office, when we were able to reiterate



some of the remaining concerns we have about the Bill. The Northern Ireland Office has also, belatedly, met us to hear face to face the well-documented reasons for our absolute opposition to the core of proposed new criminal injuries procedures, the tariff system, which had also been rejected by the Assembly - more about this later, but it appears that the Government is determined to push the changes through, regardless of local opposition. We have alerted both MLA's and Northern Ireland MP's to the dangers.

Our Human Rights Committee has met with the N.I. Human Rights Commission to discuss the latter's draft Bill of Rights, and the Remuneration Committee has met with the Taxing Master to discuss several matters of concern to the profession. We have held our first-ever joint seminar with the Ulster Society of Chartered Accountants, on intellectual property; this was very well attended, as was the first of a series of presentations under the auspices of InterTrade Ireland supported by the Society, the Law Society of Ireland, the Ulster Society of Chartered Accountants and the Society of Chartered Accountants in Ireland. I had the privilege of attending the annual meeting of the Presidents and Chairmen of the Law Societies and Bar Councils of Europe and we have also had the annual visit to Northern Ireland of young lawyers from all over Europe as part of the British Council's scheme. And, needless to say, the unsung work of all our committees continues.

**Alan Hewitt**  
President  
Law Society of Northern Ireland



## NEWS FROM THE BRUSSELS OFFICE

The Northern Ireland Executive opened an office in Brussels at the end of January, enabling the region to be able to engage more effectively in dialogue with the rest of Europe.

Michael Barnier, Commissioner responsible for regional policy, opened the office which is one of about 200 representations of European regions. Northern Ireland will receive more than EUR 1.4 billion from the Union's Structural Funds between 2000-2006. This will be allocated through initiatives such as

- **EU Programme for Peace and Reconciliation**  
Granting special support to the Northern Ireland border region for the benefit of groups and communities which have been affected by conflict
- **EU Urban Programme**  
Renewing physical and social resources in an area of Inner North Belfast suffering severe deprivation
- **INTERREG Programme**  
Focusing on local development, infrastructure and environment projects for the area along the border covering a population of 1.1 million
- **LEADER Initiative**  
Providing funding for rural areas
- **EQUAL Initiative**  
Providing funding for labour markets

*Further details or copies of any of these documents can be obtained from the library.*

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# WEB WATCH

Large files to the lawyer usually means lots of work done and a fat fee to come. To those of us who rely on email they often mean slow download times and that hefty data may be attached to an email. The attachment may be work related. Often it is not but conveys a joke or a message such as a birthday or Christmas greeting.

One such file sent out last December from a number of different sources including a law firm in Ireland allowed recipients to click on parts of a virtual Christmas producing snow, lights on a tree and then Santa himself. Although fun to play with, the file was half a megabyte in size which means that two were almost large enough to fill a floppy disk. Such files over a standard dial up Internet connection can lead to a wait of many minutes before it downloads and it is impossible to access other important emails queuing up behind it.

"Netiquette" is Internet etiquette, the do's and don'ts of communicating on-line. It covers both common courtesy online and the informal "rules of the road" in cyberspace.



One rule of Netiquette is that you should not normally send files of larger than 50 Kilobytes (roughly equivalent to a 15 page word document) unless you have first checked that it is okay to do so with the intended recipient. This rule should rarely present difficulties. Large files can become small files if cut into segments and sent with separate emails. Word documents and many other file types can also be compressed by using Winzip and converted into sizes often 5 to 10 times smaller than their original state.

Unsolicited emails with large attachments such as those mentioned above are a common source of viruses and are often immediately deleted unopened by many recipients. Where they block the supply of email into an office altogether, the Internet Service Provider should be asked to delete the offending email at an earlier stage of its journey. Sometimes this can be done by going to web sites such as mail2web.com which permits users to intercept their pop3 email through the world wide web.

Netiquette, data management, zipping and storing files and a host of techniques guaranteed to ensure effective use of the Internet will feature in a plenary session of this year's seminar "Law Firms - Getting the Most from the Internet". This is a not-to-be missed event for all those legal eagles looking to get the most from email and the world wide web. Details available at [www.legal-island.com](http://www.legal-island.com)

## 'INTELLECTUAL' SEMINAR BRINGS SOCIETIES TOGETHER FOR THE FIRST TIME

The Law Society of Northern Ireland and the Ulster Society of Chartered Accountants held a first ever joint event at W5 recently. The seminar, attended by over 90 Chartered Accountants and Solicitors, examined the issues around the identification and protection of intellectual property rights.

It was the first step in what is hoped can become a series of joint events between the two Societies. The Ulster Society and Law Society have also issued a 44-page joint booklet on the issue entitled 'Recognising Intellectual Property'.

*(A complementary copy is enclosed with this magazine)*

Alan Hewitt, President of the Law Society of Northern Ireland said: "The concept of intellectual property is not new, but in recent years it has received much greater recognition. The emergence of the knowledge economy and its significance for many individuals and companies has made it imperative that intellectual property should not be overlooked."

John Hansen, Chairman of the Ulster Society of Chartered Accountants said: "We're delighted to jointly host this seminar and issue this useful booklet on the issue of intellectual property. The reaction to this first joint event has been magnificent and we hope to develop closer links between the two societies which will be beneficial for us all."



*Pictured at the historic joint first meeting are (from left) Roisin McNally, Murgitroyd and Co., speaker at the event; Alan Hewitt, President, Law Society; John Hansen, Chairman,*

*Ulster Society of Chartered Accountants; and Alan Taylor, Carson McDowell Solicitors who spoke at the seminar.*

BELFAST SOLICITORS



ASSOCIATION

# BSA Seminar Programme

## March

### Risk Management for Conveyancers

At Law Society House on Friday 22nd March from 12.30pm to 2.00pm  
By Mr Donald Eakin of Macauley & Ritchie Solicitors  
1 hour CPD

## April

### Recent Developments in Alternative Dispute Resolution (ADR)

At Law Society House on Friday 19th April from 12.30pm to 2.00pm  
By Mr David Gaston of Gaston Graham Solicitors & Mr Brian Speers of Carnson Morrow Graham Solicitors  
1 hour CPD

## May

### Whiplash Injuries

At Law Society House on a date to be confirmed from 12.30pm to 2.00pm  
1 hour CPD

## June

### Occupational Stress Claims

At Law Society House Thursday 20th June from 12.30pm to 2.00pm  
By Mr David Ringland QC  
1 hour CPD

The cost of each lecture will be £10.00 for members of BSA and NIYSA and £20.00 for non-members.

A light lunch is available from 12.30pm onwards, included in this price.

## Booking Form

Name \_\_\_\_\_ Firm \_\_\_\_\_

Tel \_\_\_\_\_

Lecture(s) \_\_\_\_\_

Enclosure \_\_\_\_\_

Suggestions for further lectures \_\_\_\_\_

*Booking forms and cheques should be sent to BSA c/o Karen Henebry of Cleaver Fulton & Rankin, 50 Bedford Street, Belfast*

## BSA Practice Management and Client Care Seminar

At the Wellington Park Hotel on Saturday 28th September 2002.

- 9.00-9.30** Registration and coffee
- 9.30-10.30** Risk Management and how to avoid the Pitfalls.  
By Mr Tom McGrath of Marsh (UK) Ltd.
- 10.30-11.15** Complaint Handling Procedures  
By Mr Gary Millar
- 11.15-11.30** Coffee
- 11.30-12.30** Cost Effective Practice Management  
By Jeremy Harbinson of Harbinson Mulholland

Attendance at this seminar will qualify for 3 hours CPD.

## Booking Form for Practice Management seminar

Name \_\_\_\_\_

Firm \_\_\_\_\_

Tel \_\_\_\_\_

Enclosure \_\_\_\_\_

# Belfast Solicitors Association Annual Subscription Notice

Membership of the Association is open to those Solicitors practising in the Greater Belfast area and subscription notices will shortly be sent out to individual solicitors. However in the interim those Solicitors wishing to join or renew membership may do so now by completing and returning the form below to the Association's Honorary Treasurer, Martin Mallon (details set out below).

**Annual Subscriptions for 2002 have been fixed as follows :-**

- £7.00 for any Solicitor enrolled on or after 1st January 1998
- £15.00 for any Solicitor enrolled prior to 1st January 1998
- Corporate membership is available for £100.00 for five members, and thereafter £10.00 per person. Thus a six person corporate membership would cost £110.00 etc.
- Associate membership is open to any Pupil Solicitor at a Subscription of £7.00

*I/We enclose £ \_\_\_\_\_ for my/our 2002 subscription(s)*

*(Please make all cheques payable to "The Belfast Solicitors' Association")*

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

**OR**

***We wish to have corporate membership of the following person :-***

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

*Please forward all subscriptions to :- Martin Mallon, Honorary Treasurer,  
Belfast Solicitors' Association  
Clo Fitzsimmons Kinney & Mallon, Solicitors, 56 University Street, Belfast,  
BT7 1HB*

## Assoc. of Family Solicitors for Children

### Lunchtime Seminar

**Child Protection and  
Alcohol Abuse -**

**Assessment and Impact of  
Alcohol Abuse  
In Children Order Cases**

**Thursday 7th March 2002 1pm**

**Venue: Law Society House**

Tea and Coffee served from 13.30  
noon

**Speaker: Alan Tate BSC M. Med. Sc  
Dip.SW**

**Fee: £10 payable to AFSC**

**Please contact: (Secretary)  
Claire Doherty McCann and  
McCann Solicitors  
10 Royal Avenue Belfast  
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**BELFAST SOLICITORS**



**ASSOCIATION**

# CONTINUING PROFESSIONAL DEVELOPMENT

When did you qualify? Was it after January 1992, if so then Continuing Professional Development (CPD) applies to you. By the end of this year you will have taken part in 15 hours of CPD. A minimum of ten of these hours must be in group study. Of these ten hours, at least three must be devoted to client care and practice management.

We in the Belfast Solicitors' Association, mindful of the needs of the recently qualified members of our Association, while also offering a service to all members of our Association, have put together, we feel what is a diverse, eclectic and interesting series of lunchtime lectures for 2002.

In addition we have planned a Saturday morning seminar and lecture in the Wellington Park Hotel, Belfast on 28th September 2002 from 9.00 a.m. to 12.30 p.m. The broad topic being covered will be:

"Client Care and Practice Management".

Within this seminar we will be covering:

- Risk Management for Solicitors;
- Complaint Handling Procedures; and
- Cost Effective Practice Management.

We are also very fortunate for each of these topics to have secured the involvement of speakers with a particular and specific insight into their area of discussion.

Booking forms for all of the lectures

can be found on page 6. From September - December we will be arranging further lectures on areas of interest to the Profession. If there are any gaping holes in the available lectures let us know and we will see what we can do.

Now the more astute amongst you will have realised that by attending seven of our lunchtime lectures and our September Saturday seminar you will have complied with the group study aspect of your CPD obligations for 2002

You having done your part we will then do ours. In case you are one of the unlucky 5% whose CPD record card is selected by the Law Society for monitoring we will keep our records available for inspection by the Law Society. In so doing those who do actually attend our lectures and seminars will readily illustrate their compliance with their CPD requirements.

Places on all of our lectures and seminars are limited, so don't delay; complete the Booking Form now for the lectures in your areas of interest.

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# BSA Annual Dinner

(L - R) Henry Toner QC, Bar Council, Maureen Bell, Chair of the NI Young Solicitors, Stephen Andress, Chairman of the BSA, Helen Sheehy, President of the Dublin Solicitors Bar Association.



(L - R) John Leith, President of the Liverpool Law Society, Stephen Andress, Chairman of the BSA, Alan Hewitt, President of the Law Society of NI, James Cahill, President of the Mayo Bar Association.

The BSA Annual Dinner Dance was held at the Culloden Hotel on Saturday 19th January 2002. The always popular event was attended by over 300 members and guests some of whom are pictured below.



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\* The FSA does not regulate this product.



*By Brian E Doherty*

### PROTECTION OF WILD BIRD SPECIES

The Commission has issued a reasoned Opinion in respect of the alleged failure to comply with the Wild Birds Directive. It alleged and has failed to classify all the most suitable territories for various species and to establish appropriate special protection areas for them.

### FULL SCALE CHALLENGE TO MOX PLANT

The International Tribunal for the Law of the Sea, despite not granting interim relief to Ireland has however found that Ireland does have a prima-facie case to argue against the plant which is intended to manufacture new nuclear fuel loads from spent uranium. In addition to pursuing that case Ireland is maintaining a parallel legal action under the OSPAR Convention claiming the UK has refused to release sufficient safety information regarding the plant.

### NITRATE POLLUTION

Both the UK and Ireland are accused of continuing not to implement the Nitrate Directive fully. The European Commission has threatened to withhold large scale subsidies up to 1.95 billion from Ireland unless it establishes nitrate vulnerable zones and poses controls on stocking levels in slurry and fertiliser spreading.

### HEATHROW NOISE HUMAN RIGHTS FINDING

The European court has found against UK regarding the extension of night flights and the resulting noise which, the court has held, breaches the right individuals in the vicinity of the airport to a peaceful and quiet family

life. In particular, the court found that the processes of investigation of the extent of the nuisance to residents was not sufficient to fulfil the requirements of the directive. One judgement dissented from this view, and it is understood that the case may now be brought before the Grand Chamber for a reconsideration.

### BREHON LAWS: RESTORATIVE TO JUSTICE

At a recent Brehon law conference in Dublin one speaker indicated that the roots of the modern restorative to justice system is in the Celtic tradition and the Brehon law in particular Ms Justice Denham, whilst acknowledging that Brehon law was not part of the general law of the land in Ireland presently, nevertheless indicated that there were similarities in the currently attempted move to a paperless environment as a result of the use of information technology. Brehon law courts were paperless because of their reliance of an oral

tradition. Further, replacing judicial wigs and gowns with judicial robes might also be said to be inspired by the Brehons of Ireland.

### OPENING UP OF EUROPEAN CAR MARKET

The European Commission is proposing bold changes in car distribution throughout the EC. These are intended to increase competition allowing dealers, including those on the internet, to compete for customer across Europe. The current existing regime is protective of the industry from the full rigours of European Competition Law. It expires in September 2002, and is not expected to be replaced in anything like the same form.

### ADVERTISEMENT

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# Cross-Border boost for Business

The business community in Northern Ireland and the Republic could be doing more to improve their cross-border business activities a senior representative from InterTradelreland said last week.

Paddy Savage, who is the Operations Manager at InterTradelreland, was speaking before the first of a series of North / South Business Forums to be held across the island over the next few months. The initial event took place in Newry on Wednesday, February 13th, chaired by Martin Naughton, InterTradelreland's Chairman. Other events scheduled are:

**Wed March 6 2002**  
**Everglades Hotel, Derry**

**Tues March 12 2002**  
**Sligo Park Hotel, Sligo**

The North / South Business Forum represents a unique collaboration between InterTradelreland and the Institute of Chartered Accountants of Ireland, the Ulster Society of Chartered Accountants, and the Law Societies of Northern Ireland and Ireland. Mr Alan Hewitt, President represented The Law Society of Northern Ireland at the Newry event.

The Forum is targeting SMEs and those who act as professional advisors to businesses, including lawyers and accountants. The aim is to raise awareness of the opportunities, advantages, pitfalls and barriers involved with trading in the other jurisdiction on the island.

Mr Savage commented:

"The North / South Business Forum is specifically designed with the needs of businesses in mind. Real business opportunities exist in both parts of the island and InterTradelreland wants to facilitate their development.

Companies shouldn't feel constrained about doing business in the other part of the island, and the North / South Business Forum will provide them with practical advice on how to

achieve this."

A range of experts from B.D.O. Stoy Hayward, Cleaver Fulton Rankin, KPMG, FPM Chartered Accountants and Matheson Ormsby Prentice are available at these events to share their knowledge and answer queries on subjects such as corporate/personal tax, corporate/employment law, financial incentives, VAT and indirect taxes.

In addition Mr Savage said:

"InterTradelreland has undertaken in-depth research into this area and found that there is a lack of awareness among some businesses about the potential to market their services in the other part of the island.

Although the level of trade between north and south is growing, the scope for improvement is enormous.



*Pictured are Alan Hewitt, President Law Society of Northern Ireland, Liam Nellis, Chief Executive Intertradelreland and Martin Naughton, Chairman InterTradelreland*

InterTradelreland's remit is to facilitate trade across the island through the dissemination of relevant business knowledge and the North / South Business Forum represents one element in our strategy to achieve that."

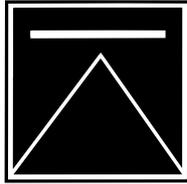
Those wishing to attend any of these events should contact InterTradelreland's Nicola McGuinness on 028 3083 4154 or e-mail [nicola.mcguinness@intertradeireland.com](mailto:nicola.mcguinness@intertradeireland.com)

## Solicitors' Benevolent Association

NOTICE IS HEREBY GIVEN that the one Hundred and Thirty Eighth Annual General Meeting of the SOLICITORS' BENEVOLENT ASSOCIATION will be held at the Law Society, Blackhall Place, Dublin 7 on Friday 12th April 2002 at 12.30 p.m.

1. To consider the Annual Report and Accounts for the year ended 30th November 2001.
2. To elect Directors.

To deal with other matters appropriate to a General Meeting.



NORTHERN IRELAND  
YOUNG SOLICITORS ASSOCIATION

## NIYSA EASTER DISCO

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Thursday 28th  
March 2002



9.00pm ~ to late

Admission £5.00

## Society of Young Solicitors Ireland *and* Northern Ireland Young Solicitors Association Spring Conference 2002

8th - 10th March 2002 at Faithlegg, House Hotel, Waterford.

### Friday 8th March

*Saturday afternoon & evening*

- |               |   |
|---------------|---|
| 13.00         | ACTIVITIES  |
| 19.30 - 20.00 | DRINKS RECEPTION  |
| 20.00 - 21.30 | Registration<br>Health Centre, Golf, Walking, Fishing, Tennis, Cycling. |
| 21.00         | Welcome in Hotel Bar  |

### Saturday 9th March

Morning Sessions

#### Guest Speakers

1. Kevin Langford, Arthur Cox, "Bullying and Harassment in the Workplace"
2. Eoin Dee, Nolan Farrell & Goff, "Discovery"
3. Patrick Harney, Matheson Ormsby Prentice, "Tax and Property Transactions"
4. Neil Faris, Cleaver Fulton & Rankin, "UK Human Rights"

20.00 till late BANQUET and DJ. (black tie)

### Sunday 10th March

12.00 Brunch & Goodbyes

### ADVERTISEMENT

## Education and Library Boards for Northern Ireland Application for inclusion on a panel of Personal Injury Solicitors 2002 - 2005

Tenders are invited from qualified Solicitors for inclusion on a Panel of Personal Injury Defence Lawyers to be retained by the five Education and Library Boards for Northern Ireland for a period of three years (with a possible extension for a further two year period). Estimated start date September 2002.

#### ELIGIBILITY:

A firm will be eligible for appointment to the Panel if they satisfy all of the following criteria:

1. At least two solicitors (admitted to the Roll of Solicitors in Northern Ireland) must be working in the Firm (including any employed solicitors)
2. One of those solicitors must have acted for defendants in personal injury litigation, including employer's liability claims (both High Court and County Court) as a predominant (more than 50%) part of his/her workload for at least five years (or for periods in aggregate, amounting to five years). That solicitor must be nominated as the "Designated Solicitor" for the purposes of the Panel.
3. Another solicitor in the firm must have acted for defendants in personal injury litigation including employer's liability claims (both High Court and County Court) as a substantial (more than 25%) part of his/her workload for at least three years (or for periods in aggregate amounting to three years).
4. The firm's principal or one of the principals must have been in practice as a principal on his/her own account for at least five years.

Further details and tender forms are available on request and on payment of a deposit of £100.00 (returnable on receipt of a valid tender) from The Chief Executive, North Eastern Education and Library Board, County Hall, 182 Galgorm Road Ballymena BT42 1HN. Cheques should be made payable to North Eastern Education and Library Board and crossed "not negotiable".

The closing date for full tender submission will be 4.00 p.m. on 22 March 2002. The Board does not bind itself to accept the lowest or any tender.

# NIYSA & BSA lunchtime Lecture Series

*"Risk Management for Conveyancers"* by Donald Eakin

Wed 20th March 2002 at 12.30pm till 2.00pm

**Members:** (BSA & NIYSA) £10  
Others £20

**Venue:** Law Society House  
Refreshments available at 12.30 pm  
Cheques and bookings to BSA c/o Karen Henebry of Cleaver Fulton & Rankin, 50 Bedford Street, Belfast, k.henebry@cfrlaw.co.uk

## Booking Form

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Tel: \_\_\_\_\_

Number of persons attending: \_\_\_\_\_

Enclosure: \_\_\_\_\_

### ADVERTISEMENT

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### ADVERTISEMENT

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(Partner)

We are pleased to announce our

# Mid Summer's Ball

Friday 7 June 2002

Ramada Hotel,  
Shaw's Bridge, Belfast

Further details to follow

## Risk Management

ADVICE

# Laid Back or Slack?

Keith thought he had a good rapport with his staff. He tried to adopt a light-hearted approach and didn't want to appear to be breathing down their necks. He worked on the basis that they would come and ask him if they didn't know what to do.

As a busy criminal practitioner, he wasn't in the office much and, although his mobile phone was turned off when he was in court, everyone had his number. He made a point of telling staff 'my door is always open - you can come and see me any time'. He prided himself on running a friendly, informal practice.

Keith's assistant solicitor Marion could have told a different story. She was often the only fee earner in the office, and found that she was fielding all the queries from support staff. Sometimes she thought she was taking on too much responsibility. At other times she took the view that Keith was not delegating work to her because he simply didn't know what she was capable of doing. He rarely had time to read her letters or review her files.

When Keith wasn't out at court he was usually seeing clients or taking calls, so his office door was closed. If she did manage to catch him, he was signing letters or the telephone would ring just as she had started to talk to him. She knew how busy he was, and although it was meant as a joke, Keith's greeting of 'hello trouble, now what have you done' made

her think she was being a nuisance.

The outcome was almost inevitable - when a problem arose, Marion believed she had to cope on her own. By the time she approached Keith for help, the problem was no longer capable of being resolved, and he had to notify his insurers. He thought that his low-key approach had failed, and concluded that in the future he would have to adopt a much stricter approach to all his staff. Marion also felt let down and unsupported. She lost confidence in her own judgement and began to refer every query to Keith, increasing his work load still further.

### *When Supervising:*

Make sure that you are available

for at least a part of every day, or that someone else is available to supervise in your absence;

Try to be approachable - give positive feedback and encourage discussion

If criticism is needed, be constructive - don't let feelings of anger or irritation influence what you say

Beware of jokes which are really subtle put downs

If you are too busy, say so - and give a time when you can deal with the matter. It is unfair to agree to see someone and then cut them short, or make them rush

Supervise pro-actively - don't wait for problems to come to you, and review staff progress regularly.



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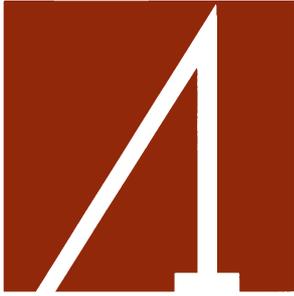
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**Law Reform Advisory  
Committee**Formalities for Contracts relating to the sale of Land or interests in Land and the Rule in *Bain v Fothergill*The Law Reform Advisory Committee for Northern Ireland has published Discussion Paper No. 8 "Formalities for contracts relating to the sale of land or interests in Land and the Rule in *Bain v Fothergill*."

The discussion paper considers the existing legal rules, and looks at the changes implemented in England and Wales. The Options for reform of the law in this jurisdiction are considered, and matters for consideration by consultees are set out in the paper.

The Committee welcomes the views of consultees, and all responses should be addressed to Clare Irvine, Secretary, Law Reform Advisory Committee for Northern Ireland, Lancaster House, 5 Linenhall Street, Belfast BT2 8AA. Alternatively, responses can be e-mailed to clare.Irvine@dfpni.gov.uk.

Consultees are asked to note that all responses must be submitted to the Secretary by 30th April 2002.



Law Centre (NI)

## PAYING FOR RESIDENTIAL CARE:

## VALUATION OF JOINTLY OWNED PROPERTY

When a person enters residential care on a permanent basis, Social Services carry out a financial assessment to ascertain whether that person requires assistance in paying the care fees. When the resident has a joint interest in property then the value of that interest will be included in the financial assessment. The Department of Health has issued guidance on this point, which is contained in the Charging for Residential Accommodation Guide (CRAG). The guidance states that the value of the share will be greatly influenced by whether the other joint owner(s) wishes to buy the resident's share as it is unlikely that an outsider would be willing to buy a share in a property. Thus the value of a joint interest in property may well be a nil or a nominal value. Social Services are advised to seek professional valuations where there is a question as to the value of a share in property.

That valuation should take into account all the relevant factors such as the willingness or otherwise of the other joint owner(s) to sell the property and the price which a willing buyer would be likely to pay for the part share. The Law Centre has dealt with some cases in which a joint share in property was being valued at half

the market value of the property. It is our opinion that this is incorrect and that residents are being asked to pay care fees on the basis of incorrect valuations of jointly owned property.

The Law Centre is interested in hearing from anyone experiencing difficulties in this area and is willing to provide advice and assistance if appropriate.

This article is not intended to form an authoritative statement of the law but is merely intended to give some basic information and guidance to those who receive queries in this area.

### FREE NURSING CARE

On 15th January 2002, the Minister for Health, Social Services and Public Safety announced the introduction of free nursing care for elderly residents of nursing homes from October 2002.

The University of Ulster is currently involved in testing an assessment tool to be used in determining who will be entitled to the free nursing care.

Free nursing care has been available

in England from October 2001 but concerns have been raised about the system implemented there for passing on the benefit of the free nursing care to self-funding residents. At present the NHS pays the nursing homes for the nursing element of the care and the home is then supposed to pass on the saving to the residents.

However, concern is mounting that this is not always happening and that the money is being swallowed up in fee increases by the homes. The Health Minister, Jacqui Smith, has stated that she will write to homes to seek clarification where there is a lack of clarity over this issue. It is not yet clear whether or not the same system will be introduced in Northern Ireland but clearly this is something which needs careful consideration.

**Noreen Brolly, Law Centre (NI)**

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# INTRODUCTION TO ATTACHMENT ASSESSMENT AND THEORY:

## *Analysis and Assessment of Children in Need*

**Malone House**

**Barnett Demesne**

**Belfast**

**BT9 5PB**

**Thursday 21st March 2002**

**9.30 am - 4.15pm**

### **Speaker: Professor David Howe**

Professor Howe is professor of social work at the University of East Anglia, Norwich where he teaches and carries out research. His writing and research interests include adoption, attachment theory and child abuse and neglect. He is author of a number of books including most recently "Patterns of Adoption: Nature, Nurture and Psychological Development" (1998) and with colleagues at the School of Social Work, Norwich "Attachment Theory, Child Maltreatment and family support" (1999) he is also Editor of the journal "Child and family social work".

**£50.00 per delegate**

### **Booking Form**

Name and address of firm

Name of Delegate

_____	_____	£50.00
_____	_____	£50.00
_____	_____	£50.00

Total: £

**Booking forms to be returned to Ann Crawford, NIGALA, Centre House, 79 Chichester Street, Belfast, BT1 4JE, DX 514NR BELFAST 1 by Thursday 14th March 2002.**

**Cheques should be made payable to the Guardian Ad Litem Agency**

## ADVERTISEMENT

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- ◆ A definition of Risk Management and how the principles apply to every law firm and legal department
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- ◆ How the framework for Risk Management may be applied to your firm
- ◆ How to introduce robust systems for Risk Management without damaging the entrepreneurial spirit of individuals

The seminar will cover the Risk Management requirements of Lexcel and is also equally valid for non-Lexcel practitioners who want to know more about how to proactively manage their exposure to risk without adding huge administrative costs

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**Risk Management Seminar**

I wish to reserve \_\_\_\_\_ place(s)

**Thursday 21st March 2002 – Belfast**

I am unable to attend the event but would like to find out more about Risk Management

I am unable to attend the event but would like to find out more about Lexcel Accreditation

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Tel: \_\_\_\_\_

Email: \_\_\_\_\_

Please list the names of those attending:

**BLOCK CAPITALS**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

*Please return this form by 14th March 2002. We will contact you to confirm your place(s) and details of the venue*

**If you prefer you may send this form by post to:**

The Ridley Partnership, The Coach House, Barningham Park, Richmond, North Yorkshire, DL11 7DW  
or telephone 01833 621130 for more details

## EMPLOYMENT LAWYERS' GROUP (NI)

*Hon. Sec.* Eamonn McArdle, Bar Library, Royal Courts of Justice, Chichester Street  
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*Fax:* (028) 90231850  
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**Website: [www.legal-island.com/elg.htm](http://www.legal-island.com/elg.htm)**

### Lunchtime Seminar

## STRESS AT WORK

### Key issues and developments on employer liability

**Speaker:** Siobhan Donnelly (a leading health and safety lawyer from Donnelly Kinder Solicitors)  
**Date:** Friday, 12 April 2002  
**Time:** 1.00pm (coffee and sandwiches served from 12.30pm)  
**Venue:** Law Society Lecture Theatre, Law Society House, Victoria Street, Belfast  
**Cost:** Members £3, Non-members £6.

*Our speaker, Siobhan Donnelly, will be considering the latest case law on Stress injury including last month's guideline judgment handed down by the English Court of Appeal, **Sutherland v Hatton**.*

*Members are very welcome to submit suggestions for talk topics to Committee members.*

**Booking forms and cheques, made payable to The Employment Lawyers Group (NI), should be sent to:  
Ms June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast, BT2 8FH**

### Booking Form

Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

I enclose remittance of £ \_\_\_\_\_

## Membership Renewal

Membership fees are now due for 2001-2002. Members are invited to renew their membership for the current year. New members are welcome. Please return the form below completed together with cheque for £10 made payable to ELG (NI) to: June Turkington, Legal Directorate, Central Services Agency, 25-27 Adelaide Street, Belfast BT2 8FH

### Membership Form

I enclose cheque for £10.00 made payable to ELG (NI)

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No: (work) \_\_\_\_\_ E-mail \_\_\_\_\_

# Solicitor Advocacy

The demand for places for this year's course, as highlighted in the January edition of the Writ, remains high. Applications will be accepted until 22nd March and the successful applicants will be the first 24 "out of the hat" after that date. I am pleased to confirm that more female members of the profession are applying than in previous years and one hopes that the group of 24 will reflect the gender makeup of solicitors in practice.

This year the Law Society of Ireland is organising a similar course to ours based on our methods and led by NITA (National Institute for Trial Advocacy) faculty members from the US and timed so as to run back to back with our course commencing on 9th September. It may be possible to share some of the

resources of the course with our colleagues in the Republic and cross-border faculty and Judicial input may be possible.

This course is one of the genuine good news stories for the Solicitors profession in Northern Ireland and all senior litigation practitioners should, if not participating themselves, encourage and support their junior partners and associates to enrol. The public service sector participated fully in last year's course with 3 participants from the Crown Solicitors Office alone. This year the Advocacy Working Party hopes that the offices of the Director of Public Prosecutions, the Departmental Solicitors Office and the Equality Commission provide their staff with the opportunity for professional development and provide a more efficient advocacy service for the public at large. Remember that Solicitor Advocacy is a service that is now provided widely in Great Britain and many clients, particularly those in the commercial sector, will demand and expect the firms of their choice to provide a similar standard of service

(LR) Seated: William Hasson, Anne Fenton. Standing: Brian Archer, Ian Wimpers, John Walsh



(LR) Jeanne Jourdan, Peter Jones, Lord Mayor of Belfast, Fiona Donnelly, Lonny Rose, Paul Zwier, Brian Johnston, Tony Caher.

in this jurisdiction. It is also evident that the Government in Westminster recognises the benefits of Solicitor Advocacy and much needed legislative reforms in the area of remuneration for Solicitor Advocacy are to be enacted later this year. Even without the legislative reforms Solicitor Advocates are enhancing the remuneration they receive through applications for uplift on taxation and applications for the advocacy/enhancement fee in the County Court.

Tony Caher  
Chairman  
Advocacy Working Party



## **LIST OF CORONERS AND DEPUTY CORONERS AT FEBRUARY 2002**

<b>Name of the Coroner's District</b>	<b>Local Government Districts Comprising Coroner's District</b>	<b>Name and Address of Coroner</b>	<b>Telephone Number</b>	<b>Name and Address of Deputy Coroner</b>	<b>Telephone Number</b>
Londonderry	Londonderry Limavady Strabane	R H C O'Doherty Esq Solicitor 4 Queen Street Londonderry BT48 7EF Buncrana Office - 00353 7761286 Fax No. 00353 7762196	Londonderry (02871) 371894 Fax No. (02871) 371894 Home - Co Donegal 00353 7762547 Fax No. 00353 7762196	CG Copeland Esq Thomas Elliott & Son Solicitors 29 Patrick Street Strabane BT82 8DP	Strabane (02871) 882262 Fax No. (902871) 382770 home - Londonderry (02871) 351834
North Antrim	Coleraine Ballymoney Moyle Ballymena (Secretary of Coroners' Association)	D J Hunter Esq Coroner's Office The Courthouse Old Townhall Building 80 Victoria Street Belfast BT1 3GL	Belfast (02890) 728202 Home (02870) 321719	J L Baxter Esq Beardeville 3 Ballyholme Road Coleraine BT52 2LU	Home- Bushmills (028207) 31552
Greater Belfast	Belfast Down North Down Ards Castlereagh Larne Lisburn Antrim Newtownabbey Carrickfergus	J L Leckey Esq Coroner's Office The Courthouse Old Townhall Building 80 Victoria Street Belfast BT1 3GL	Belfast (02890) 728202 Fax No. (02890) 724559 Home Whiteabbey (02890) 861442	D K Malcolm Coroner's Office The Courthouse Old Townhall Building 80 Victoria Street Belfast BT1 3GL  D J Hunter Esq Coroner's Office The Court House Old Townhall Building 80 Victoria Street Belfast BT1 3GL	Belfast (02890) 728202 Home - (02894) 473437  Belfast (02890) 728202 Home - Coleraine (02870) 321719
East Tyrone and Magherafelt	Magherafelt Cookstown Dungannon	J R H McLernon Esq Solicitor 15 Meeting Street Magherafelt BT45 6BN	Magherafelt (028796) 32533 Fax No. (028796) 301201 Home - Portrush (02870) 829789	J A Kincade Esq T D Gibson & Co Solicitors 107 Church Street Portadown BT62 3AX	Portadown (02838) 332176 Fax No. (02838) 330834 Home - Loughgall (02838) 891356
Fermanagh and Omagh	Omagh Fermanagh	J A Kincade Esq Acting Coroner		J A Kincade Esq T D Gibson & Co Solicitors 107 Church Street Portadownh BT62 3AX	Portadown (02838) 332176 Fax No. (02838) 330834 Home - Loughgall (02838) 891356

Name of the Coroner's District	Local Government Districts Comprising Coroner's District	Name and Address of Coroner	Telephone Number	Name and Address of Deputy Coroner	Telephone Number
Armagh	Craigavon Armagh	J H Rodgers Esq Solicitor 15 Church Street Portadown BT62 3LN	Portadown (02838) 337211 Fax No. (02838) 350980 Home - Warringstown (02838) 881873 Bushmills (028207) 32114	J A Kincade Esq T D Gibson & Co Solicitors 107 Church Street Portadown BT62 3AX	Portadown (02838) 332176 Fax No. (02838) 330834 Home - Loughgall (02838) 891356
South Down	Newry & Mourne Banbridge	J Daniel Thompson Esq Solicitor 72 Address Road Portadown BT62 1SQ	Portadown (02838) 851347 Fax No. (02838) 851347	P B Finlay Esq James Murland & Co Solicitors 15 English Street Downpatrick BT30 6AP	Downpatrick (02844) 619980 Fax No. (02844) 613527 Home - Bailies Mills (02892) 638472 or (02892) 638997

## NORTHERN IRELAND COURT SERVICE

### No 1 of 2002

#### PRACTICE DIRECTION

#### QUEEN'S BENCH DIVISION (CROWN SIDE)

1. From the 19th day of March 2002 all matters on the Queen's Bench Division (Crown Side) relating to judicial review shall be entitled Queens' Bench Division (Judicial Review) and all matters relating to bail applications shall be entitled Queen's Bench Division (Bail Applications).

2. All other matters allocated to the Queen's Bench Division (Crown Side) shall continue to be entitled Queen's Bench Division (Crown Side).

RD Carswell

Lord Chief Justice

6 February 2002

### Supreme Court of Judicature of Northern Ireland Offices of the Supreme Court

Pursuant of Order 64, rule 5(1) of the Rules of Supreme Court (Northern Ireland) 1980, the offices of the Supreme Court will be closed to the public on the following days in 2002:

St Patrick's Day Holiday	Monday 18th March
Good Friday	29th March
Easter Monday	1st April
Easter Tuesday	2nd April
Early May Bank Holiday	Monday 6th May
Spring Bank Holiday	Monday 3rd June
Golden Jubilee Holiday	Monday 4th June
July Bank Holiday	Friday 12th July
July Privilege Holiday	Monday 15th July
August Bank Holiday	Monday 26th August

A notice setting out the Christmas and New Year closures will issue at a later date.

# In the High Court of Justice in Northern Ireland Chancery Division

## PRACTICE DIRECTION 2002 NO. 3

### MORTGAGE ACTIONS FOR POSSESSION

Particulars of inquiries as to occupation - Order 88 rule 5(4) of the Rules of the Supreme Court (Northern Ireland) 1980

1. Where the plaintiff claims delivery of possession of property which consists entirely of a dwelling house (for the purpose of this Direction to include, where applicable, its own domestic garden, access and/or yard) and the plaintiff does not have any information tending to suggest that it is or may be unoccupied or occupied by a person other than the mortgagor, his or her spouse and/or children, the affidavit should so state (identifying to the best of the plaintiff's knowledge, information and belief who is thought to be in occupation) and unless the Court otherwise directs in a particular case no inquiry about occupation shall be necessary for the purpose of the proceedings.

2. Where the property consists entirely of a dwelling house and the plaintiff has information tending to suggest that it is or may be unoccupied or occupied by a person other than the mortgagor, his or her spouse and/or children, reasonable inquiries as to whether the dwelling is occupied and as to the identity of the persons (if any) in occupation should be made and the affidavit grounding the application should set out details of the information which led the plaintiff to inquire and details of the inquiry and the information obtained in consequence.

3. Where the property is not, or is not exclusively, a dwelling house reasonable inquiries as to the identity of the persons (if any) in occupation should be made and the affidavit should set out details of the inquiries and the information obtained in consequence.

4. Reasonable inquiries may consist of a visit to the property or be by way of correspondence or a telephone call to the mortgagor. If no meaningful response to correspondence or phone

contact is received a visit to the property may be necessary. Where within the period of one year before the swearing of the relevant affidavit there has been a visit to the mortgaged property by or on behalf of the mortgagee or within that period there has been a specific representation to the effect the property is unoccupied or as to who is occupying the property (the accuracy or sufficiency of which representation the plaintiff has no reason to doubt) from a mortgagor, neighbour or other person who the plaintiff has reasonable grounds to believe has relevant information, a visit or further visit should not be necessary provided sufficient particulars of the visit and/or representation are set out in the affidavit.

Notices to occupiers pursuant to Order 88 rule 4B

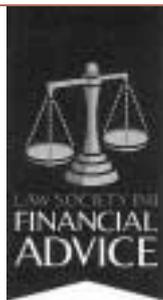
5. Practitioners are reminded of the requirements of the above rule as to

service of notices in Form 10C of Appendix A of the Rules. Until further notice and unless the Court otherwise directs in a particular case:-

- (a) Where the mortgaged property does not comprise or include a dwelling house the service of a notice in Form 10C shall not be necessary.
- (b) Where the property does comprise or include a dwelling house, the service, by one of the methods specified in Order 65 Rule 5, of a single envelope addressed to "The Occupiers (not being [the named defendant])" and containing a Form 10C notice similarly addressed shall be sufficient.

BY THE DIRECTION OF THE HONOURABLE MR JUSTICE GIRVAN

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# OLD DOG NEW TRICKS

**You're never too experienced or knowledgeable to learn, reports Joe R McDonald, Solicitor, Portadown**

It was a sunny August morning when the circular from Legal-Island landed on my desk detailing their annual review of employment law Conference to be held in November. I had just returned from my annual summer holiday, my batteries fully recharged and, with only a few appointments in my diary, I had time to read the circular. It looked rather interesting, an annual review of employment law. I had not been to a Conference in ages, I deserved a day out and anyway the Law Society were always preaching the virtues of continuing education. On the spur of the moment therefore I sent off my cheque.

Four months later, on a cold misty morning in November, the 22nd November to be exact, I found myself racing down the road to Templepatrick (occasionally remembering to slow down and avoid three penalty points). I was late after rushing into the office in an attempt to open the mail and leave numerous instructions attached to my secretary's screen. The previous day, whilst staring at my diary considering whether it was physically possible to attend a consultation in Belfast and deal with Petty Session cases in Craigavon and Armagh, I noticed a small hand written note on the bottom of the page "Employment Conference". The rest of the day had been spent politely asking then bullying and finally threatening other Solicitors in my office to deal with my workload.

As I raced down the road wondering if Templepatrick was where I thought it was I began to wonder why I had thought it necessary to attend this Conference. Had I not kept well up-to-date with recent developments in employment law in the past year? My employment text-books on CD had been updated each year and I had even discovered the Part-time Workers Regulations 2000. I slowed down a little wondering if speed cameras

were still black or were they now supposed to be yellow? During the year I had prepared a number of cases for the Tribunal. I had also prepared opinions for clients on numerous employment matters and had read the 2001 decision of Preston -v- Wolverhampton Healthcare NHS Trust. As I approached Templepatrick (it was where I thought it was!) I was now quite sure that this was going to be a waste of time. Approaching the Hilton Hotel I was convinced I was an expert on employment law and annoyed that the good folks at Legal-Island had not requested me to be one of their guest speakers.

I arrived with two minutes to spare and was presented with a large white folder containing bundles of documents submitted by the speakers (so many documents I began to wonder whether or not this was actually a weekend Conference). I took my seat deliberately at the back of the hall planning to slip away unnoticed at lunchtime and return to the office to do some real work.

As Barry Phillips opened the Conference I looked around the room and noted that there were about 100 people present including a number of employment practitioners who I presumed should have been as up-to-date in employment law as myself. I wondered why where they there?

The first speaker was Patricia Maxwell a Senior Lecturer of Law at the University of Ulster whose chosen subject was an overview of developments in employment law including Institutional Developments, recent legislative proposals and case law development. As she discussed the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (NI) 2001, which had come into force in August 2001, it quickly dawned upon me that somehow these Regulations had cunningly sneaked into force behind my back. Thereafter Patricia Maxwell had my full attention and I found her review of the recent legislative changes, such as the Stake Holders Pension and the Regulation of Investigatory Powers Act 2000 most interesting. Her

discussion regarding the legislative changes which were to take place in the latter part of 2001 and during 2002 covered such topics as parental leave, maternity pay and leave, the Employment Bill, the new framework employment quality directive and the new race directive. She concluded her talk by looking at some of the recent case law developments.

Second speaker up was Michelle McGinley of Campbell Fitzpatrick who covered developments relating to the employment contract including leave, restricted covenants, PILON, damages and settlements. For practitioners who are not involved in employment law PILON is short for pay in lieu of notice. Ms McGinley's review of recent cases I found very useful.

The third speaker dealt with a subject which to be honest I had not paid very much attention to in the past. Alana Jones-Campbell looked at the topic of individual and collective consultation and employers duties, dealing with collective redundancies, transfer of undertakings, European Work Councils, proposed developments and legislative provisions.

Then there was Cyber Liability, another topic which I had paid little attention to until Lynas Murray of O'Reilly Stewart brought it to my attention during his talk on the internet and e-mail in the work place. He discussed the use of the internet and discussed how employers can minimise their risk by implementing an internet policy. He discussed the different types of risk such as time wasting, viruses, defamation, obscene and offensive material, copyright and data protection, emphasising it was good practice for organisations to review the use of the internet in the work place and to consider the risks arising from this. He also presented useful clauses which could be used in an internet policy.

Lunchtime had arrived and by now I had no intention of sneaking off. Whilst I was enjoying the presentations, my initial confidence in 'knowing it all' had been shattered and I could hardly eat lunch.

The afternoon session commenced

with Barry Phillips hosting a "fun employment law quiz" for the delegates. Fortunately the Data Protection Act 1998 prevents me from disclosing my score.

The next subject, stress at work, with key issues and developments relating to employment liability, was presented by Siobhan Donnelly. Apart from the stress I suffer at work, again this was not a topic I would have been totally familiar with. I was amazed at the amount of awards Plaintiffs were receiving. In the case of Ingram -v- Worcester County Council(2000) the Plaintiff was awarded the sum of £230,000.00 against his employers after he suffered a mental breakdown. Ms Donnelly covered the issues of stress related claims, the management of Health and Safety at Work Regulations (NI) 1999 and the number of recent cases involving stress, bullying and foreseeable risks questionnaires. She also covered legal resolutions to stress and risk assessment. I made a mental note to ensure the Solicitors in my Office read her excellent notes on this subject and wondered if I might have a personal claim.

Gerry Grainger spoke next on the transfer of undertakings and he brought me up-to-date with recent case law on whether there is an undertaking and what is a relevant transfer. The Acquired Rights Directive was revised in 1998 and a consolidated version was adopted in 2001 but, as he pointed out, this Directive is unlikely to assist in resolving the confusion which surrounds the definition of a transfer.

Eamonn McArdle spoke on the subject of the rights of fixed-term workers and the new European Directive. Once again I was concerned that I had missed the introduction of this Directive but was relieved to hear that its implementation had been postponed until July 2002. Mr McArdle discussed fixed term work, redundancies and waivers, renewal of fixed term contracts and remedies.

The last speaker of the Conference was Beverley Jones who dealt in some detail with the Human Rights Act 1998 and its considerable impact on employment law. Her talk included a number of issues relating to the impact of the Act and its relevance to employment law, including such subjects as data protection, privacy

and conduct outside the workplace. She concluded with details of recently decided cases on this subject and again her notes were invaluable.

As I made my way back to the office that evening I knew why I had not been invited as a guest speaker. With new legislation being introduced almost on a daily basis and the ever emerging new fields such as cyber liability and stress at work it is virtually impossible on a day to day basis to keep up with the changes. My verdict on the speakers and

Conference? Excellent. The folder containing the speakers' notes has been read several times by me and now sits prominently on my shelf with my other employment reference books.

**Report by Mr. J.R. McDonald, Solicitor, Portadown. Conference organised by Legal-Island. "Annual Review of Employment Law, 2001."**

## NORTHERN IRELAND COURT SERVICE

### In the High Court of Justice in Northern Ireland Queen's Bench Division

#### Listing and hearing of Assessment of Damages under Order 37

#### PRACTICE NOTE

No. 1 of 2002

1. A plaintiff should not request an appointment before the Master for an assessment of damages until evidence relating to both general and special damages claims is completed.

2. The Office will not issue a Notice of Appointment for assessment of damages unless the plaintiff lodges a complete set of relevant papers to include:-

- (a) a copy of the Writ of Summons and the pleadings
- (b) any medical reports upon which the plaintiff intends to rely; and
- (c) any documents relating to a claim for special damages upon which the plaintiff intends to rely.

3. Additional documents (such as medical reports or documents relating to special damages) which have not been included in the papers lodged, or which have come into being subsequently, must be filed in the Office at least one clear working day prior to the appointment for assessment of damages.

4. Where an action has been settled between the date when the appointment for assessment is fixed and the appointed date, the plaintiff's solicitor should immediately notify the Office, that the assessment of damages will not be proceeding.

5. The practice set out in this Note will come into operation on Monday 18 February 2002.

J W Wilson  
Master (Queen's Bench and Appeals).

# Recent Developments in ADR

## As the man said "It's taken me 10 years to be an overnight success."

In 1995 the Society organised a training programme for solicitors interested in mediation. Professor Karl Mackie came to Law Society House and with a combination of lecture and role play exercises described the process of mediation and gave those attending a feel for what mediation had to offer. The Society's Dispute Resolution Service was launched. And very little else happened. The merits of mediation seemed well founded but in practice there were few takers - although mediations which have occurred have been successful and lawyers involved and their clients were pleased with the process. This article examines how far we have come and the path which lies ahead.

In March the Dispute Resolution Service is to be re launched. A combination of factors suggest that things will be different this time. These factors are:-

- lawyer awareness
- judicial awareness
- social change
- client expectation
- civil procedural changes and
- availability of mediators

### Lawyer Awareness

For mediation to develop it is necessary for there to be sufficient lawyers knowledgeable about the process and its suitability for a particular case. Often one side with some knowledge of mediation may suggest its possible use to find the other side unwilling to consider it. Lawyers with disputes are trained in the adversarial system of our civil procedure. Mediation is "new" and may be misunderstood and solicitors fearful of selling the client short may prefer to stick to what they know. So writs continue to be issued. Settlements as usual become possible the night before or on the morning of the trial but not before.

The Society and the Institute of Professional Legal Studies has sought to increase lawyer awareness of mediation. The Society by means of occasional lectures for those qualified and the Institute by developing part of the negotiating course for solicitor and barristers qualified in the last 7 years have sown thereby at least the seeds of knowledge regarding ADR.

Professor Mackie's organisation, CEDR,

has continued to disseminate knowledge and to provide training. Some members of the Society and the Bar have, at no small expense, attended CEDR training programmes in London and elsewhere. Some have even ventured to the USA and Australia, the legal press has featured many articles on mediation, drawing on an increasing number of actual cases and real experiences.

In addition, in the last two years the Society has approved a mediation training course available locally. This has now been delivered to two cohorts and will be provided again in April.

The number of lawyers well informed about mediation is steadily increasing. This will mean that when one suggests mediation a more receptive response is likely simply through more lawyer awareness.

### Judicial Awareness

In the Chancery Division Mr Justice Girvan delivered a judgment in 1998 (1) in which he said

"The provision of efficient and effective means for the resolution of disputes between parties is an important duty of the state in modern society. Civil law disputes should preferably be resolved by agreement between parties..... an agreement between parties is much to be preferred to a solution imposed by the Court. If the parties cannot resolve the dispute by agreement, mechanisms must exist for the dispute to be brought to a conclusion. Those mechanisms may be by arbitration, by the court or by alternative dispute resolution."

This was followed by a Chancery Division Practice Direction (2) which describes how a provisional date will be set for hearing to be fixed finally 4 weeks later.

"The 4 week period is to allow the parties to fully explore the possibility of settlement"

The Commercial Court Practice Direction 1 of 2000 (3) states

"In suitable cases the Court will direct that the parties, their representatives and expert witnesses should arrange to meet... for the purpose of conducting detailed negotiations with a view to achieving a mutually satisfactory resolution of their differences."

Such "explorations and negotiations" could involve the assistance of a mediator.

The Society was grateful for the participation of Lord Justice Campbell in the opening lecture to launch the first Mediation Training Programme in April 2001 and for the care and time taken by Mr Justice Coghlin who delivered a key note speech at the launch. The writer has benefited from the observations of Mr Justice McLaughlin before his elevation to the Bench in a lecture on Alternative Dispute Resolution to the Belfast Insurance Institute (4). There is no doubt that the present High Court judiciary is informed about and willing to consider and encourage where appropriate the use of ADR.

All current inclinations are that this level of judicial interest will be maintained and expanded in the future.

### Social Change

The Belfast Agreement provides a paradigm of dispute resolution. The involvement of a neutral third party (Senator Mitchell) in a process repeatedly stated to be intended to help the parties reach their own agreement, can be held up as an example of mediation being used at the highest level of dispute. The use of mediators on the international stage in Kosovo and the Middle East helps to give credibility to the process and makes some of the language of mediation more familiar. In dealing with our contentious parades mediators are involved for the Parades Commission which has a function to promote the use of mediation locally to resolve parading disputes. While we can all point to the contentious unresolved parading hot spots this should not blind us to the many situations which are resolved successfully often by mediation.

On 23rd March 2001 the government issued a press release (6) in which it stated

"Today the Lord Chancellor, Lord Irvine, announced a major new initiative by Government to promote Alternative Dispute Resolution (ADR) in place of Litigation.

In future, the Government will only go to Court as a last resort... Instead, government legal disputes will be settled by mediation or arbitration wherever possible. Lord Irvine published a formal pledge committing Government Departments and agencies to settle cases by ADR techniques when ever the other side agrees to it. Standard Government

procurement contracts will in future include clauses on using ADR to resolve disputes instead of litigation."

Only last month a headline appeared indicating that the NHS was embracing ADR as a means of resolving disputes more effectively and achieving savings.

Family lawyers have been aware for some time of the encouragement being given by the Government to the use of mediation for resolving family disputes and many services have grown up offering family mediation.

### Client Expectation

Solicitors need to be responsive to their client's interests and as more clients become aware of alternatives to litigation and educate themselves about the alternatives it will be the solicitors who can deliver the service that the client wants, who will surely flourish. There is a vital role for solicitors to prepare clients for and assist clients during mediation. For example, some of those attending the Society's Mediation Training Programme were blessed with having insurers as clients. These clients are aware of the value of mediation in appropriate cases and encourage its use.

In the area of professional negligence (and not just clinical negligence) insurers are familiar with the use of mediation and are likely to develop skills themselves to the detriment to lawyers if the legal profession does not provide the comprehensive range of dispute resolving options which clients require.

The attitude of the government and the NHS has been mentioned earlier. However other clients in the field of construction, employment, sport and finance may well also want a range of dispute resolving options explained and analysed by their advisers.

### Civil Procedure

We should all have heard of Woolf. In Northern Ireland we have the Report of the Civil Justice Reform Group (8). Early exchange of expert witness information, early exchange of documents, active judicial case management and possible penalties in costs for failing to properly or adequately explore settlement will bring about a change in litigation practice. The demand for settlement arrangements, some of which will involve mediators, is set to grow under the Civil Justice reforms proposed.

In an important judgement of far reaching significance, (Cowl), Lord Woolf recently stated (9) that the parties "must now be acutely conscious of the

contribution alternative disputes resolution can make to resolving dispute in a manner which both meets the needs of the parties and the public and saves time, expense and stress"

It can be seen that for the Lord Chief Justice awareness of the benefits of ADR is well established and the duty of lawyers to "avoid litigation" is plainly stated.

### Availability of Mediators

For mediation to advance there must be mediators. For people to invest time and money in training there must be the prospect of mediation appointments. There are now lawyers (solicitors and barristers) who have completed approved mediation training. There is now available to act as mediators, a corps of lawyers with a range of age, professional experience and diversity of interest in which the parties and courts and the court administrators can repose confidence. The Dispute Resolution Service of the Law Society has a Code of Conduct to which all mediators subscribe and has a helpful standard form of mediation agreement to set out the obligations and rights of parties and mediator.

Lord Woolf said in Cowl

"Today sufficient should be known about alternative dispute resolution to make the failure to adopt it, particularly when

public money is involved indefensible."

Against this background the Dispute Resolution Service can expect an increase in enquiries and mediators already on the panel can expect involvement in cases referred for mediation.

Perhaps only 8 years after professor Mackie's first visit, mediation can be regarded as on the brink of "overnight success"!

**Brian H Speers Solicitor  
Carson Morrow Graham, Belfast**

### References:-

1. 1995 ND 891 Cecil Brown and another v Fraser Houses (NI) Limited and Fraser Homes Limited
2. Chancery Division Practice Direction No. 4 of 1997
3. Queens bench division (Commercial List) Practice Direction No. 1/2000
4. Alternative Dispute Resolution What is it? What does it mean for the Insurance Industry? Richard McLaughlin Q.C. Europa hotel 9 February 1998
5. Practice Direction 49 Medical Negligence
6. Lord Chancellor's Department Press Release 117/01 of 23rd March 2001
7. The Lawyer 21 January 2002
8. The Civil Justice Reform Group Review of the Civil Justice System in Northern Ireland. Final Report June 2000
9. Cowl and others v Plymouth City Council Court of Appeal Judgement December 14, 2001

## ADVERTISEMENT

# Equality Commission

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## Provision of Legal Services

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. The Commission may grant assistance to applicants who believe they have been discriminated against on grounds of their race, sex, disability, religious belief or political opinion. The Government Purchasing Agency on behalf of the Commission wishes to establish a framework agreement with a panel of solicitors to conduct cases which receive assistance from the Commission. Solicitors wishing to be considered for the framework agreement must be able to demonstrate that at least 30% of their workload in the last 3 years involved the running of employment/discrimination law cases.

Tender Documents will be issued upon receipt of a written request or fax to;

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The closing date for return of completed Tenders is **3.00pm on Friday 15th March 2002**

## Missing Wills

**RE:** Thomas Braniff deceased late of 12 (a) South Link, Belfast County Antrim.

Would any person or Solicitor having knowledge of the whereabouts of a Will for the above named deceased please contact Paul M Graham & Co Solicitors, 70 Andersonstown Road Belfast, BT11 9AN. Telephone 028 90603 223, Fax: 028 9060 2678.

Reference: PG/PRO/G129

**RE:** Ann Fox deceased late of 42 Edenvale Avenue, Banbridge and formerly of 109 Knockview Drive, Tandragee, Craigavon, Co Armagh Day of Death - 23.1.2002.

Would any person having knowledge of the whereabouts of a Will of the above named person please contact:-

Byrne & Herbert  
Solicitors  
Avonmore House  
15 Church Street  
Banbridge  
Co Down

Telephone - 028 4066 2251  
Fax - 028 4062 6706

Could anyone who is in possession of a Will for Michael Kelly, late of 93 Drumsnade Road, Ballynahinch, please contact Roisin McKenna at::

Madden & Finucane  
Solicitors  
88 Castle Street  
Belfast  
BT2 1HE

**RE:** Richard Smyth  
Late of: 16 Redemption Avenue  
Crossgrove  
Co Down.

Would any person who is aware of a Will made by the above named deceased, please contact:-

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## ADVERTISEMENT



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# Damages across the jurisdictions

## a special afternoon meeting

The meeting is to be held at The McCausland Hotel, 34-38 Victoria St, Belfast on Friday 22 March, 2.00pm - 5.00pm. Presentations include:

### Scottish claims, the experience of forum shopping & the choice of jurisdiction in the USA

David Short, Lawford Kidd, APIL executive committee member

### Special damages schedules

Michael Scutt Lee Davies & Co., APIL damages special interest group secretary

### The damages perspective in the Republic of Ireland

Colm Barry, John Schutte Associates, APIL Republic of Ireland secretary

### Damages in Northern Ireland

Robert Martin, McAteer & Co., APIL executive committee member

The attendance fee, £10+VAT for APIL members and £35+VAT for non-members, includes tea, coffee and a finger buffet. Please reply to Sam Maffett at APIL, at the address below.

### Also coming up: Accidents at work - a fully interactive training day in Belfast run by the College of Personal Injury Law (CPIL).

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by a group of barristers and solicitors working for claimants - it now has over 5,000 members. As an APIL member you are part of an influential forum exchanging views, ideas and information, offering you professional support in the changing world of personal injury law.

Members benefit from regular newsletters, information exchange services including a database of experts, a network of regional and special interest groups, access to the APIL members' web site and reduced rates on training at the CPIL, APIL's training arm. The annual membership fee is £165+VAT for practitioners.

**For further details, please contact: APIL, 11 Castle Quay,  
Nottingham NG7 1FW, DX 716208 Nottingham 42  
Tel: 0115 958 0585 Fax: 0115 958 0885 e-mail: mail@apil.com**

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Solicitors  
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BELFAST  
BT9 6BT

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**H B Marley Solicitors**, require a Conveyancing/Probate Solicitor for locum cover from April 2002 to September 2002. Apply in writing with C.V. to H B Marley, Solicitors 8 Edward Street PORTADOWN Co. Armagh BT62 3LX E-mail: law@hbmarley.fsnet.co.uk

### THOMAS ARMSTRONG - SOLICITORS

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Mc Cann & Mc Cann Solicitors  
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Belfast BT1 1DB  
Email: office@mccannandmccann.com

## GERMAN STUDENT SEEKS PLACEMENT

Diana Steiner, a German Rechtsreferendar (Legal Trainee) is seeking practical experience with a law firm in Northern Ireland. Her specialisation is employment law and social law.

Further details regarding Ms Steiner (her CV and contact details) can be obtained by contacting

Mrs. Blackstock at the Law Society.

## FIRMS MERGE

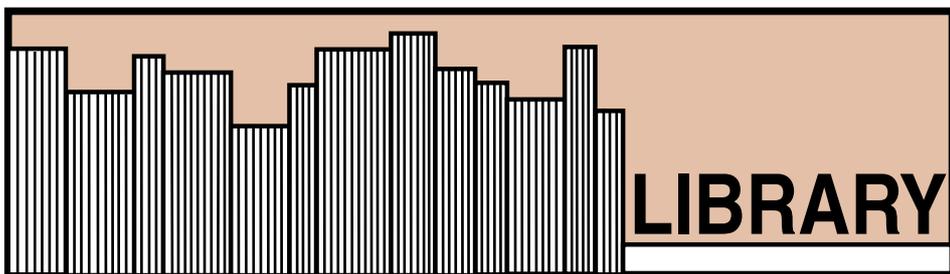
Please note that on 01 March 2002 the firms of John Reavey, Solicitors, and White McMillan, Solicitors will merge and trade as Reavey & Co at the following addresses.

22 The Diamond  
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Newtownabbey  
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Tel: 028 9086 0335  
Fax: 028 9036 5124

Castle House  
4-6 Castle Street  
Carrickfergus  
BT38 7BE  
Tel: 028 9335 5535  
Fax: 028 9335 5588

625 -627 Shore Road  
Whiteabbey  
BT37 0ST  
Tel: 028 9085 3361  
Fax: 028 9036 5031

Please note the old offices of White McMillan at Lynden Gate, 50 Knockbreda road, Belfast are now closed.



## RECOMMENDED READING

### OCCUPATIONAL STRESS: AN UPDATE

#### Cases

**Hatton v Sutherland and other appeals**  
 Court of Appeal, Civil Division  
 5 February 2002 [2002] EWCA Civ 76

This decision clarified the responsibilities of the employer and employee over stress at work. It is a conjoined case between 2 teachers, an administrative assistant and a factory worker. The Court listed factors firms should take into account to assess the risk of stress:

- Whether the job is particularly intellectually or emotionally demanding
- Whether the workload is abnormal/ demands unreasonable
- Whether other employees suffer from stress
- Whether the employee is particularly vulnerable

#### Articles

Stress and the law in 2002 (cases and settlements, with HSE Stress Guidance and Strategic Stress Plan)  
 Humby: 2002 HSB 305, 8-20

Risk assessment approach to stress management (practice advice issued by Engineering Employer's Federation on common causes of workplace stress, workers' responses to stress, steps for carrying out risk assessment, key control measures, employee involvement and training methods)  
 2001 H&SM, 2001, 24(6), 1-2

Occupational stress (whether action for damages for work related stress could succeed without evidence of prior absences from work due to stress related illness)  
 2001 Rep. B. 2001 37 (Jan) 5

Breached duties, broken minds (common law and statutory remedies available to employees who have suffered psychiatric illness as result of occupational stress)  
 Christie: 2000 SLPQ 5(4), 376-384

## New Books in the Library

- 1) Blackstone's criminal practice 2002. 11th ed. Blackstones. 2002
- 2) Archbold criminal pleading, evidence and practice 2002. Sweet & Maxwell. 2002

Law Society Library Email:

[hsemple@lawsoc-ni.org](mailto:hsemple@lawsoc-ni.org)

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