Evolution of a President

John Wallace Dickson Pinkerton

On 26th November 2003 John W D Pinkerton became President of the Law Society of Northern Ireland. As this profile explains he is the latest in a line of distinguished forebears (father and grandfather) who have served in this capacity.

The Society is almost certainly unique among law societies in having such a lineage of presidents from one family. This is all the more remarkable because, but for a quirk of history, none of this might have happened.

We need to go back to that time of great religious ferment in Scotland, after the restoration of Charles II, when attempts were made to resolve religious differences between Scotland and England. The Act of Rescissory cancelled all legislation after 1633. Effectively, an episcopacy was established and lay patronage introduced. This caused a storm of protest because Presbyterian congregations had always chosen their own clergy.

Now such appointments had to be confirmed by a lay patron and a bishop. Existing ministers who refused to obey the new rules were chased from their pulpits. Many took to field preaching, to gatherings known as conventicles at which members in the congregation were often armed. The Covenanters, as they were dubbed, were addressed by dissident clergy preaching fire and brimstone and divine wrath upon a tyrannical government. A far cry from what we are used to today.

Armed conflict broke out which was, in effect, a rebellion against the English. The climax came in 1679 at the Battle of Bothwell Brig, the site of which is adjacent to the M74 about a mile south east of Bothwell.

The Covenanters had been successful at the Battle of Drumclog and now assembled at Bothwell to establish their next move. Somewhere amongst the 6,000 gathered at the bridge was a clutch of Pinkertons.

Unfortunately for them, the Covenanters were attacked at Bothwell Brig by 10,000 disciplined troops, complete with a train of artillery, who wreaked havoc among the ad hoc army. Although few Covenanters were killed in the battle, many died after capture and many were transported as slaves to the West Indies. One of the transports, The Crown of London, was shipwrecked on rocks off the Orkneys and over 200 of its complement were drowned.

One John Pinkerton avoided transportation and other misfortunes by escaping with his wife and four sons to North Antrim but he could just as easily have been in a grave beside the M74, or at the bottom of the sea or a slave on the other side of the Atlantic, where his descendant might now presumably be the fortunate head of a law society in the sun.

The Pinkerton family settled outside Ballymoney, where their descendants continue to reside to this day. They were weavers and farmers until his great-grandfather John (the eldest boys of the family are all called John, and they’ve now reached John the Tenth), who was a ‘tenant right’ activist, was elected as MP for Galway, North Antrim not caring for his nationalist views. He was a member of Parnell’s parliamentary party and sponsored one of the first Land Purchase Acts. He is reputed to be the first person to have coined the term ‘boycott’.

His grandfather first set up his plate in Ballymoney in 1904 and so it is doubly fitting that this John (the Eighth) will be President of the Law Society of Northern Ireland in the centenary year of the practice. John’s father or if you prefer, John’s son, entered the practice in 1938. From the day he was born it had always been assumed that John the Eighth would become a solicitor.

But no such assumption was made by John himself. He read business studies at Magee College and joined a company in Ballymoney making medical supplies, as an industrial engineer. He then moved to the Northern Ireland Electricity Service (NIES). “Working for a large bureaucratic organisation had its frustrations. If you sent an idea up the line and it was rejected, it came back with your name on it; if it was accepted, it came back with some one else’s name on it,” he said with a characteristic smile. “But I learnt about productivity, how to analyse jobs and about work measurement. These are skills which can translate to any enterprise.” He eventually saw that NIES was about to undergo change and
would be down-sizing. It caused him to think long and hard about the future and at this point he somewhat shocked his father by confessing - at long last - that he wanted to become a solicitor.

Quite a big decision at the age of 35 and with a young family. It was an unusual situation, because his wife Joan had become a partner in John Pinkerton & Son and it was she who persuaded him to sign up. Sadly Joan died in 1995 after a prolonged illness.

John continued as a sole practitioner until Richard Rountree joined him in partnership in 1999. In 1996 John married Sue Ellaby and she is presently working towards qualifying as a solicitor.

Elected to Council in 1995, John has served on the Home Charter, Policy Co-ordinating, Judicial, Library, Non-Contentious and Professional Ethics and Guidance Committees, the last three of which he has chaired. He became Junior Vice-President in November 2002.

It could be said that John has a knack of being installed in places where his particular talents are needed.

He was the very first member of Gracehill Golf Club and was elected as the first captain when it opened in May 1995. “It’s a difficult course with lots of water hazards. After six months, they sent a diver into the lakes and he recovered 4,500 golf balls, most of them mine!” His golf handicap is a closely guarded secret.

His other interests of boating (“for rather reading about boating since I sold my boat”), gardening (“more trying to keep nature under control”) and carpentry (“you can have any present you want so long as it is round and wooden”) have all had to take second place to Law Society business. But he does have the odd rattle at the tenor banjo which he plays to “Grade Two Barbecue Standard” and likes nothing better than a good old pub sing-song where the audience are incapable of distinguishing the bum notes!

John is also a member and past President of Ballymoney Rotary Club and is involved in a number of other organisations and societies. He is also the third generation to sit on the Board of the Robinson Memorial Hospital, Ballymoney.

He has two sons, John (IX) who lives in Northern Ireland with his wife and two children Polly and John (X), and Robert who lives in New Zealand with his wife and two children Freya and Finlay. The new President lives with Sue and their two dogs, Max and Archie, in the townland of Seacon where his family have lived continuously since about 1680.

 Asked about his aims and objectives for his forthcoming year in office, he said that it is very easy for an incoming president to set lofty goals or to make a grand mission statement.

“Actually achieving them is another thing entirely. However, this profession of ours is under all sorts of pressures, particularly from government, and I am acutely aware of the need for visionary leadership over the next few years if it is to survive. It is a daunting thought that I am one of those being called upon to deliver. I hope to devote as much time and energy as possible to matters of strategy while still keeping in touch with the day-to-day tactical issues.

I believe that the profession as it presently exists in Northern Ireland, i.e. an extensive country-wide network of independent firms, serves the public extremely well. No system is incapable of improvement and we cannot afford to be complacent but the solicitors’ profession is not as defective as the public is being led to believe. I intend to do my utmost to preserve the core values and professional standards of this profession. I want the status of solicitor to continue to command respect. A year is a short time in the law but in twelve months time I want to be able to look back and find that I had actually managed to make some sort of impact.”

Don Anderson

The New Presidential Team

Joe Donnelly (Senior Vice-President), John Pinkerton (President) and Attracta Wilson (Junior Vice-President).
Shaping up to New Technology

The impact of new technology on solicitor practices during the last twenty years has been enormous. This trend is set to continue - the effect of technology in the way solicitors carry out their business is increasing ever more quickly over almost every aspect of our practice.

The Solicitor without a desktop screen is a member of a dying species. Already many Solicitors’ principal line of communication is e-mail, rather than hard copy correspondence. These trends have been accommodated easily and enthusiastically by younger solicitors, whose training has been technology based. Older practitioners are finding the going more difficult, to a greater or lesser degree, but adapt they must.

In recognition of these developments the Law Society has set up a Technology Sub-Committee which is charged with the task of monitoring developments in technology over a broad area and liaising with parties responsible for moving forward within specific areas. Members will be well aware of the E-conveyancing Initiative (still in its early stages) promoted and energetically backed by the Government. Readers of The Writ will have noted the recent article (in our July/August edition) entitled ‘Computer Technology and the Provision of Court Services’. That article describes the ongoing work as the ICOS Project (Integrated Court Operations System). Work is also being promoted by the NIO on the Causeway Project which links six criminal justice systems (Police, Courts, Prison, Probation, Forensic Science and the new Public Prosecution Service) by computer.

The transmission of cash is another area which will be radically altered, affecting as it does the payment of stamp duty, the assessment and payment of inheritance and other taxes and generally the movement of funds within the banking system.

It is evident that progress in these various areas is uneven. The new technology is impacting on the profession rather as a glacier slowly moves down a broad valley - the advance will be quicker over specific areas but inevitably, as specific obstacles are addressed, its advance will be universal.

A questionnaire will shortly be sent to all firms, aimed at ascertaining the current levels of use of technology by solicitors’ firms and legal departments in public bodies.

The survey results will be used by the Society in negotiations with the Courts Service, Government and business, as we jointly with them seek to improve the provision of legal services. We would ask you to respond to the questionnaire when you receive it.

John G Neill
Chairman
Technology Sub-Committee
Set out below are ‘key point’ extracts from the speech given by the President at the Society Dinner.

A lot has been made of the fact that I am the first third generation President of this Society and it is my sincere hope that I will be able to live up to the reputations of my father and grandfather in all respects save one - both of them dropped dead in the street on their way to Law Society meetings: one in February 1949 and one in February 1989. I intend to reduce the statistical probabilities of that happening to me by:-

• not being involved in Law Society business when I am in my seventies,
• not travelling by train; and
• staying in bed every February for the entire month starting in 2005.

I would like to think that I have been elected as President of this Society on grounds other than the creation of that unique situation and that my name is not my only qualification for the job. I am immensely proud to be standing here tonight as your President and I would be saying exactly the same thing even if my father and grandfather had not been Presidents before me.

Billy Connolly once said that anyone can write a country and western song if you simply take three basic phrases - add a few other random words and phrases, and put them to any country and western tune you like.

I thought that I might apply the same technique by taking to tonight’s speech. I was going to take random selections from:-

The Annual Dinner of the Society was held in the Culloden Hotel on 3rd December. Just over 200 guests (including some 45 newly-admitted solicitors) ate, drank and were merry. Principal guests and speakers were Mr Dan McLaughlin, who proposed the toast to the Society; Mr John Pinkerton, who responded and proposed the toast to the newly-admitted solicitors; and Mr Stephen Mearns, who replied on behalf of the new solicitors.
Clients regard work that costs nothing as worth nothing and furthermore, to do it other can economically and at a profit you have to cut corners and some day that will really cost you, and the rest of us, dearly. You have to do an awful lot of short-cut conveyancing to cover the cost of the excess on a claim on your PI Insurance.

And whilst I am on the subject of PI Insurance, I would like to assure you that the Society continues to take a very robust attitude towards errant solicitors. Unfortunately, over the last year or so, the Compensation Fund, to which we all subscribe, has taken a number of really serious hits, thanks to a very small but none the less significant number of our brethren who have felt that it is somehow in order to help themselves to their clients’ money.

We intend to take all the steps we can, within the existing framework, to put the fires out as soon as they start smouldering but the co-operation of the rest of the profession will be greatly appreciated.

By now the newly admitted solicitors will be wondering why they bothered to pass their Institute course. Perhaps I am taking too cynical a view of the future. So in the meantime we will have to make our living within the tried and trusted system that has served the population so well for so many years.

It is my hope that the title of Solicitor will continue to have the cachet that it has traditionally enjoyed.
At the Council Dinner...

(L-R) Gerry Bell, Bernard Turkington, Sean Hagan.

(L-R) Sue Bryson, Tiana Peck, Attracta Wilson.


(L-R) John Comerton, TC Smyth, Dan McLaughlin.

(L-R) Peter O’Brien, Simon Murray, Peter Walsh, Greg McCourt, Patrick Kelly, Doreen Kelly.

(L-R) Paddy Oliver, John Pinkerton, Adam Curry, John Bell.

(L-R) Shauna Harley, Patricia Montgomery, Laura Beggs.

(L-R) Noeleen Weir, Claire Marshall, Lisa Mullan.

(L-R) Catherine McGinley, Gemma McKeown.

(L-R) Kelly Marner, Brian Feeney.
Tributes have been paid to Sir Thomas Brown - an outstanding figure with a long association with the legal profession and health and social services in Northern Ireland, who died on 8th November 2003.

A wide range of individuals and organisations that have been influenced by the work of Sir Thomas over many years have been acknowledging his contribution to them and to his family.

Sir Thomas grew up in Portaferry, County Down, where he attended the local primary school before continuing his education at Royal Belfast Academical Institution. He went on to train as a solicitor and his first post after qualification was with a law practice in Downpatrick, County Down, before later moving to work in Belfast. This choice of profession was to determine much of his early career.

As a lawyer, Sir Thomas played an active part in the affairs of the legal profession in Northern Ireland, being elected to the Council of the Law Society, where he became a member of the disciplinary committee. He also served as Executive Chairman of the Belfast Council for Social Welfare, and was particularly active in the 'Poor Man's Lawyer Scheme' which provided legal assistance for many people who could not otherwise afford it.

In the early 1960s, Sir Thomas embarked upon new roles that took him into the realm of Northern Ireland's health and social services - and this transition was to shape much of his later working life.

Periods of service with the Council for Professions Supplementary to Medicine and the Joint Board of Curators for medical and dental appointments at Queen's University proved the spur for what was to be an enduring contribution to the health sector. This was to lead to his Chairmanship of the former Northern Ireland Hospitals Authority in 1967 and, following later re-organisation of the health and social services, his appointment in 1973 as Chairman of the Eastern Health and Social Services Board.

This by now substantial role within many public services was formally recognised with the award of a Knighthood in the Queen's New Year Honours List of 1974.

Sir Thomas then attained a national role in health services when he was appointed as Vice-Chairman of the Royal Commission on the NHS which presented its report to government in June 1979.

Even though Sir Thomas retired from his role as Chairman of the Eastern Board in 1984, his commitment and contribution to the wider health and social services in Northern Ireland is an enduring one. Many staff across the service will remember him with affection for the personal dignity, sincerity and good nature with which he defined his role.

Many of his former associates keenly acknowledge the great sense of personal dignity and integrity that Sir Thomas possessed - and his ability to readily lead and motivate others in a quite unassuming fashion. He was unquestionably a key figure who helped to shape health and social services into their modern form, and this is perhaps the most fitting legacy of his contribution to public services.

Sir Thomas had lived in his native and much-loved Portaferry for all his life, where he actively contributed to community development work. In this capacity he had served as the first Chairman of Portaferry Regeneration Limited, which has in recent years attracted new investment to the town and introduced successful restoration schemes.

Sir Thomas held a life-long interest in travel and in music and the arts, having been a member of the Belfast Philharmonic Society. In summer, he was also a familiar figure to many people on a rowing boat that he frequently plied on Strangford Lough.

Many of Sir Thomas's former colleagues and associates paid tribute to his memory at his funeral in Portaferry on 12th November. His wife, Eleanor, two brothers and a wide family circle, survive him.
Importance of Training

When we talk about putting risk management procedures in place, we do not just mean inviting an adviser into a practice to discuss potential minefields. We also do not mean simply setting up a system which incorporates all the advice given by the risk consultant. While both of these are valid parts of risk management, they need to be accompanied by training.

Lawyers are good at their jobs when it is to do with the business of the law. However, many are slightly less astute when it comes to the actual running of a business. Our research has shown that lawyers can answer most questions on their specialist legal areas, but on the day-to-day running of a practice they are not such experts.

Therefore, within a practice everyone should not only know the risk management procedures being introduced, but should also understand them. Our research shows that while many lawyers can recite the areas of risk to be found within their practice, many have not actually stopped to consider what this means. The result of this is that they do not fully comprehend why these procedures are necessary and, therefore, do not implement them properly, running the risk of mistakes being made.

The training also needs to be not only educational, but relevant. It must teach staff the importance of risk management while also addressing not only business issues but also issues which are pertinent to the individual. If the training does not relate to someone’s particular area in a way that they can understand both the rationale and benefits behind it, chances are they will not incorporate the new procedures into their daily routines.

Another important aspect when training staff in risk management is reviews. It is not enough simply to train everyone once and stop it.

A risk management consultant will insist that all procedures are reviewed on a regular basis. This is also true of training. While it will not be necessary to retrain all staff annually, it is a good idea to check that they are still up to speed on and implementing all areas of risk management within the practice.

To reap the benefits of good risk management - namely, to have fewer claims of negligence against the practice and a subsequent reflection in professional indemnity insurance premiums - procedures need to be embedded in a firm’s culture. The best way to do this is to ensure that everyone knows about, is trained in, and understands fully all risk management strategies within the practice.

This column was prepared by the Alexander Forbes Professions risk management team.

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In the September issue of the Writ, we considered the mechanisms that can be employed with regards to a person’s financial affairs where s/he lacks the necessary mental capacity to make a decision for her/himself.

In this issue and the next, we will consider what, if any, provisions there are for taking decisions on behalf of a person who lacks the necessary mental capacity with regard to her/his welfare or care needs. We will look for guidance in these areas by reference to statute, case law and Departmental guidance. Much of the case law has focused on issues about consent to medical treatment and it is to these cases that we will first look for guidance on general principles.

The requirement of voluntary consent is central to the treatment of a patient and where the patient is an adult of sound mind this principle is absolute. However, legal issues arise where the patient is incapable of giving consent. The test for deciding whether or not a person has the capability to give consent has been laid down in the leading case of Re C (1994). C was a 68 year old man suffering from paranoid schizophrenia who refused against medical advice an amputation of his leg. He suffered from delusions that he was a great surgeon and that no-one but himself would operate on his leg. The court held that there existed a presumption of competence but that this was a rebuttable presumption. They adopted the test of the psychiatrist giving evidence in the case who analysed the decision making process into three stages:

- comprehending and retaining information;
- believing it;
- weighing it in the balance to arrive at a choice.

The court held that it was for those wishing to treat the patient to prove that the answers to these questions were negative. In this case, the doctors had failed to prove this therefore they could not operate. Although the person was suffering from a mental disorder, he was nevertheless deemed to have the mental capacity to make a particular decision ie to refuse the treatment.

Although this was an unusual case, the issues raised also apply to less dramatic circumstances. For example, in one unreported case dentists who administered an anal suppository for pain relief while the patient was unconscious were struck off. Their actions amounted to an assault, even though they were acting in the patient’s best interests. The patient in that instance was mentally sound but the case illustrates the importance of consent when any treatment decisions are being made.

The common law doctrine of necessity provides a defence to conduct which would otherwise be tortious such as medical intervention without the consent of the patient. The High Court has power both inherent and statutory to make a declaration as to whether an act is lawful or not. It was stressed in the case of Re F (1989) that the court cannot give consent in the place of a person, but merely clarifies whether or not certain actions are in the person’s best interests and therefore lawful. The Law Commission of England and Wales (1995), when reviewing this power, commented as follows:

“...a declaration by the High Court does not answer the question who decides? Nor does it answer the question what will be best? It has been said that the essence of the jurisdiction is that the Court is like a camera photographing the relevant legal terrain. It registers what exists and declares what it finds.”

Before the declaratory relief is granted, it must first be established that the person lacks capacity to consent, which in this context involves comprehending and retaining the relevant information, believing it and weighing it in the balance to arrive at a choice.

The threshold for a declaration has been set low, but depends on a pre-existing relationship or legitimate interest, the absence of any other suitable protector and someone’s own legal position being protected. The only real limits are that strangers or busybodies are not allowed to ask for a declaration.
The courts have accepted that they have jurisdiction to use the declaration procedure in cases concerning the cessation of artificial sustenance of a patient in a persistent vegetative state and, as discussed above in the case of Re C, to clarify the effect of purported refusals of treatment. In general terms, if a person is found not to have capacity, other remedies are not available and the court accepts it has jurisdiction, then the court will decide what is in the best interests of the patient based on expert evidence.

The Court of Appeal, in the case of Re MB (1997,) considered the test for mental capacity and also laid down the procedure and guidelines for applications for declarations as to the lawfulness medical intervention when capacity was in issue. The following principles emerged.

(a) Every adult is presumed to have capacity, unless shown to the contrary.
(b) Capacity should be considered in relation to the particular decision - the more serious the decision, the greater the capacity required.
(c) If a patient has capacity, then the issue of best interest does not arise. It does not matter if the decision is one which would not be made by a person of ordinary prudence and indeed may be irrational or founded on no good reason.
(d) A person lacks capacity if some impairment or disturbance of mental functioning renders her/him unable to make a decision. That inability to make a decision will occur when:

(1) the patient is unable to comprehend and retain the information which is material to the decision, especially about the likely consequences; or
(2) the patient is unable to use the information and weigh it in the balance as part of the process of arriving at the decision.
(e) temporary factors such as confusion, shock, fatigue, or pain may erode capacity, but these factors would need to be operating to such an extent that the ability to decide is nullified.

In the case, Lady Justice Butler-Sloss said that the court in assessing best interests would follow similar principles to those applied in assessing the welfare of a child, as the court was concerned with a person who was unable to make a decision for her/himself. In reaching such a decision, all relevant information about a person's circumstances and background should be considered by the court.

While the Court of Appeal decision in Re MB is binding, the case dealt with a specific crisis situation from which the court attempted to formulate wider issues of principle.

In something of a similar vein, the DHSS&PS has recently issued a handbook for medical practitioners entitled Reference Guide to Consent for Examination, Treatment or Care which includes guidance on consent when working with children, older people and people with learning disabilities. The guidance emphasises consent as a process and reiterates that for a person to have capacity to take a particular decision, s/he must be able to comprehend and retain information relevant to the decision, especially as to the consequences of receiving or not the treatment or care in question and be able to use this information in the decision-making process.

The High Court has accepted that the declaration procedure can be invoked to determine a dispute with regard to residence. In the case of Re S (1995), the Court of Appeal considered an application by the cohabitant of an adult who lacked capacity for a declaration that it was lawful for him to reside and be cared for in a hospital in England and an interim injunction to prevent his family removing him from the jurisdiction. Neither of the parties to the case was currently caring for the adult who had suffered a stroke but both had views on what was best for him. It was disputed that the cohabitant had sufficient standing to obtain the relief sought and that it was a matter over which the court had jurisdiction. In the case, the court stressed that neither co-habitee, wife nor son had any legal right or duty to care for the future welfare of the patient and...
that it was the legal right of the patient to the exclusion of all others to choose where he lived. It was this right that gave the court its jurisdiction to give a declaration as to what was in the patient's best interest as the court was concerned that the person was unable to make that decision for her/himself.

In judgement, the court stated;

"...it can be suggested that where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party the court will not impose nice tests to determine the precise legal standing of that claimant... I have no doubt that the substantial issue in this case is a serious justiciable issue, involving as it does the happiness and welfare of a helpless human being."

The court went on to find that it was not necessary to demonstrate that a specific legal right was infringed in order to secure injunctive or declaratory relief.

Rather the court should respond to 'social needs as they are manifested, case by case'. It also recognised that an ageing population and a community into which more persons without capacity are integrated would produce more cases of this type.

This inclusive and pragmatic approach has enabled the courts subsequently to intervene in a range of cases concerning adults who lack capacity, despite the absence of any express statutory powers.

This will be discussed in the next issue of the Writ.

Vincent Sheils, community care legal adviser, Law Centre (NI)

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REVISED STANDARD FORM OF BUILDING AGREEMENT

On 10th November 2003 the Society announced the publication of a revised Standard Form of Building Agreement for use in new private house building developments, together with revised recommended procedures for solicitors acting for developers and for purchasers.

The Society has also agreed with the Construction Employers’ Federation (the Trade Association for the building industry) to promote these documents jointly to our respective members.

For a number of years a Standard Form of Agreement has been in use and this has now been revised and updated. A copy of the new Agreement, together with a copy of the recommended procedures for building developers’ and purchasers’ solicitors is downloadable from the Members’ Section of the Society website at www.lawsoc-ni.org.

In a letter addressed to all firms urging members to make as wide a use as possible of this documentation, the President, Mr Joseph Donnelly said: “The Agreement in its standard form strikes a fair balance between the respective rights of the purchaser and the developer.

It is recommended that developers’ solicitors should, wherever possible, adopt this new Form of Agreement and furnish papers in accordance with the recommended procedures for developers.

Conversely solicitors acting for purchasers should request papers in accordance with the recommended procedures for purchasers.”

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Stamp Duty - All Change

part 2

In my article for the previous issue, I outlined the background to the introduction of Stamp Duty Land Tax on 1 December and the practicalities involved in the completion and submission of new Stamp Duty Land Tax forms. This article now concentrates on further aspects of the new regime together with details on how you can obtain further information and publications we have produced concerning the changes.

Land transaction return certificate
A certificate will be issued once the land transaction return has been processed at our data capture centre if:

• all relevant information is provided
• our own system check verifies the calculation of Stamp Duty Land Tax due
• payment is enclosed

The certificate replaces the impressed stamp and provides you with proof that a Land Transaction Return has been delivered. The certificate must be presented to HM Land Registry, Registers of Scotland or Land Registry Northern Ireland when applying for registration of title or documents.

The certificate will be based solely on information contained on the land transaction return (and where appropriate supplementary forms). No covering letter, other information or documents should be submitted with the return unless you are submitting a plan because the land is for development, is agricultural or is a small ‘garden’ plot. This will reduce the amount of paper to be sent through the post to us and should avoid any chance of valuable original documents going astray. The new process also represents a first step towards more streamlined ways of submitting data to us and helps prepare the way for possible future changes, such as the plans for an electronic conveyancing system to co-ordinate the electronic delivery of various aspects of the conveyancing process.

Late Returns
The Finance Act 2003 introduced a penalty for late notification and payment of Stamp Duty Land Tax.

Where the land transaction return and/or payment is not received within 30 days of the effective date of the transaction (the filing date) but within three months of the 30 day limit, a penalty of £100 will be charged automatically. A penalty of £200 will be automatically charged in all other cases. Any late payment will also give rise to an interest charge.

Amended Returns
Where customers wish to query or amend information captured, they should write to a local Stamp Office who will have a facility to amend the original notification. An amendment may not be made more than 12 months after the filing date.

Circumstances when no land transaction return is required
The following transactions do not need to be notified for Stamp Duty Land Tax purposes. However, you will need to certify that the transaction is exempt and submit, as now, that self-certificate to HM Land Registry, Registers of Scotland or Land Registry Northern Ireland when applying for registration of title. We have provided a special form for this purpose which is available from the Orderline.

(1) transfer or conveyance of a freehold interest in land (in Scotland, ownership of land or the interest of the proprietor of the dominium utile of land) for no chargeable consideration
(2) transfer or assignment of a leasehold interest in land (in Scotland, assignment of a tenant’s interest under a lease of land) for no chargeable consideration
(3) grant of lease (in Scotland, exchange of missives of let) where all the following are satisfied

• the term of the lease is less than seven years
• the amount of any premium is not such as to attract a charge to Stamp Duty Land Tax at a rate of 1% or more (ignoring the availability of any relief)
• the amount of any rent is not such as to attract a charge to Stamp Duty Land Tax at a rate of 1% or higher (ignoring the availability of any relief)
(4) other land transaction (for example, the grant of an easement or servitude) where the chargeable consideration is not such as to attract a charge to Stamp Duty Land Tax at a rate of 1% or higher (ignoring the availability of any relief)
(5) land transaction exempt from Stamp Duty Land Tax under Schedule 3 paragraph 3 Finance Act 2003 (transactions in connection with divorce)
(6) land transaction exempt from Stamp Duty Land Tax under Schedule 3 paragraph 4
Finance Act 2003 (variation of testamentary dispositions)

Self-certificate forms will be available from the IR Orderline and HM Land Registry, Registers of Scotland and Land Registry of Northern Ireland from 1 December. You can use photocopies of this form.

Rates and thresholds

For freehold transfers and assignments or assignations of leases, and for the premium element of new leases, the rates and thresholds will be the same as at present, except that for non-residential property the nil-rate limit is increased from £60,000 to £150,000.

There will be a new structure for charging the rental element on the grant of a new lease. The charge will be based on the ‘net present value’ of the rentals payable under the lease. We shall give more details of the charge on the rental element of new leases shortly.

Under the new regime, there will be cases where no tax is due, for instance where a relief can be claimed or where the transaction is below the nil-rate band threshold.

The threshold will be £60,000 for residential property and £150,000 in other cases.

In these cases purchasers may still have to make a return to the Inland Revenue or, in certain cases, provide a self-certificate to the land registries (which includes any register maintained by the Keeper of Registers of Scotland and, in Northern Ireland, the Land Register of Northern Ireland and the Registry of Deeds).

Reliefs

Reliefs that have been carried forward from the existing regime include transfers between group companies, transfers arising from company reconstructions and certain purchases and leases by registered social landlords. In addition, there will also be new reliefs for the modernised regime. These include acquisitions of dwellings by housebuilding companies in part-exchange for the sale of a new home, acquisition of dwellings by relocation companies, and acquisitions by local authorities or public bodies under compulsory purchase orders or under the terms of planning arrangements. Since 10 April 2003, stamp duty has not been due on certain non-residential property transactions in designated disadvantaged areas. This builds on the existing exemption from stamp duty on all property in disadvantaged areas where the consideration does not exceed £150,000. A full list of qualifying areas is available on the Inland Revenue website at www.inlandrevenue.gov.uk/so.

Customers who do not have access to the Internet can also receive advice on this and other stamp duty issues from the Stamp Taxes Enquiry Line on 0845 6030135.

Special rules will apply to certain transactions. They include transfers between companies and connected parties, collective enfranchisement by leaseholders and crofting community right to buy schemes, alternative property financing arrangements for individuals (which can be used, for instance, to provide ‘Islamic mortgages’). Also included will be acquisitions of dwellings under shared ownership schemes, and right to buy and rent to mortgage transactions.

Developing a compliance regime

The modernised regime will bring a modern, comprehensive compliance framework to stamp duty for the first time. An enquiry regime will be implemented which will mirror provisions already in place for other taxes administered by the Inland Revenue such as Income Tax and Corporation Tax. The main enquiry regime will be underpinned by a risk assessment process. A random enquiry programme will be implemented to enable us to measure the effectiveness of our compliance approach.

We are also taking forward work related to the practicalities of the enquiry regime, including a Code of Practice covering how those enquiries are to be handled and an appeals process.

We will also develop a compliance regime around exempt instrument transactions and stamp duty certificates.

Further information

Further details are available in the Inland Revenue’s Finance Bill 2003 press notice (REV 55) and Budget day press notice, PN05: Modernising the Taxation of Property. Both of these can be found on the Stamp Taxes’ website at www.inlandrevenue.gov.uk/so/budget2003.htm. Customers who do not have access to the Internet can also call the Stamp Taxes Enquiry Line on 0845 6030135.

Detailed guidance is available in the new Stamp Duty Land Tax manual that has been published in electronic form. A draft version of the manual is available on our website. We would welcome comments on the content of the manual.

Please send comments by post to; Vivienne Scrimshire Room 116, New Wing Somerset House London WC2B 1LR Tel. No. 020 7438 7762 or alternatively these may be e-mailed to; Vivienne. Scrimshire @ir.gsi.gov.uk

Further information on Stamp Duty Land Tax can also be found on our website at www.inlandrevenue.gov.uk/so/

Also on our website we provide an on line ‘postcode tool’ at www.inlandrevenue.gov.uk/so/postcode_search.htm if you would like to find out if a property is in a disadvantaged area and qualifies for relief.

This will enable you to determine whether a property is in a disadvantaged area from the postcode. Where exceptionally the answer cannot be found, for example for a new property that has only just received a postcode, you can gain further guidance from our Enquiry Line by telephoning 0845 603 0135.

We are looking at other ways of improving how this information is provided to you. Full details will be provided on our website.
Information Bulletins and SDLT Customer Newsletters
The first in a series of Information Bulletins have been produced and mailed to around 10,000 firms of solicitors who have had contact with us in the past. These bulletins will continue to be produced in the run up to the commencement of the changes. The aim of the bulletins is to keep customers informed of developments on an ongoing basis.

If you would like to be added to our mailing list to receive future editions and receive copies of the three so far issued, please contact Vanessa Jenkins on msd.stampscondoc@ir.gsi.gov.uk.

We have also recently begun to publish SDLT Customer Newsletters. The newsletters will provide more detailed information relating to specific areas of the changes and how they will affect our customers.

These will also be published on a regular basis. Again earlier issues of the newsletter can be obtained by contacting Vanessa Jenkins at the address as shown above.

Alternatively both of these publications are also available from the eight Stamp Offices across the country and on our website at www.inlandrevenue.gov.uk/so/land_tax_changes.htm

Article supplied by Des Newman, Modernising Stamp Duty, Project Support Officer.

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Actuary to the Legal Profession in Northern Ireland

Spence & Partners is Northern Ireland’s leading firm of actuaries and pensions consultants. Our Actuaries to the Legal Profession practice area provides expert actuarial support to solicitors and barristers in meeting the needs of their clients.

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Telephone 028 9041 2020

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Life is precious.
Your legacy

Every year in Northern Ireland, almost 10,000 people die from a Chest, Heart or Stroke related illness.

However, we can leave our children the priceless legacy of a healthier tomorrow. The NI Chest Heart & Stroke Association is working today - providing support and advice, funding research in hospitals and universities - so that we can help find a cure for tomorrow.

To continue our work, we rely on legacies and voluntary donations, with ALL money raised spent on helping people in Northern Ireland.

For a leaflet on leaving a legacy to NI Chest Heart & Stroke Association please phone 028 9032 0184

Or write to us at our temporary address:
Chamber Of Commerce House, 6th Floor,
22 Great Victoria Street, Belfast BT2 7LX

www.nichsa.co.uk

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If you need a solution to your problem contact our Underwriters on 020 7397 4343.
Friday 20th February

The Conference opens on Friday afternoon with an optional visit to Hillsborough Castle. The Castle set in the picturesque village of Hillsborough will be instantly recognisable to many as the venue for some of our recent historic political talks.

On Friday evening at 7.30pm onwards, there will be a Drinks Reception and Buffet Supper in the Royal Courts of Justice which is located just across from the Hilton Hotel. This will be an informal evening and we will arrange a tour of the adjacent New Bar Library with all its state of the art facilities. For those with continuing stamina details of local hot spots will be provided.

Saturday 21st February

The Conference Session will get underway in the Hilton Hotel and will encompass, amongst others, the following topics:

- the role of the newly appointed NI Commissioner for Children - Nigel Williams
- pre - nuptial agreements - Peter Duckworth
- family law and human rights - Ursula Kilkeeny
- relocation of children - Professor Nigel Lowe

Delegates will have an opportunity to participate in active debate throughout the Conference.

On Saturday evening, the magnificent Belfast City Hall will be the venue for the Gala Dinner Dance. Belfast City Council is hosting a Drinks Reception which will be followed by dinner and dancing until late.

Sunday 22nd February

On Sunday morning there is the option to tour Belfast by Black Taxi before starting your journey home.

The Conference fee of £110 includes the visit to Hillsborough Castle, Friday Drinks Reception and Buffet, the Conference Session and lunch and the Gala Dinner Dance.

Bank of Ireland

Due to the generous sponsorship of our principal sponsor Bank of Ireland, we have been able to keep costs to a minimum. We very much appreciate their sponsorship and that of all our other sponsors who will be acknowledged in our Conference brochure.

Conference Booking Form

Name: 
Address: 
Tel: Email: 

I wish to attend Four Jurisdictions Family Law Conference 2004

The Conference Delegate fee is £110 and includes Friday Evening Reception and Buffet, Saturday Conference Session and Gala Dinner and Dance.

I will be accompanied by: 

The cost for accompanying person is £65 and includes Friday Reception and Buffet and Saturday Evening Reception and Gala Dinner Dance.

Special dietary requirements: 

Additional activities Delegate Companion
Visit to Hillsborough Castle
Sunday morning Black Taxi Tour of Belfast 2 hours (£99 pp payable on day) Delegate fee (£110) Companion fee (£65) Total £

Please return completed Booking Form together with cheque payable to Four Jurisdictions Conference Belfast to: 

CBPR 229 Mountsandel Road, Coleraine, BT52 1TB 
Tel: 028 7035 3217 Email: clair@cbpr.co.uk

To download additional booking forms and to find out more about transport links, Belfast and Conference Hotel go to www.lawsoc-ni.org

In order to assist in updating the database for future Four Jurisdictions Conference, it is necessary for data protection purposes to indicate consent for the storage of the above information. Please do so by ticking box.

All Hotel Accommodation should be booked directly with the Hilton Hotel Belfast

The Conference Hotel is the Hilton Hotel, Belfast. A contemporary 5 star hotel in the city centre with an enviable riverside location and excellent Living Well Health Club.

Single rooms are £96 per room per night; double rooms are £106 per room per night; executive rooms £126 per room per night. All rates include VAT and full Irish breakfast. Please quote the reference Four Jurisdictions Conference when making a reservation directly with the hotel. 50% of the rooms not reserved by 9/4/04 will be released. Remaining rooms will be released by 23/01/04. All accommodation must be confirmed with a credit card.

Hilton Hotel, 4 Lanyon Place, Belfast BT1 3LP Tel: 028 9027 7000 Fax: 028 9027 7277 www.hiltonhotels.com
Youth Conferencing Update

An Information & Training Seminar on the Youth Conferencing Pilot Scheme commencing in Greater Belfast on 18th December 2003 was held at Law Society House on 18th November.

In his opening remarks, Nigel Broderick who chaired the presentation set out the background to the scheme which had its genesis in the Criminal Justice Review 2000. It recommended that restorative justice approaches should be developed in suitable cases involving young persons. In particular it proposed a system of youth conferencing for juveniles. It aimed to balance the needs of the victim and the young offender by agreeing plans of action which satisfied the victim and created opportunities for the young person to make amends and stop committing crime. The recommendations of the Review were now enshrined in Part 4 of the Justice (NI) Act 2002.

Raymond Kitson, Assistant Director of the Department of Public Prosecutions gave a presentation on the new Public Prosecution Service for Northern Ireland (PPS) and the new provisions for dealing with youth conferencing, particularly those relating to prosecutorial diversionary youth conferences.

He advised that a pilot scheme for the new PPS would commence on 1st December 2003, dealing with all cases in which a prosecution decision was required for the South Belfast District Command Unit. More importantly in the context of youth conferencing the PPS would commence a Youth Conferencing Pilot Scheme on 18th December. It would apply to all young persons falling within the provisions of the legislation who both reside and commit an offence in the Petty Sessions District of Belfast and Newtownabbey.

Alice Chapman, Director of the Youth Conferencing Service, indicated that whilst there had been a number of youth conferencing initiatives in New Zealand, Canada and Europe, the particular provisions of this scheme were unique to Northern Ireland. The legislation provided that a legal representative of the child acting as adviser was entitled to participate in any meeting constituting a youth conference.

It was intended though that the young person would speak in his/her own voice and not through the voice of others. As the process was intended to be a restorative one and not adversarial, the role of the legal representative would be different from that traditionally performed.

A video of a mock youth conference was then shown.

Details of the legal aid arrangements applying to youth conferences were given by Padraig Cullen of the Public Legal Services Division of Northern Ireland Court Service. In particular he drew attention to the new arrangements for legal aid in diversionary youth conferences. He also furnished a useful handout of Frequently Asked Questions.

In the ensuing Panel Question and Answer session, a number of issues arose in relation to proportionality, legal aid and what was meant by significant non-compliance and the consequences thereof.

In closing the seminar, Mrs Bernadette Kelly, Resident Magistrate at Belfast Youth Court thanked all of the presenters for their contribution. She remarked that there would be a learning process for all involved. She advised that she intended to operate an ‘open door’ policy so that practitioners could raise with her any difficulties they had with the operation of the pilot scheme. She recommended the establishment of an informal Youth Conference Users Group to provide a forum for the exchange of ideas and views.

Note:

(1) A small number of Information Packs are still available - contact Peter O’Brien at Law Society House

(2) The Youth Conference Rules (NI) 2003 (SR 2003 No.473) are now available from The Stationery Office or are downloadable from www.northernireland-legislation.hmso.gov.uk
Mournes Setting for 2004 Advocacy Course

The Law Society of Northern Ireland’s Advocacy Working Party is delighted to announce the first major event in the calendar for 2004.

With the Advanced Advocacy Course having been successfully completed by 100 practitioners in Northern Ireland and by large numbers in our sister jurisdictions in the Republic and Scotland, the Working Party has met the overwhelming demand for a Refresher Course by organising a long weekend of advocacy training, mock trials and workshops etc in March 2004.

This course is being organised by the Society’s Working Party here but will have equal representation and input from participants from the South and from the Scottish Society of Solicitor Advocates. Like all our courses we are obliged to restrict the numbers to between 24 and 26 and no jurisdiction will be permitted to exceed ten participants for the event.

We have been fortunate to be able to organise the event as a residential course over a long weekend commencing on Thursday evening, 11 March 2004 through to Sunday lunchtime, 14 March 2004 in the relaxing and welcoming atmosphere of the Burrendale Hotel and Country Club, Newcastle, County Down. This establishment boasts an extensive range of leisure facilities and is situated at the foot of the majestic Mournes beside the jewel in a crown of gems of golf courses all within a 15 mile radius. Country lanes, forest parks, beaches and horse-riding are all available and should provide some brief respite from the hectic timetable for those privileged to be accepted on to the Course.

This is certainly the first ever joint venture in continuing legal education for solicitors from three jurisdictions in these islands and the stimulus of meeting, training and competing with colleagues from other jurisdictions adds immensely to the attraction of the Course.

Once again our gracious mentors and friends in NITA have agreed to travel over and lead the Course. We are certain to have the cream of the NITA faculty for this prestigious event. The prospect of multi-jurisdiction co-operation in these islands has inspired the NITA board and members and gives us here no little satisfaction at being the pioneers in the exercise.

Only those who have obtained an Advanced Advocacy Certificate are eligible for the Course but if you fail to meet that criterion do not worry, we are about to commence preparations for the fifth Advanced Advocacy Course in September 2004 in the Institute of Professional Legal Studies in Belfast and details of that event will follow in the next edition of the Writ.

Advocacy Working Party

The Burrendale Hotel and Country Club in Newcastle, County Down - the setting for the March 2004 Advanced Advocacy Course.
The Society is delighted to have Alison Matthews of Irwin Mitchell Solicitors provide practitioner focused seminars on money laundering avoidance. Money laundering has implications for risk and practice management.

This is the seminar which will address both the law and the practical implications of the Proceeds of Crime Act (POCA) 2002 and the Money Laundering Regulations (MLR) 2003. HM Treasury have just announced that the Money Laundering Regulations laid before Parliament on 28th November will come into effect on 1st March 2004.

**Alison Matthews is the Money Laundering Reporting Officer and Compliance Officer at Irwin Mitchell, having joined the firm in July 2001 from the Professional Ethics Division at the Law Society of England and Wales. In addition to her MLRO duties she is responsible for ensuring compliance with the FSA's rules within Irwin Mitchell's Investment Management Division. Irwin Mitchell is one of the top 20 law firms in England and Wales, with an established national reputation for personal injury work, as well as corporate, private client and insurance services. Alison is also a member of the Money Laundering and Serious Fraud Taskforce of the Law Society of England and Wales, which lobbied on the Second European Money Laundering Directive and on the money laundering provisions of the Proceeds of Crime Act 2002. Alison also lectures and publishes on money laundering compliance and the money laundering provisions of the Proceeds of Crime Act. She was co-editor of the Law Society’s guidance on money laundering, ‘Money Laundering Legislation: Guidance for Solicitors - Second Edition’ and is now a member of the Editorial Board for the new guidance.**

Alison says, “Your firm is vulnerable to money launderers. The impact on solicitors will be significant as most areas of legal work will be caught by the new Regulations. This is in addition to the Proceeds of Crime Act 2002 which is already having a phenomenal impact on the legal profession, for example, the P v P Judgment is having a significant impact on family lawyers.

The legislation and the implications have been described as draconian. The penalties are severe. Your staff have a defence if they do not receive training on the law and the regulations and they do not know or suspect that another person was engaged in money laundering. However, partners who fail to train their staff will be in breach of the Money Laundering Regulations 2003, the maximum penalty is 2 years or a fine or both.”

This seminar is aimed at solicitors in private practice and explains the money laundering provisions of the Proceeds of Crime Act 2002; the new Money Laundering Regulations 2003; and gives guidance on procedures to minimise the risk of being caught up in money laundering.

- What is money laundering?
- Money laundering and the Proceeds of Crime Act 2002
- The new Money Laundering Regulations
- Privilege and confidentiality
- Assessing the risks for your firm
- Developing anti money laundering strategies and policies
- Knowing your client
- Reporting issues
- Practical help

The seminar will cover a vast amount of material and be backed up by detailed notes. The seminar fees are £25.00 per head to include light refreshments.

Times and places are as follows:-
**Wednesday 21st January 2004** 12 noon - The Spires Centre, Howard Street, Belfast / 6.00 pm - City Hotel, Londonderry
**Thursday 22nd January 2004** 12 noon - Canal Court Hotel, Newry / 6.00 pm - The Spires Centre, Howard Street, Belfast

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**Booking Form**

Name ................................................................................................................................................................................................................... 
Firm ..................................................................................................................................................................................................................
Address ...............................................................................................................................................................................................................
Tel ............................................................................................................................................................................................... Email .............................................................................................................................................................................

I wish to attend the following seminar (please tick)

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I enclose my remittance for £ ....................................................... (cheques should be made payable to the Law Society)

Please return your completed booking form to:
The Deputy Secretary, Law Society of Northern Ireland, Law Society House, 98 Victoria Street, Belfast BT1 3JZ.
Stamp Duty Land Tax Update

The introduction of Stamp Duty Land Tax (SDLT) on 1st December 2003 might be considered an early Christmas present which Northern Irish lawyers could well do without, given the introduction of ground rent legislation, compulsory first registration and the revised Standard Form of Building Agreement in recent times and forthcoming changes over the next number of months with regard to the introduction of a Council of Mortgage Lenders Handbook for Northern Ireland and the requirements of the Money Laundering Regulations 2003 (which will come into force on 1st March 2004).

Undaunted however almost 700 solicitors attended the seminars on ‘An Overview of Stamp Duty Land Tax’ which were held at various locations throughout Northern Ireland during the month of November. It is hoped to publish in a subsequent edition responses (once received from the Revenue) to the specific questions which were raised at those meetings.

A further 130 practitioners attended a supplemental seminar entitled ‘SDLT In More Complex Commercial Transactions’. In relation to this second seminar, the speakers from the Inland Revenue commented that the Law Society of Northern Ireland was the only regional Law Society to request such a presentation.

Whilst the SDLT regime is not intended to make any significant changes to the duty payable on standard residential transactions, the general view was that the system was indeed new as was the tax. For more complex transactions however, it may be necessary to consider the effects of the new tax with some care.

In any event its introduction will certainly require all conveyancers to change their procedures. The Guidance Notes on Practice Issues prepared by the Society which accompanied the Information Pack from the Inland Revenue provide some useful assistance on these matters. For those who were unable to attend the seminars there are a limited number of packs still available - contact Peter O’Brien at Law Society House.

Work on various aspects of the new tax is still ongoing - draft clauses on certain partnership transactions have just been published. The Inland Revenue are issuing News Releases and Technical Notes on an ongoing basis. The Lease Calculator and Stamp Duty Calculator are now both available online, as is an Internet version of SDLT Forms 1,2,3 and 4. Special ‘soft landing’ arrangements have also been announced which will apply for a limited period of time with regard to the correct completion of the forms and the time limit for submission to the Rapid Data Capture Centre at Netherton for processing. In these circumstances, practitioners should consider regularly visiting the Stamp Taxes website at www.inlandrevenue.gov.uk/so to keep themselves updated with ongoing developments.

Trends in Charitable Giving by Will
Seminar/Book Launch: January 30th 2004

A seminar to be held at Queen’s University Belfast on 30 January will present the findings of a major survey into charitable giving by will. The research examined over 10,000 wills - all those admitted to probate in Northern Ireland in 1937, 1967 and 1997. The result is a unique insight into charitable giving on death, addressing some key questions:

- Who is most likely to leave a charitable bequest, and who is not?
- Which types of charity are most likely to benefit from charitable giving?
- What type of person is most likely to leave a charitable gift to a particular cause?
- What types of gift are testators most likely to include in their wills and which are most useful to charities?
- How have the patterns of giving changed in the last sixty years and what are the signs for the future?
- What are the most common mistakes made when charitable gifts are being drafted in wills?

The results will be presented by members of the research team, Norma Dawson and Sheena Grattan of the School of Law, Queen’s University Belfast, Laura Lundy of the Graduate School of Education, QUB, and Ruth Glenn, a solicitor in private practice. Those attending the seminar will receive a copy of the book, Dying to Give? Trends in Charitable Giving by Will, published by The Stationery Office. Other speakers at the seminar will include Seamus McAleavey, chief executive of NICVA, and Dave Wall of the Department of Social Development, NI. Venue and time for the event: Council Chamber and Canada Room at Queen’s University, Belfast, 9.30am - 2.00pm, 30th January 2004.

For further details and registration forms, contact Norma Dawson: n.dawson@qub.ac.uk
Attention Probate Practitioners

The Non-Contentious Business Committee of the Law Society of Northern Ireland invite you to a short seminar on:-

‘Probate Applications Less Frequently Encountered’

Friday 30th January 2004

1.00pm - 2.00pm

(tea/coffee sandwiches served from 12.30pm)

Venue: Lecture Hall, Law Society House, Belfast

Cost: £20.00

This seminar will look at various procedural and practical issues arising in those probate applications not regularly encountered in practice and will include - guarantees, lost wills, limited grants, second grants, amendment and revocation of grants, caveats, warnings and citations. Attendance will qualify for CPD.

Speakers:
Master McReynolds Master Probate & Matrimonial Office and
Rosalind Neill Probate Section Probate & Matrimonial Office

To reserve a place please complete the attached form and return it to:
Law Society of Northern Ireland, Law Society House
98 Victoria Street, Belfast, BT1 3JZ

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Probate Applications Less Frequently Encountered

Name ..............................................................................................................................................................................................

Firm ................................................................................................................................................................................................

Address ................................................................................................................................................................................................

Tel ................................................................................................................................................................................................

I enclose cheque for £20.00 payable to Law Society of Northern Ireland
Presidential Swansong

In one of the last events of his Presidential year, Joe Donnelly appeared live (and almost rehearsed) at a charity gig in support of Action Cancer. Promoted jointly by the Society and the Northern Bank, Ballymena was the venue for an excellent evening combining Irish Stew and the blues (no connection between the two). The event raised over £4,000. A big thank you from Joe to all who attended and/or gave donations.

Mr Joe Donnelly presents a cheque to Leo Donaghy of Action Cancer. Looking on are Matthias Kelly QC (Chairman, Bar Council of England and Wales) and David Preston (immediate Past President, Law Society of Scotland).

The President in his natural environment.

PRACTISING CERTIFICATE NOTICE

Applications Reminder
Application forms for Practising Certificates for the practice year 6th January 2004 to 5th January 2005 have been despatched by the Society.

Each solicitor wishing to apply for a certificate for this period should ensure that the form is completed in accordance with the Guidance Notes which appear on the reverse side of the application forms.

Practitioners are reminded that responsibility for a correct and timely application lies with the individual solicitor seeking the authority of the certificate (not with his or her firm or Department). The forms, together with the other specified documentation and appropriate fees, must be returned to the Society no later than 5th January 2004.
The Children Order Advisory Committee - Best Practice Guidance

The Children Order Advisory Committee (COAC) was set up in 1997 to monitor and advise on the operation of the Children (Northern Ireland) Order 1995 in the courts and to advise the Lord Chancellor, the Minister for Health, Social Services and Public Safety, and the Secretary of State on issues arising from its implementation.

The Committee is chaired by the Judge of the Family Division of the High Court of Justice in Northern Ireland, the Honourable Mr Justice Gillen. Its composition reflects the broad spectrum of disciplines and professions engaged in working with children in both the courts and other spheres.

On 8th December 2003 COAC launched ‘Best Practice Guidance’ in Children Order proceedings. The Honourable Mr Justice Gillen introduced the document saying:- 'The Best Practice Guidance provides a definitive statement of good practice on major aspects of Children Order proceedings. It is my hope that the guidance will find use as a tool for the conscientious but busy practitioner, and that it will become incorporated into both judicial and professional training.'

The Guidance provides a definitive statement of good practice on major aspects of Children Order proceedings, including the use of adjournments, appeals to the High Court, case management in private and public law cases, the timetabling of concurrent criminal and care proceedings, disclosure in public law proceedings, the use of experts, the Guardian ad Litem Agency, the renewal of interim care orders and the appointment of the Official Solicitor.

It has been developed by a sub-committee of COAC comprising representatives of the Bar, solicitors, legal representatives of HSS Trusts, the Northern Ireland Guardian ad Litem Agency and the judiciary / magistracy and reflects the inter-disciplinary approach which COAC has striven to implement. A copy of the Best Practice Guidance is downloadable from the Northern Ireland Court Service website at www.courtsni.gov.uk.

OFFICE OF LAW REFORM
LEGAL CONSULTANCY OPPORTUNITY

The Office of Law Reform is a Directorate within the Department of Finance and Personnel. Its remit is to bring forward proposals for reform of the civil law in Northern Ireland.

OLR wishes to appoint lawyers on a consultancy basis to assist in legal research and drafting for projects mainly within the broad area of family law. The work requires good research and writing skills, experience in handling statutory materials, meticulous attention to detail and IT skills.

Duration of appointment - negotiable, likely to be in the range from 6 months to 2 years, commencing in early 2004.

Hours of work - part-time or full-time commitment considered.

Fees - negotiable, likely to be pro-rata the legal assistant salary range, currently £20,208 - £34,992.

Further details available from OLR.

Expressions of interest with CV before 9th January 2004:
Office of Law Reform, Lancashire House, S Linenhall Street, BELFAST BT2 8AA.
Telephone: 028 9054 2900 E-mail: info@olrni.gov.uk

The Society has been notified on new arrangements for certain bail applications.

Saturday morning hearings for first bail applications in scheduled bail cases are to be introduced. In other words, where an accused is charged and remanded on Thursday afternoon or perhaps a Friday morning, if an application is made before lunchtime on Friday then the case will be listed for hearing on Saturday at the Royal Courts of Justice. The new procedure will be put in place from the beginning of the new term (January 2004).
NIYSA CHRISTMAS DISCO
O’Neill’s Bar - 4 Joy’s Entry, Belfast
Friday 19th December 2003
9.00pm - Late
Admission: £5.00

The NIYSA would ask its members to contact Nuala Sheeran (Chairperson), of Mills Selig Solicitors, with any comments they would like to make about the topics chosen for our CPD lectures and seminars over the course of 2003. We would also welcome suggestions for subjects of interest for next year’s programme.

BRITISH COUNCIL VISIT DINNER
Belfast Castle
Wednesday 18th February 2004
The annual visit from European students to Northern Ireland for a week long study tour will take place in February next year. The NIYSA will be hosting a dinner at Belfast Castle on Wednesday 18th February 2004.

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 Nuala Sheeran, c/o Mills Selig Solicitors, 21 Arthur Street, Belfast BT1 4GA. E mail to nuala.sheeran@nilaw.com

The NIYSA would like to invite its members to attend the
‘SPRING FORWARD’ FOUR NATIONS CONFERENCE FOR YOUNG SOLICITORS
Friday 14th May - Sunday 16th May 2004
Venue - The Hilton
Newcastle-Upon-Tyne Gateshead

We will be hosting the conference jointly with the Scottish Young Lawyers Association, the Society of Young Solicitors of Ireland and the Trainee Solicitors Group of England and Wales.

There will be a full programme of CPD lectures on the Friday and Saturday. As always there will be a Gala Ball on Saturday night.

You are encouraged to contact any NIYSA committee member to register your name for a place at the conference. The registration cost will be confirmed shortly although we can advise that as in previous years, the first thirty places will be offered at a considerably subsidised rate.
Action Cancer saves lives through the provision of free early detection clinics to men and women concerned about cancer. The charity’s support service helps families affected by cancer and our research provides hope for the future. A bequest could make a real difference to future generations. If you would like more information or our Legacy leaflet, please ring Leo.

Tel: (028) 9080 3344
Web Site: www.actioncancer.org
Charity Reg No: XN48533

PREVENTION DETECTION SUPPORT RESEARCH

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**McERLEAN WEIR SOLICITORS**

45 Fitzwilliam Square
Dublin 2, Ireland
Tel: (353-1) 678 7777
Fax: (353-1) 678 7878
E-mail: info@mcerleanweir.com

ALL LEGAL WORK UNDERTAKEN ON AN AGENCY BASIS
FEE SPLITTING BY ARRANGEMENT
CONSULTATIONS IN NORTHERN IRELAND WHEN REQUIRED

CONTACT
Kevin H. McErlean, Solicitor
(Also admitted N.I. 1998)
The annual BSA Dinner Dance is to be held on Saturday 17 January 2004 at the Ramada Hotel, Shaws Bridge, Belfast. Drinks reception at 7.30pm followed by dinner at 8.30pm with dancing ‘til late with The Booze Brothers.

Tickets are £35.00 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 Gavin Patterson, BSA Dinner Dance, Hoffman & Company Solicitors, 27-29 Gordon Street, Belfast, BT1 2LG; A reservation cannot be made unless a cheque (made payable to Belfast Solicitors Association) is received with the booking request. Tables are for 10 people and any requests for vegetarian meals should be made at the time of booking.

This year 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 Ramada Hotel is offering a preferential room rate of £65.00 bed & breakfast. Room reservations should be made direct with the hotel on 9092 3500, requesting the preferential rate for the BSA Dinner Dance.

We look forward to seeing you there.

CPD Seminar Programme

Thursday 5th February 2004
‘Solicitors’ Guide to Setting Down a High Court Action and Preparation for Trial’ by Cormac Fitzpatrick.

Thursday 26th February 2004
‘An Update on Land Registry of Northern Ireland Practice and Procedure’ by Patricia Montgomery.

All seminars will take place at Law Society House Coffee and sandwiches will be available from 12.30pm and the talks will start at 1.00pm.

The cost of all lunchtime seminars is £10 for BSA members and £20 for others.

Cheques payable to the BSA, c/o The Administrator, BSA, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.

Pictured at a recent meeting in Law Society House are (l-r) David Lavery (Director, Northern Ireland Court Service), John Bailie (Chief Executive, Law Society of Northern Ireland), Lord Filkin (Parliamentary Secretary, Department of Constitutional Affairs), Joe Donnelly (then President, Law Society of Northern Ireland). Lord Filkin is the Minister within the DCA (formerly the Lord Chancellor’s Department) with responsibility for the Northern Ireland Court Service and the other functions of the Lord Chancellor in Northern Ireland. This was his first ‘introductory’ meeting with the Society since his appointment and provided a useful, if brief, opportunity to exchange preliminary views on a range of issues of mutual concern.
Law Society Notice The Solicitors’ (NI) Order 1976
Notice of Order of the Disciplinary Tribunal

The Disciplinary Tribunal constituted under the above mentioned Order has held an enquiry into applications made by the Law Society of Northern Ireland and having found the allegations contained in the Affidavits of the applicant to have been proved, ordered that the name of Thomas P Bennett, formerly practising on his own account at 4 Abbey Street, Bangor, be struck off the Roll of Solicitors in Northern Ireland.

John W Bailie, Registrar of Solicitors
Dated: 11th November 2003

To advertise in the Writ

If you wish to advertise in the Writ please contact Karen Irwin for rates, specification and copy deadlines at:

Citigate NI Public Affairs Ltd
128a High Street
Holywood
BT18 9HW

Tel: 028 9042 8899
Fax: 028 9042 8877
Email: karen.irwin@citigateni.co.uk
The Rules amend the Crown Court Rules (Northern Ireland) 2003 (SR 2003 No.471).

The above named Rules came into operation on 1 December 2003. The Rules amend the Magistrates’ Courts Rules (Northern Ireland) 1984 (‘the principal Rules’) to provide for the service of a summons in cases prosecuted by the Director of Public Prosecutions (Rule 2(1) to (4)) and to substitute a new Form of Recognizance to keep the peace and/or be of good behaviour. The new form detail the particular behaviours from which the party to the recognizance is to refrain (Rule 2(11)).

The Rules also make provision relating to Part II (Special measures directions in case of vulnerable and intimidated witnesses), Part III (Protection of witnesses from cross-examination by accused in person) and Part IV (Protection of complainants in proceedings for sexual offences) of the Criminal Evidence (Northern Ireland) Order 1999 (‘the 1999 Order’).

Rule 2(5) revokes Rule 149A of the principal Rules, which is no longer required as the an application to use television links where a witness will not give evidence otherwise through fear will be dealt with as an application for a special measures direction, the procedure for which is prescribed in Rule 149AA.

Paragraphs (6) to (9) of Rule 2 amend make a number of minor amendments to the principal Rules to take account of the extension of Part 2 of the 1999 Order to vulnerable and intimidated adult
The Rules amend the Magistrates' Courts (Criminal Justice (Children)) Rules (Northern Ireland) 1999 by substituting a new Form of recognition by a parent or guardian for the good behaviour of a child, in which details of specific behaviour from which the child must refrain may be specified and by inserting new forms for use in connection with applications in relation to reparation orders, community responsibility orders and youth conference orders.

**PRACTICE DIRECTION**

**In the High Court of Justice in Northern Ireland Queen's Bench Division Practice Direction No 1 2003 Expert's Declaration**

With effect from 1 January 2004 the report of any expert witness prepared after that date shall contain the following declaration. I declare that:

1. I understand that my primary duty in furnishing written reports and giving evidence is to assist the court and that this take priority over any duties which I may owe to the part or parties by whom I have been engaged or by whom I have been paid or am liable to be paid. I confirm that I have complied and will continue to comply with this duty;

2. I have endeavoured in my reports and in my opinions to be accurate and to have covered all relevant issues concerning the matters stated, which I have been asked to address, and the opinions expressed represent my true and complete professional opinion;

3. I have endeavoured to include in my report those matters of which I have knowledge and of which I have been made aware which might adversely affect the validity of my opinion;

4. I have indicated the sources of all information that I have used;

5. I have where possible formed an independent view on matters suggested to me by others including my instructing lawyers and their client; where I have relied upon information from others, including my instructing lawyers and their client, I have so disclosed in my report;

6. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report or opinion requires any correction or qualification;

7. I understand that:
   a) My report, subject to any corrections before swearing as to its correctness, will form the evidence which I will give under oath or affirmation;
   b) I may be cross-examined on my report by a cross-examiner assisted by an expert;
   c) I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standard set out above.

8. I confirm that I have not entered into any arrangement whereby the amount or payment of my fees, charges or expenses is in any way dependent upon the outcome of this case.

Practice Direction made 1 December 2003 coming into effect on 1 January 2004

J J Sheil
Senior Queen's Bench Judge
The library has been required to comply with changes to copyright law brought about by the EU Copyright Directive (2001/20/EC) which has been implemented in the UK by SI 2003/2498, coming into force on 31 October 2003.

We have had to obtain a copyright licence from the Copyright Licensing Agency and have had to bring about changes in charges to comply with the legislation.

Changes in the new law
Until now, copying done by users in the library, and vicariously by library staff, have been covered by the library exemption of fair dealing, research and private study. These exemptions have been removed, and the only material exempt from the new Copyright Directive is Crown Copyright material, or copying carried out for non-commercial purposes or for judicial proceedings as follows:

Material exempt under the new Directive
• All legislation
• All EU material
• All material from Libero
• Material to be used for judicial proceedings (ie. after a writ has been issued)

In these cases, users will be required to sign a form declaring that the material is exempt from copyright, and this material will be subject to the usual library charges.

Material covered by the Directive and therefore not exempt
• Journals
• law reports
• text books

In these cases the new charges will apply (see below).

What it means
Unfortunately the need to obtain a licence will result in an increase in our prices. The charges have been set by the Copyright Licensing Agency, and the revenue generated goes directly back to them, and ultimately to the publishers. The library will make no profit from these increased fees.

Our services
Self service photocopying
When you come to the library and carry out your own copying for commercial purposes you will be required to purchase a sticker declaring that the copyright fee has been paid. This sticker costs £9.

Document delivery services
For material requested from the library, either by way of routine requests or through our current awareness list, a charge of £5 per item will now be levied for material which is not exempt (see above). You will no longer be required to complete a copyright declaration form.

We apologise for the increase in fees for some of our services and reassure you of our continued commitment to provide the best library and information service to our users as possible.

If you have any further queries please contact Heather Semple, Head of Library and Information Services.
The President, together with several criminal law practitioners, pictured at a recent meeting with the Attorney-General, Lord Peter Goldsmith QC. This provided a useful and informal forum for discussion of issues of common interest, such as criminal law and procedural reform. In the frame are (l-r) Peter O’Brien (Law Society of Northern Ireland), the Attorney-General, Hugh Edgar, Philip Breen, Joe Donnelly (then President), Pearse MacDermott and John Bailie (Law Society of Northern Ireland).

<table>
<thead>
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<td><strong>Signed:</strong></td>
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<tr>
<td>J W Bailie, Registrar of Solicitors</td>
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<td><strong>Dated:</strong> 11 November 2003</td>
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<th>NEW APPOINTMENTS</th>
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<tr>
<td>Forthcoming editions of The Writ will include a new ‘People on the Move’ feature.</td>
</tr>
<tr>
<td>We are keen to hear from any solicitor who has taken up a new appointment or from practices which have taken on new recruits.</td>
</tr>
<tr>
<td>Your information should include the name of person you wish to feature, their new title and/or position, their responsibilities in their new post and if possible, a colour head and shoulders photograph.</td>
</tr>
<tr>
<td>All copy should be sent to: Mr John Bailie, Editor, The Writ, Law Society of Northern Ireland, Law Society House, 98 Victoria Street, Belfast, BT1 3JZ.</td>
</tr>
</tbody>
</table>
Re: Beatrice Richardson
Late of 5 Cliftondene Park, Belfast, BT14 7PG
Date of death: 28th October 2003
Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Nesbitt Solicitors
167 Upper Newtownards Road
BELFAST
BT4 3HZ
Tel: 028 9047 1851
Fax: 028 9065 4411

Re: Elizabeth Reynolds Rush (deceased)
Late of 52 Hollypark Road, Killinchy, Co Down
Born 11th March 1921
Died 21st July 2003
Would any person having knowledge of the whereabouts of a Will of the above named deceased, please contact:
Elaine Early & Co Solicitors
19 Castle Street
Comber
Co Down
BT23 5DY
Tel: 028 9187 1880
Fax: 028 9187 1882

Re: George Murdock deceased
Late of 126 Highfield Drive, Belfast or 11 Portmore Lea, Lower Ballinderry, Lisburn, Co Antrim who died on 28th May 2003.
Would any person have knowledge of the whereabouts of a Will for the above named deceased?
Please contact:
J G O’Hare & Co Solicitors
37-41 High Street
BELFAST
BT1 2AB
Tel: 028 9023 4800

Folio: 8440
County: Down
Registered Owner: Patrick McStay
Of: Drumhorc, Lawrencetown, County Down
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned folio shall 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 is so communicated within three weeks of publication of this notice, a duplicate Land Certificate shall be applied for.
Emmet J Kelly & Co Solicitors
21 Rathfriland Street
Banbridge
Co Down
BT32 3LA
Tel/fax: 028 4062 9397

Folios: 28689, County Tyrone
28164, County Tyrone
17228, County Tyrone
Registered owner:
John Patrick McBride
Lands of Glashygolgan / Meenagarragh
Take notice that any person having custody of or information as to the whereabouts of the Land Certificates relating to the above mentioned Folios shall forthwith produce said Certificates or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificates are so produced or adequate information as to their whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Michael Ferguson Solicitors
249 Lisburn Road
Belfast BT9 7EN

Folio: AN 88280
County: Antrim
Registered Owner:
Paula McKenzie and Noel Moyna
Lands of: 12 Clovelly Street, Belfast
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Michael Ferguson Solicitors
249 Lisburn Road
Belfast BT9 7EN

Folio: AN 32221 L
County: Antrim
Registered Owner: Brian Alexander Walker and Suzanne Wallace
Lands of: 18 Hamlet Way, Ballyclare
Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the undermentioned solicitors.
And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Michael Ferguson Solicitors
249 Lisburn Road
Belfast BT9 7EN

Folio: 20210
County: Antrim
Registered Owner: Antrim Borough Council
Lands at: Neillsbrook Road, Randalstown, County Antrim
Take 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 further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Cleaver Fulton Rankin Solicitors
50 Bedford Street
Belfast BT2 7FW

Folio: 35757
County: Antrim
Registered Owner: 
David Elliott Robinson
Lands at: Gracehill Road, Ballymoney

Take 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 publication of this notice, a duplicate Land Certificate may be applied for.

Greer, Hamilton & Gailey (Ref: SJW)
27 High Street
Ballymoney
County Antrim BT53 6AJ

Folio: 22693
County: Antrim
Registered Owner: 
Josephine Doherty
Lands at: Gracehill Road, Ballymoney

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio shall forthwith produce said Certificate or communicate such information to the undermentioned solicitors.

And further take notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.

Sheridan & Leonard Solicitors
19-21 High Street
Belfast BT1 2AA

An attractive salary will be offered to the successful candidate. Apply with CV to:
The Recruitment Partner
McCloskeys Solicitors
Rochester Building
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Belfast BT2 8GD
Tel: 028 9024 0310

Assistant Solicitor required for country practice.
Experience in Conveyancing essential. Attractive salary will be offered to the successful candidate. Apply with CV to:
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Portadown
Co Armagh BT62 3LN
Tel: 028 3833 1834

We are a niche firm based in the centre of Belfast and work primarily for business clients.

We now wish to recruit a Solicitor with proven experience of property law. The successful candidate is likely to have at least two years' experience, and possibly considerably more, of commercial conveyancing, developments and leasing. There will be a limited amount of domestic conveyancing. Some experience of banking work would also be beneficial.

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We offer excellent career prospects and a friendly working environment. Please apply in writing, enclosing a CV, to:
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Morrow & Wells
57 Upper Arthur Street
Belfast BT1 4GJ
Tel: 028 9023 3866
Fax: 028 9033 0762
Email: law@morrow-wells.com

Assistant solicitor required for busy Lisburn practice.

Experience in conveyancing and matrimonial work is essential. Please forward CV in confidence to:
John P Slevin Solicitors
144 b&c Longstone Street
Lisburn, Co Antrim BT28 1TR

An attractive salary will be offered to the successful candidate. Apply with CV to:
The Recruitment Partner
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Rochester Building
28 Adelaide Street
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Assistant Solicitor required for busy Litigation practice.

Applicants should have three to four years PQE in Defendant's Litigation.
High Court, Court of Appeal and Tribunal Decisions

ARMAGHDOWN CREAMERIES LIMITED and HARRY BELL
Summons seeking to strike out proposed amendment to defendant's counterclaim on grounds it discloses no reasonable cause of action, is frivolous, vexatious and abuse of process under 0.18 r.19 RSC. - money due by defendants to plaintiff for goods sold and delivered. - issue already determined by Master 6 years previously. - order made in the terms of the plaintiff's summons.
QUEENS BENCH DIVISION 30 OCTOBER 2003 COGHLIN J

IN THE MATTER OF L1 AND L2
(CARE PROCEEDINGS: CRIMINAL TRIAL)
Application for care order by grandparent under art.8 Children (NI) Order 1995 under criteria set out in art.10 (B). - application against wishes of mother. - whether disruption to child's life. - leave granted to applicant to bring application for contact.
FAMILY DIVISION 30 OCTOBER 2003 GILLEN J

MULLIN, GREGORY MATTHEW ARCHER, SMITH, WALTER PAUL, REV DUANE DENNIS RUSSELL AS TRUSTEES OF THE DROMORE INDEPENDENT METHODIST CHURCH and MILLS SEILG
Solicitors' undertaking - construction of undertaking - whether breach of undertaking - duty to discharge incumbrance - duty to complete.
CHANCERY DIVISION GIVAN J

NIB GROUP LIMITED and COLIN ELLIS
Appeal from a small claims arbitration by way of case stated under article 30(4)(b) County Courts (NI) Order 1980. - termination of hire purchase agreement. - whether car dealer was agent at common law of finance company. - whether adequate notice of termination.
QUEENS BENCH DIVISION 17 OCTOBER 2003 WEATHERUP J PAYNE, PATRICK DANIEL AND COOKE, WILLIAM and ULSTER BANK LTD Damages for negligence, misrepresentation and breach of contract. - partnership experiencing financial difficulties and signed Farming Development Loan. Agreement offered by bank by way of loan at flat rate interest. - this financial advice subsequently challenged by independent advisers. - whether bank owed plaintiffs duty of care. - whether this duty was breached. - whether bank should have assumed plaintiffs would receive independent advice from their accountant. - HELD bank owed plaintiffs duty of care, and was in breach of this duty by misrepresenting information to plaintiffs. - £60,083 damages awarded.
QUEENS BENCH DIVISION 30 OCTOBER 2003 COGHLIN J

RE ANTHONY QUINN A BANKRUPT
Bankruptcy. - divorce. - application for order for possession and sale of dwelling house and premises. - occupation order under art. 11 Family Homes and Domestic Violence Order 1998. - whether just and reasonable. - whether exceptional circumstances. - HELD that order be suspended for nine months to give applicant's wife opportunity to find suitable living arrangements.
CHANCERY DIVISION (BANKRUPTCY) 16 OCTOBER 2003 CAMPBELL LJ

IN THE MATTER OF AN APPLICATION BY MARTIN SHAW FOR JUDICIAL REVIEW
Application for judicial review. - whether legislative provisions relating to bail in scheduled cases under the Terrorism Act 2000 are incompatible with art.5 ECHR. - whether Secretary of State ought to have made regulations under s.72 Terrorism Act imposing time limits for the holding of a preliminary inquiry into the applicant's case. - application dismissed.
QUEENS BENCH DIVISION 10 NOVEMBER 2003 KERR J

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QUEENS BENCH DIVISION 10 NOVEMBER 2003 KERR J

TRANSLINK and AMALGAMATED TRANSPORT & GENERAL WORKER UNION & ORS
Application for interlocutory injunction to restrain trade union defendants from inducing or procuring employees of the plaintiff to break with contract of employment by taking part in industrial action and proposed strike. - Trade Union and Labour Relations (NI) Order 1999 art. 97. - whether breach of procedural requirements invalidating outcome of union ballot. - whether negotiations related to different trade disputes. - whether fresh ballot required. - HELD that application for injunction refused.
CHANCERY DIVISION 16 OCTOBER 2003 GIVAN J

R V NOEL GERARD KING, SEAN CHRISTOPHER KING and HUGH WILLIAM FOSTER
Murder. - whether any minimum term of imprisonment should be specified before each defendant can be considered for release. - Life Sentences (NI) Order 2001. - aggravating and mitigating factors. - minimum terms of 11 and 16 years set for defendants before consideration for release.
CROWN COURT 31 OCTOBER 2003 WEATHERUP J

R V THOMAS SAMUEL TOURISH
Application for leave to appeal against sentences imposed. - leave to appeal refused. - grievous bodily harm. - malicious wounding with intent. - possession of offensive weapon. - leave to appeal given and sentence substituted.
COURT OF APPEAL 24 OCTOBER 2003 NICHOLSON J

Tribunal Decisions

DUGGAN, GAVIN V CROSSGAR POULTRY LIMITED INDUSTRIAL TRIBUNAL, 14 JUNE 2002, 1879/01 Applicant alleged unfair dismissal. - applicant made redundant. - whether redundancy situation existed. - whether applicant was fairly selected for redundancy. - Tribunal rules applicant was unfairly dismissed and orders sum to be paid to him.
GUERRERO, JEROME V DARWIN MARTIN T/A WEBWORLD LIMITED INDUSTRIAL TRIBUNAL, 7 JUNE 2003, 3540/01 Applicant alleged non-payment of wages, non-payment of notice period, no itemised pay statement, no written reasons for dismissal and unfair dismissal. - applicant alleged he was summarily dismissed by the respondent. - respondent was not represented at the Tribunal. - Tribunal dismisses applicant's complaint of unfair dismissal and no written reasons for dismissal as he had not been employed for a
Continuous period of one year. Tribunal rules applicant's complaints of non-payment of wages and non-payment of notice are well-founded and orders sum to be paid to applicant.

LEWIS, JAMES V MAYBIN PROPERTY SUPPORT SERVICES (NI) LTS & DHSS INDUSTRIAL TRIBUNAL, 7 MAY 2002, 02145/00
Applicant alleged disability discrimination and constructive dismissal. Applicant worked as a security guard and suffered two instances of collapse on duty due to diabetes. Applicant did not have a physical or mental impairment as a result of his diabetes and his condition did not affect his ability to carry out normal day-to-day activities. Tribunal dismisses application.

PARK, STEPHEN V CIARA MCCOURT T/A KELLY’S CELLS INDUSTRIAL TRIBUNAL, 7 JUNE 2002, 32200/01
Applicant alleged unfair dismissal and breach of contract. Applicant summarily dismissed. Tribunal can discern no good, proper or fair reason for the applicant's dismissal. Tribunal rules applicant was unfairly dismissed and upholds his complaint of breach of contract. Applicant awarded compensation including amount for injury to feelings.

PARKER, RORY V THE RANGERS SHOP LIMITED INDUSTRIAL TRIBUNAL, 3 MAY 2002, 3604/01
Applicant alleged unfair dismissal. Respondent summarily dismissed applicant for gross negligence. Tribunal found the decision to dismiss the applicant was unreasonable and unfair. Compensation is awarded to the applicant.

Recommended Reading

| Proceedings of Crime Act and the P v P case |
| Caselaw |
| P V P (Divorce: Ancillary Relief) |
| The liability of solicitors acting in divorce proceedings to report to the National Criminal Intelligence Service their suspicions that a spouse's property might represent the proceeds of crime. |
| 2003 EWHC (Fam) 2260; Times, October 14, 2003; (2003) All ER (D) 141 (Oct) http://www.bailii.org/ew/cases/EWHC/Fam/2003/2260.html |
| Alternatively a transcript of this case is available from the Law Society Library. |

Legislation


 Books in the library


New Books in the Library


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T: 028 9032 3980

Copy deadline for January Friday 14th January 2004

Editor: John Bailie
Published by the Law Society of Northern Ireland, 98 Victoria St. Belfast BT1 3GN
The views expressed are not necessarily those of the Law Society of Northern Ireland.

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