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Committee for Justice Meeting at Law Society House

Society Chief Executive, Alan Hunter, reflects on the recent visit of the Justice Committee to Law Society House.

On 24 May 2012 the Society hosted the Committee for Justice of the Northern Ireland Assembly. The Committee held their formal stated meeting in Law Society House and then met in private session with the Law Society Council. They received a number of briefings from Council members and me on the particular challenges facing the profession at present. Prior to their stated meeting members attended a lunch with Council members.

The Society enjoys a good working relationship with the Committee for Justice. Members will be familiar with the role of the Committee for Justice which is to scrutinise the work of the Minister of Justice, Mr David Ford MLA and his Department.

The Committee’s visit to the Society provided an opportunity to publicise research produced from a survey of the profession in 2011. This survey was despatched to all practices throughout the jurisdiction and has provided a solid evidential base from which general trends can be identified. From the survey we have been able to identify statistical estimates of the contribution which solicitors’ practices make both to the local economy and to the local community. I provided the Committee with headlines figures emerging from the survey, including:

- Every Solicitor’s practice on average spends £25,000 per annum within their local area on products and services.
- Collectively solicitors’ practices provide pro bono services to the value of £21 million per annum.
- 76% of solicitors throughout Northern Ireland perform a voluntary role with a community charity or voluntary group often providing free legal advice.

Following the presentation of the key findings, the President invited a number of Council members to address the Committee on a range of issues of interest.

Former President and current Treasurer of the Society, Rory McShane, impressed upon the Committee the need for legislation to provide for a comprehensive ban on the payment of referral fees in personal injury cases in Northern Ireland to ensure protection for consumers and to reduce the cost of motor insurance.

Brian Speers, the Senior Vice President, delivered a presentation on the high levels of professionalism and experience of solicitors practising in Northern Ireland and drew attention to how solicitors continually develop their skills, in areas such as alternative dispute resolution, to meet emerging client needs.

Norville Connolly provided the Committee with an overview of the ongoing work of the Society with key stakeholders, including Invest Northern Ireland, in promoting the Northern Ireland legal sector. The work of the Society in promoting Northern Ireland as a centre for legal business.

Committee Chair, Paul Givan MLA, thanked the Society for hosting the Committee meeting and for providing an informative overview of the profession and evidence of its contribution to the local economy and community.
a jurisdiction of choice for outsourcing was highlighted.

Elizabeth McCaffrey advised the Committee about the Society’s ongoing work in relation to issues affecting multi-unit developments. The Chairman of the Committee welcomed the work of the Society in this area, in particular commending the information leaflets on the topic produced by the Society which had proved helpful in assisting constituents. Ms McCaffrey provided a further presentation on access to justice, impressing upon Committee members that solicitors’ practices provide a one stop legal service to the local community.

Brian Walker highlighted to the Committee the importance of the sole practitioner. Anne Brown delivered a presentation on the issue of un-adopted roads, discussing the role of the solicitor in the conveyancing process.

Mr Robinson, the Junior Vice President, presented to the Committee on the law relating to the elderly, in particular stressing the Society’s opposition to plans to abolish the Enduring Power of Attorney and replace it with a more complicated and expensive Lasting Power of Attorney.

Paul Givan, the Chairman of the Committee, thanked the Society for the opportunity to engage and for the presentations from Council members. On behalf of his colleagues he indicated that the Committee was receptive to hearing from the Society on the issues discussed and that they would consider further the issues raised during the meeting. Mr Givan referred to the constructive working relationship which the Society and Committee shared and acknowledged the work undertaken by the Society to develop this relationship.

The President thanked the Committee members for their attendance and encouraged them to engage further with the Society and its membership on key justice issues.

This meeting served to strengthen relationships between the Society and Committee for Justice as we move forward. The Society has continued to impress upon politicians the importance of the solicitor as the first port of call when members of the public, who are also MLA constituents, encounter legal difficulties.

The Society will continue to highlight the central role played by the solicitor in the local community and economy.
On 6 June 2012, provision made in the Justice Act (NI) 2011 for the Offender Levy and Penalty Notice, was introduced. The Act received Royal Assent on 4 May 2011.

The Offender Levy

Sections 1 to 6 (Part 1, Chapter 1) and Schedule 6 (paragraph 1) of the Act provide for the Offender Levy.

Background

The principal aim of the Levy is to make offenders more accountable for the harm their actions have caused, by requiring them to make a financial contribution towards support services delivered to victims and witnesses of crime. Revenue accumulated from the Levy will be used to resource a dedicated Victims of Crime Fund ("the Fund"). The Fund (which is non-statutory) will pay for projects that support victims and witnesses in the criminal justice process, as well as local initiatives taken forward by groups working with victims in the community.

Applicability

The Offender Levy ("the Levy") involves the mandatory imposition of a specified financial amount on a range of sentences handed down by the court, as well as on fixed penalties offered by the police as an alternative to prosecution. The Levy will only apply to sentences given to adult offenders (those aged 18 years and over) and its rate, ranging between £5 and £50, will be dependent on the severity of the sentence or penalty imposed. The range of sentences and penalties to which the levy is to be imposed is specified in Section 1 of the Act. The Levy rate is specified in Section 6.

For court based sentences, the Levy and its rate will be pronounced verbally by the judge when sentencing. The Levy will be imposed only once on the offender when the court is dealing with him on a particular occasion, whether for one or more offences. It will be applied to the sentence given to the most serious offence, as determined by the judge and it will be recorded by the court as part of the sentencing record.

For fixed penalties, the Levy amount will form part of the overall fixed penalty amount to be paid.

Commencement

Introduction of Levy provisions of the Justice Act (NI) 2011 is to be phased in line with operational capability of all criminal justice organisations responsible for its delivery. Phase 1 of the implementation timetable which commenced on 6 June 2012 – includes the Levy’s introduction to:

- Immediate custody and detention – at a rate of £50 for sentences of more than 2 years and £25 for sentences of 2 years or less
- Court fines at a rate of £15
- Fixed penalty fines of the Justice Act (NI) 2011 at a rate of £5

Further roll-out of the Levy’s application to remaining sentences and penalties specified in the Act, will be dealt with at a future stage.

Key characteristics

- The Levy will not apply retrospectively. Schedule 6 paragraph 1 provides that the Levy does not apply in relation to an offence committed before the commencement of its provision.
- Therefore, the Levy will only apply to those offences committed on or after 6 June 2012
- Section 1(4) provides that a Levy will not apply to custodial sentences to be served concurrently with another custodial sentence imposed on the offender on a previous occasion, and where the Levy has been imposed on the previous custodial sentence
- The rate of Levy can be reduced, but only in clearly defined cases. Section 1(5) of the Act provides that where a compensation order has been made under Article 14 of the Criminal Justice (NI) Order 1994, but the offender has insufficient means to pay both the Levy and the appropriate compensation, the court must reduce the Levy accordingly (if necessary to nil)
- Under Section 2, the Levy will be enforced by the courts in the same way as any fine imposed by the court
- Section 4(1) provides that at the time of sentencing, a court shall not exercise any power to issue a warrant committing the offender to prison in respect of non-payment of the Levy ("forthwith warrant"). This provision will allow the Levy to be collected from the offender whilst in custody
- A prisoner will be given the opportunity to pay the Levy in full, however, where the prisoner is unwilling or unable to do so, the Levy will be recovered by deduction from the prisoner’s earnings. Section 3(1) provides the governor of a prison or young offenders’ centre, or a person authorised by the governor, the power to make Levy deductions from the earnings of a prisoner. Under Section 3(3), the rate of the deductions and frequency of its payment is determined by the Department (of Justice)
Penalty Notices

Background

Sections 59 to 70 (Part 6, Chapter 1) and Schedule 4 of the Act provide for the issue of Penalty Notices by police officers for a prescribed list of seven offences.

Operation of the Penalty Notice

The Penalty Notice provisions in the Act will enable police officers to dispose of a limited range of offences, without a direction from the Public Prosecution Service. Penalty Notices will give first-time or non-habitual offenders the opportunity to discharge liability for certain offences by paying a penalty of either £40 or £80 (dependent on offence) within 28 days. No admission of guilt is required, and an individual may decline the offer of a Penalty Notice.

The penalty will be available to offenders aged 18 or over, and will be subject to an Offender Levy of £5. The power to issue a Penalty Notice does not preclude the use of any existing methods of disposal for relevant offences and the option to issue a Penalty Notice will be at officers’ discretion.

On acceptance of a Penalty Notice, no proceedings may be brought for that offence until the end of the 28 day suspended enforcement period.

Alleged offenders retain the right, within 28 days of issue, to ask that the offence be considered for prosecution at court instead. If such a request is received, the Penalty Notice issued will be nullified.

If a penalty is not paid within 28 days (and the recipient has not requested to be tried), it will be uplifted by 50%, registered as a court fine and enforced through existing court fine default arrangements. The Offender Levy element will not be subject to uplift.

A Penalty Notice is not recorded on an individual’s criminal record. However, a record of issue will be retained to inform future decisions as to the appropriateness of a fixed penalty for any subsequent offending by the individual.

Aims of the Penalty Notice

- To enable police officers to deal with certain minor offences quickly and in a proportionate and appropriate manner at the time of the commission of the offence.
- To increase the amount of time officers spend dealing with more serious crime while simultaneously reducing the burden on the Public Prosecution Service and the courts.
- To allow suitable minor offences committed by first time or non-habitual offenders to be dealt with quickly and proportionately without necessarily leading to the impact of a criminal conviction on their future prospects.

The offences

Schedule 4 of the Act details the seven offences for which the new Penalty Notice will be available. Additionally, police are in receipt of guidance (as provided for in Section 60 of the Act) which stipulates further conditions for some of the eligible offences which must be observed when considering the issue of a Penalty Notice. These offences and associated conditions are:

£40 Penalty Notices

- Indecent behaviour (Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 (c. 28)). Issue of a Penalty Notice for this offence is limited to incidences of urination in the street.

£80 Penalty Notices

- Disorderly behaviour (Article 18(1)(a) of the Public Order (NI) Order 1987).
- Behaviour likely to cause a breach of the peace (Article 18(1)(b) of the Public Order (NI) Order 1987).
- Resisting, obstructing or impeding a constable (Section 66(1) of the Police (NI) Act 1998). Guidance precludes issue for assault of a police officer which is also covered by Section 66(1) of that Act.
- Criminal damage (Article 3(1) of the Criminal Damage (NI) Order 1977). Guidance provides that a Penalty Notice may only be issued for criminal damage to, or destruction of, property under £200 in value.
- Theft (Section 1 of the Theft Act (NI) 1969). Guidance provides that a Penalty Notice may only be issued to an individual once for this offence. A Penalty Notice may only be issued for criminal damage under £100 in value where goods are recovered in saleable condition or the retailer has been compensated for their loss.

More generally, guidance to police officers precludes issue where there has been an injury to any person or any realistic threat or risk of injury to any person, or for any offence related to domestic violence, motivated by hatred (based on religion, race, sexual orientation, age or disability), or which is overtly sexual in nature.
We are grateful to Mr Justice McCloskey, Chairman of the Northern Ireland Law Commission, for the following article.

Law reform

Both the Northern Ireland Law Commission ("the Commission") and the Law Commission of England and Wales ("the English Law Commission") are, as their titles suggest, engaged in the business of law reform. The legal profession of Northern Ireland has an important role to play in this and I am pleased to report that the Law Society has emerged as an active interested party in relation to some of the Commission’s law reform projects.

The Northern Ireland Law Commission

Initially, I take this opportunity to alert you to the broader picture. The Commission is an independent statutory body, established and governed by Sections 50-52 of and Schedule 9 to the Justice (Northern Ireland) Act 2002 ("the 2002 Act").

The creation of the Commission was one of the significant reforms of the Northern Ireland legal system effected by the 2002 Act. By Section 50, the Commission is a body corporate, consisting of a Chairman and four Commissioners appointed by the Minister.

Pursuant to Section 51 of the 2002 Act, the Commission is obliged to keep under review the law of Northern Ireland with a view to its systematic development and reform. Specifically, the methods prescribed for the performance of this overarching duty are codification, the elimination of anomalies, the repeal of unused legislation and the reduction of the number of separate legislative provisions. Section 51 further provides that the Commission should undertake the simplification and modernisation of the law of Northern Ireland.

Within the ambit of the broad statutory remit set out above, the Commission has certain specific statutory obligations. These are:

(a) To consider any proposals made for the reform of the law of Northern Ireland  
(b) To prepare and submit to the Minister, periodically, law reform programmes  
(c) To make recommendations to the Minister about law reform programmes and to pursue such programmes as are duly approved.  
(d) Within the ambit of such programmes, to formulate, by means of draft legislation or otherwise, law reform proposals  
(e) Pursuant to any request of the Minister to prepare, periodically, comprehensive programmes of consolidation and repeal of legislation  
(f) To provide advice and information (i) to Northern Ireland Departments and (ii) with the consent of the Department of Justice, to Departments of the Government of the United Kingdom and other authorities or bodies concerned with proposals for the reform or amendment of any branch of the law of Northern Ireland  
(g) To obtain such information as to the legal systems of such countries as appears to the Commission likely to facilitate the performance of its other duties

The Commission is also obliged by statute to transmit to the Department:

(a) An Annual Report  
(b) Its law reform proposals, upon completion of the relevant project  
(c) Each law reform programme approved by the Minister

All of these must be laid by Department before the Northern Ireland Assembly. Thereafter, the Commission must arrange for publication of these materials. Pursuant to Section 51(4) of the 2002 Act, in performing its duties, the Commission must consult the English Law Commission, the Scottish Law Commission and the Law Reform Commission of the Republic of Ireland.

I am the current Chairman of the Commission. The remaining structure of the organisation consists of four Law Commissioners, a Chief Executive, three lawyers, six legal research assistants and administrative staff. The Commissioners will be known to many of you – they are Neil Faris, Dr Venkat Iyer, Bobby Hurnford and Professor Sean Doran. Cumulatively, the Commissioners, lawyers and research assistants are a redoubtable team. As practitioners, you will be hearing a lot more from our organisation in the near future, when we publish our report on bail law reform; our consultation paper on the subject of unfitness to plead; and our further consultation paper on the reform of the law governing multi-unit developments.

The English Law Commission

The English Law Commission is also a statutory body. Its lineage and proportions are both of greater dimensions than its Northern Ireland counterpart. Its fundamental aims are comparable:

- To ensure that the law is as fair, modern, simple and as cost effective as possible
- To conduct research and consultations in order to make systematic recommendations for consideration by Parliament
- To codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes

Both organisations are classified as advisory non-departmental public bodies. They are sponsored by, respectively, the Department of Justice (NI) and the Ministry of Justice.
There is one significant difference between the two organisations. By virtue of the Law Commission Act 2009, there is a formal, statutory Protocol governing the relationship between Government (specifically, the Lord Chancellor) and the English Law Commission. In brief, the effect of this Protocol is to enhance the prospects of the English Law Commission’s law reform proposals maturing into legislation.

The Chairman of the English Law Commission is Sir James Munby, a judge of the Court of Appeal. There are five full time Law Commissioners, a Chief Executive, some twenty lawyers, research assistants and two Parliamentary Counsel. There is close interaction between the English Law Commission and its Northern Ireland counterpart. This occurs on two counts. The first is that of jointly undertaken law reform projects. The second, peculiar to Northern Ireland, is that by virtue of Section 51(4) of the 2002 Act the organisation which I chair is obliged by statute to engage with the English Law Commission [as well as the other two]. I am delighted to say that engagement of this kind has consistently been positive.

The Electronic Communications Code

The above preamble brings me to the main focus of this article. The Electronic Communications Code ("the EC Code") is a law reform project being undertaken by the English Law Commission pursuant to a referral by the Department for Culture, Media and Sport. The EC Code regulates relationships between landowners and those installing equipment on their land. Nowadays, electronic communications play a vital role in the lives of most people. Conventional telephonic communication now seems outmoded, if not obsolete, having been overtaken by the transfer of information via electrical, magnetic or electro-magnetic signals. This has given rise particularly to cable television, mobile telephones and the internet, the latter increasingly mobile.

Individuals using electronic communications services focus on handsets, keyboards, screens and mobile devices. Such equipment depends upon a complex array of hardware, stretching across the country. Networks of masts, cables, wires, servers, routers and exchanges (to name but a small sample) make electronic communications possible. This hardware and the networks that it forms sometimes have to be located upon land that does not belong to those who own the equipment – fibre optic cables pass under streets and cross fields; mobile phone transmitters cling to church steeples and shop-fronts; and telephone cabinets are familiar on our road sides and pavements.

The legislative framework

The communication needs of society depend, therefore, upon the use of land. The statutory balance between landowners and operators, and the subject matter of this project, is contained in Schedule 2 to the Telecommunications Act 1984 ("the 1984 Act"), where the EC Code is located. The EC Code confers on certain network operators rights to install and maintain their apparatus on public and private land. Only those operators that have the EC Code applied to them by the Office of Communications ("Ofcom") under Section 106 of the Communications Act 2003 ("the 2003 Act") are able to benefit from, and be subject to, the EC Code (commonly described as “Code Operators”).

The 1984 Act was enacted, in part, to open up the telecommunications sector to competition by privatising British Telecom and breaking its monopoly. Schedule 2 helped other operators to develop networks to compete with and supplement the network which had been developed by the public sector, predominantly through British Telecom, during the preceding years.

The EC Code was amended by the 2003 Act to “… [translate] the telecommunications code into a code applicable [to] the new regulatory regime established by the Communications Act 2003”. Many of the amendments sought to reflect a change in focus – made necessary by European Directives and significant developments in technology – from ‘telecommunications’ to the broader concept of ‘electronic communications’. Much of the EC Code remains as drafted in 1984 and it is now ripe for review.

Ofcom is the independent regulator and competition authority for the United Kingdom’s communication industries. It has an important role in the day to day activities and business of Code Operators. In a recent Government publication, it was estimated that, in the EU zone, the value of the electronic communications market is some £250 billion. In the United Kingdom, the market is valued at around £35 billion. Both figures emanate from the Department for Business, Innovation and Skills.

In 2011, the BBC suggested that the “internet economy” contributes in excess of 7% to the UK’s gross domestic product. It is forecast that this could well double by 2016. It is difficult to see how most, perhaps all, modern businesses can perform competitively without a significant degree of reliance upon electronic communications networks. The societal importance of electronic communications is equally difficult to overstate. Recent data suggests that 77% of homes have an internet connection and that there are over 80 million active mobile subscriptions in the UK. According to a United Nations’ Report:

“[The internet’s] current use throughout the world across different age groups, and incorporation into virtually every aspect of modern human life, has been unprecedented. … The Special Rapporteur believes that the Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building active societies. The Special Rapporteur underscores the unique and transformative nature of the Internet not only to enable individuals to exercise their right to freedom of opinion and expression, but also a range of other human rights, and to promote the progress of society as a whole.”
This importance is acknowledged by Government. Amongst other measures, it has committed £530 million to invest in broadband with the stated aim of:

“... [ensuring] that the UK has the best superfast broadband network in Europe by 2015, with 90 per cent of homes and businesses having access to superfast broadband and for everyone in the UK to have access to at least 2 Mbps.”

This will require significant investment in modern infrastructure. Much of this will be in rural areas (some of which have yet to be reached by modern electronic communications networks). But even within towns and cities, where some of the Government’s aims are already met, there is, or will be, a need to upgrade fibre optic, copper wire and mobile networks to ensure that there is sufficient capacity, flexibility and performance to satisfy the demands of those that rely upon them.

The focus of this law reform project is a review of the EC Code. The project began in September 2011. Please note in particular the following landmarks:

- **Late June 2012**: Publication of Consultation Paper - see lawcommission.justice.gov.uk
- **28 October 2012**: Time limit for responses
- **Spring 2013**: Report to Government
- **2015**: Legislation giving effect to a new EC Code

The EC Code applies throughout the United Kingdom. It is essential, therefore, that the population of Northern Ireland be alert to this important project. Legal practitioners have an important role to play in this respect. I wish to emphasise the opportunity which now arises to shape and influence the law in this unmistakably important sphere. The successful operation of the law reform regime in both Northern Ireland and England and Wales is dependent upon effective and extensive engagement with society. I urge all interested individuals, organisations, agencies and professions to study carefully the Consultation Paper and respond accordingly.

Finally, please note that, at present, there are tentative plans that a Law Society event involving a presentation by Professor Lizzie Cooke (the English Law Commissioner concerned) and me will be held on 27 or 28 September 2012. Further publicity will follow. In the interim, I would thank you to bring this subject to the attention of clients, professional colleagues and others.

**Bernard McCloskey**  
Chairman  
Northern Ireland Law Commission
Mediation and confidentiality - part 1

Brian H Speers, Solicitor, Mediator and Alva Brangam QC, Barrister & Mediator.

ADR Mediation is part of the civil justice system in Northern Ireland. An increasing number of Rules of Court, Protocols and Practice Directions require parties to actively consider ADR Mediation and there is a clear increase in what has been euphemistically termed “robust judicial encouragement”. Under Order 1 Rule 1A, Order 1 Rule 20 and Order 62 Rule 10 of the Rules of the Court of Judicature the Court when dealing with costs applications may require parties to justify a refusal to consider the use of such processes and it is particularly noteworthy that the Clinical Negligence Protocol of 27 February 2009 provides:

“Both the plaintiff and the defendant may be required by the court to produce evidence that alternative means of resolving their dispute had been considered. This is likely to involve production to the court of the standard mediation correspondence, a copy of which may be obtained from the Commercial Court website, together with the parties’ replies thereto. Different forms of alternative dispute resolution are available and a mediation service is provided by the Law Society of Northern Ireland. Generally the courts take the view that litigation should be a last resort and that claims should not be issued prematurely when a settlement is still being actively explored.”

Some disputing parties choose or prefer ADR Mediation because, in addition to being a swift and flexible means of reaching agreement, it is a private and confidential process. Parties who agree to seek ADR Mediation are reassured because it is a protected forum for exploring practical and often innovative settlement discussions. If required to explain confidentiality a mediator would likely assert that:

(a) it is the result of public policy in preventing or bringing an end to contentious litigation

(b) it is a consequence of the enforcement of the without prejudice rules which attach to genuine settlement negotiations; and

(c) the parties and the mediator have agreed to clothe their managed negotiations with confidentiality as stipulated in the contract which governs their rights, duties and obligations

Common sense and professional experience indicate that if parties and their representatives feel able to discuss matters under the safe umbrella of confidentiality, then they are more inclined to acknowledge not only the strengths of how they see their case but also the doubts, difficulties and uncertainties which they are fearful may come against them if the dispute goes to a judicial or other adjudication of evidence.

During a recent SLS/QUB training courses on Civil & Commercial Mediation some participants raised questions about the limit of the protection of confidentiality in mediation.

This sequence of articles seeks to explore the nature, extent and limitations of this confidentiality. Why are there pragmatic reasons for mediaion confidentiality? What is the public policy rationale for preserving confidentiality?

In this first part we consider why confidentiality is important in mediation and its basis in our law. We refer to the provisions of the EU Directive on Mediation and the increased obligation on parties to consider ADR Mediation and we discuss some cases decided in other jurisdictions.

In Part 2 we will consider cases decided in England & Wales, the rationale and implications of some of the proposed provisions of the Mediation Bill presently under discussion in the Republic and the "what and why " of some actual or possible exceptions to public policy or contractually imposed confidentiality.

Why should mediation be “confidential”? The vital importance of mediation confidentiality is well summarised in the following extract: “The mediator encourages the parties to be candid with the mediator and each other, not just about their willingness to compromise but also and especially about the needs and interests that underlie their positions. As those needs and interests surface, the possibility of finding a satisfactory resolution increases. The parties will be wary and guarded in their communications if they think that the information they reveal may later be used outside of the mediation process to their possible disadvantage. When they have resorted to mediation in an attempt to settle pending or threatened litigation, they will be particularly alert to the possibility that information they reveal to others in mediation may later be used against them by those others in that, or other, litigation. The parties may also be concerned that their communications might be used by other adversaries or potential adversaries, including public authorities, in other present or future conflicts. The possibility of prejudice to legal rights, or of exposure
to legal liability or prosecution, may not be a party’s own concern. Parties may also be concerned that disclosure of information they reveal in the mediation process may prejudice them in commercial dealings or embarrass them in their personal lives. Accordingly, mediation works best if the parties are assured that their discussions with each other and with the mediation will be kept confidential”.

(Owen V Gray - “Protecting the Confidentiality of Communications in Mediation” 1998 36 Osgoode Hall Law Journal 667 at 671)

A standard confidentiality clause

Clause 17 of the form of contract used by the Dispute Resolution Service provides that each of the parties and the mediator undertake that:

“(i) Unless they otherwise agree, the mediation shall be conducted in private and they will keep confidential all matters which emerged during the mediation

(ii) To keep confidential all statements and other matters whether oral or written including any settlement agreement relating to the mediation except in so far as disclosure is necessary to implement and enforce such Settlement Agreement:”

There is no Mediation Act in the UK but as a member state we are required to comply with the provisions of Article 7 of the EU Mediation Directive (Directive 2008/52/EC) which relates to mediation in civil and commercial matters. It provides:

“given that mediation is intended to take place in a manner which respects confidentiality member states shall ensure that unless the parties agree otherwise neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process except:

(a) Where this is necessary for overriding considerations of public policy of the member state concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) Where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.”

As all lawyers will know, legitimate communications exchanged between parties and their representatives with a view to settling disputes are subject to the protection of what is loosely known as the “without prejudice rule”.

The protection of confidentiality

Mediation has by contract and a variety of substantive and evidential rules placed protection of communications at a priority level. It is however clear that the EU Directive, recognises that there may have to be some exceptions. In the above portion of Article 7 of the Directive we have underscored the need for Member States to ensure that the protection of confidentiality surrounds not only what the parties have said to the mediator and permitted to be exchanged with other parties but also seeks to make the mediator a non compellable witness in subsequent disputes.

In Canada mediation can be made mandatory in many cases. Clearly there are differences in cases where parties willingly enter in mediation and where the mediation is the outcome of an Order of a Court. Even allowing for these differences in approach and context, clear instruction may be found in the decision of the Ontario Superior Court on 30 November 2011 in Johnstone v Locke, 2011 ONSC 7138 (CanLII) which dealt with a family custody dispute. In the preparation for the mediation an email was sent setting out terms for custody and parenting time which would be acceptable. Matters did not resolve and there was an attempt to adduce the email as evidence of what one of the parties had agreed. That party objected saying that this was done in the context of endeavouring to resolve matters and in the belief that the mediation process in which they were involved was confidential. The Court upheld that contention and did not permit the disputed email to feature in evidence at the hearing before a Court of the custody issues.

In another recent case from Kansas, the Court of Appeal was prepared to impose sanctions for breach of confidentiality in mediation. In Hand v Walnut Valley Sailing Club decided on 4 April 2012 a dispute arose within a members’ club. The Plaintiff had written a letter to the Governor of Kansas complaining that a shed owned by his sailing club did not comply with the applicable Disabilities Legislation. After that letter his membership of the Sailing Club was revoked. Mr Hand issued proceedings against his former Club and the Court swiftly ordered the parties to mediate, which they did. No settlement was achieved. Mr Hand then sent an email to 44 Club members disparaging the Club’s position and relating all the details of the mediation including what the Mediator said and the amount of the Club’s settlement offer. The Club sought a sanction against the continuing Plaintiff in the proceedings. This included the dismissal of lawsuit. The Court agreed and dismissed the case “with prejudice” - which is Kansa-speak for costs - and in so doing the Court explained that Mr Hand’s disclosures demonstrated a “complete disrespect for the confidential mediation process.”

Interestingly the Court said that the need for confidentiality was particularly strong where a mediation programme is mandatory “because participants are often assured that all discussions and documents relating to the proceeding will be protected from forced disclosure”.

These cases provide interesting views from other jurisdictions about mediation confidentiality. The question for consideration is what are the limits of confidentiality in this jurisdiction?

Part 2 of this Article will appear in the next edition of The Writ.

NB - For details of next Mediation Training Course see page 30.
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Let the Games begin - a roundup of sports law in 2012

On 27 July 2012, London will welcome athletes of the world to the 30th modern Olympiad, the world’s greatest sporting spectacle.

From over 200 countries they will compete in what will be the most commercial Games ever. It remains to be seen what the host costs will amount to but the figure of £22 billion for Beijing 2008 gives an idea of the commitment of the UK government’s Department for Culture Media and Sport.

These Games will undoubtedly also prove to be the most regulated. The London Olympic Games and Paralympic Games Act 2006 (2006 Act) ensure that London will provide the International Olympic Committee with ‘clean venues’ so the official sponsors do not suffer from Ambush Marketing and those trying to associate themselves with the Games. A specialised unit ensures that the Intellectual Property of the Olympic brand is protected.

A ban on the sale of unauthorised goods will be in place within a certain radius of the venues and the “clean venue” will even extend to the skies above London.

The commercialisation of sport has also seen more in the way of sporting challenges, both by athletes and governing bodies. The commercial value of an Olympic athlete should not be underestimated. The challenge from Dwain Chambers (pre 2008) may well be known due to his ban under the British Olympic Association (BOA) Bye Law preventing athletes with a drug ban competing for Team GB.

Following a successful challenge to the Court of Arbitration of Sport (CAS) by US athlete La Shawn Merritt (CAS 2011/0/2422) to the IOC ‘OSAKA RULE’ (rule 45 of the Olympic Charter), the validity of punishing an athlete twice for the same offence was overturned. As a result, the BOA filed an appeal with CAS against a decision of the World Anti Doping Agency (WADA). The CAS decision (CAS 2011/A/2658) having found against the BOA, its Bye-Law has now been repealed, leaving drug offenders Dwain Chambers and cyclist David Millar (subject to qualification) free to complete at the Games.

No doubt the Games will give rise to sporting disputes requiring resolution. Legal firms were invited to apply for the London 2012 Pro Bono Legal Scheme with 19 advocates and 17 law firms being appointed to provide advice and representation. Ordinarily disputes would be referred to CAS (e.g. see local case Irish Football Association/Football Association of Ireland, Daniel Keams and FIFA : CAS 2010/A/2071) but such disputes, within the Games, present a need for expeditious resolution. On such decisions rest qualification or participation in semi finals or finals.

The 2012 Games will see the continuation of ad hoc tribunals to hear disputes broadly similar to those established at the 1996 Atlanta Games The rationale is to provide a service to all participants which is easily accessible, simple, flexible and free of charge. Rule 59 of the Olympic Charter provides for the jurisdictional reference of such disputes although these disputes must arise during the Games or be a Games related dispute. ‘New evidence’ relating to a previous dispute is not sufficient grounds for reference (Claudia Pechstein 2010 Vancouver Games).

But how do such sport disputes affect us as practitioners locally? What of those of us who are not on the Pro Bono Scheme or representing the BOA or Irish Olympic Association? How do such sports’ disputes affect us or our clients and what is expected of them? Are eligibility issues, selection criteria or disciplinary proceedings in our local sports clubs to be treated as formal courts of law with serious consequences for the well intentioned volunteer?
Sporting issues can arise locally. Child protection issues require clear policies. Access NI clearance for coaches is mandatory but what of selection issues and discipline? Clear procedures and criteria are required. The well intentioned volunteer should not be put off participating because of the potential of legal action. Fairness is key and examination of the court’s attitude is insightful as to what is required.

In a recent NI case surrounding the eligibility of a local footballer (Hubert Watson’s Application (For Leave to Appeal) (2011) NIQB 66), Coghlin LJ helpfully provided an overview of the court’s attitude to sporting disputes and as a consequence should bring some level of comfort to those concerned volunteers. The reluctance of the courts to become involved in litigation is evidenced from Scott Baker LJ’s judgement in Raftery v National Greyhound Racing Club Limited (2005) EWCA CIV 1117. “It is in my judgement of paramount importance that sporting bodies should be given as free a hand as possible, consistent with the fundamental requirements of fairness to run their own disciplinary processes without the interference of the courts”. Coghlin LJ goes on to state “I respectfully agree and consider that those remarks should extend generally to the conduct of business by voluntarily agreed sporting tribunals”.

It is that word “fairness” that resonates throughout sports’ law cases. Sir Nicholas Browne Wilkinson V-C in Cowley v Heartley (The Times 24 July 1986) stated “I think the courts must be slow to allow an implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts…” The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens”.

The rules of natural justice must therefore be applied to the club’s affairs ensuring fairness born out of the quasi-contractual relationship between the athlete, his/her club and the sport’s governing body. Rules when drafted should be clear, procedures easy to understand and if disciplinary in nature provide details of the case to be answered in advance of a hearing, afford the opportunity for the athlete to give evidence in their defence and call witness evidence (audi alteram partem rule). They should also allow for cross examination of prosecution witnesses before an impartial/unbiased panel and any sanctions imposed must be proportional.

Provision should also be made for appeal. Jones v Welsh Rugby Union (1997) The Times 6 March 1998 evidences that courts will ‘interfere’ in sporting disputes if procedurally the process is flawed but will give the opportunity for the process to be remedied internally. According to Scott Baker LJ in Raftery “It seems inherently unsatisfactory that a hearing before a sporting tribunal lasting between 1-2 hours should be followed by a High Court hearing lasting ten days and an appeal taking up a further day and a half”. Indeed Lord Denning MR recognised that sports’ governing bodies are in a better position than ordinary courts to say how their affairs should be handled. In Enderby Town FC v The FA [1971] Ch 591 he intimiated that in a domestic sports tribunal justice can “often be done better by a good layman”.

If faced with such an issue surrounding a sporting dispute, a practitioner may ask where can Denning’s “good layman” be found? Where can a sports dispute be heard by sportspeople on a similar basis to the CAS ad hoc panels i.e. easily accessible, simple, cost effective and timely as opposed to lengthy litigation which neither individuals nor clubs can afford. In Northern Ireland we have two such bodies depending on whether the sport is governed on an ‘all island basis’.

The G.A.A established the Disputes Resolution Authority (D.R.A) to implement its Disputes Resolution Code following its 2005 Congress. Sport Resolutions and Just Sport Ireland are established for the very, purpose of hearing sport disputes using Alternative Dispute Resolution (Mediation and Arbitration) - sportspeople hearing sports disputes. Legal representation is permissible in both forums so a practitioner’s ADR and advocacy skills will prove invaluable.

Sport Resolution (UK) based in London is the independent dispute resolution service for sport in the UK and operates the National Anti Doping Panel. “It has recently heard the British Rhythmic Gymnastics’ appeal and the British Fencing Olympic selection appeal. Interestingly, it has just sat (April 2012) in Belfast for the first time in the matter of Ballymena United Football Club and the Irish Football Association Limited with regards to a dispute surrounding player eligibility. Similarly Just Sport Ireland offer an independent dispute resolution service for Irish Sport offering both mediation and arbitration facilities.

London 2012 may well see enthusiasts glued to the TV to view the sporting spectacles unfolding. Disputes will undoubtedly occur in the full glare of the media with panels appointed to adjudicate. The stakes may be higher for these global superstars but the principles to be upheld will be no different from those of our own ‘sporting volunteers’ who keep the amateur sporting ethos alive and are the life blood of local sport. Those ‘volunteers’ and amateur sporting enthusiasts are our clients and as practitioners our good advice and skills can be put to good use and will ensure their continued involvement.

Keith Megarry is a partner in Conn and Fenton Solicitors. He holds an LLM (Sports Law and Practice) Distinction De Montfort University, is a member of the British Association of Sports Lawyers and a Director of Sports Resolutions (UK).
Keep an eye on the HR ball

People are the biggest asset in the majority of organizations. Successful organizations harness the knowledge, skills and abilities of their people and create value by deploying them to maximum effect. It is often easy to ignore HR management with so many other issues in a legal practice, but if you want to protect and grow your practice navigating through these difficult times, the management of your people should be at the top of your business strategy.

HR fits into your practice in three ways: Strategies, Procedures, and Policies. All three of these should complement each other and complement the overall goals for the practice. Strategic human resource management is how HR supports the long-term business goals and objectives of the practice. HR policies provide the practical advice and guidance on a range employment issues and HR procedures support the policies and give a step-by-step account of how specific events and circumstances should be dealt with.

HR policies should be reviewed on a regular basis. When did you last review your HR policies? Are they up to date? Do they reflect the current legal position and the needs of your business? Are your staff contracts and HR policies ready for the impact of auto-enrolment pensions being phased in from October 2012?

Your HR policies should not only be better than the minimum legal requirements but they should also link into your overall business strategy and be tailored to suit the culture of your practice. Good HR policies will help your practice be fair and consistent in its approach to managing and developing your people. They will provide guidance to employees about their own and the practice’s responsibilities and, if properly implemented, provide protection against legal claims.

Yet, how you communicate and implement HR policy determines how effective they are. Once the HR policies have been initially reviewed, an annual review process should be put in place to accommodate changes in the law and needs of your practice. There is no point in writing them and then leaving them in a drawer!

Your practice’s HR policies should reinforce the development of behaviours and performance in individuals that help the practice achieve its goals. A well developed strategy and up-to-date HR policies will lead to more efficient use of staff, and better motivated and developed people which, in turn, increases staff retention and higher cost efficiency. Regularly recruiting new staff is expensive, so develop your staff and keep them.

A clear HR strategy with the right policies and procedures in place can improve employee retention. Elements that can be considered to improve retention are:

- Provide a realistic view of the job at the recruitment stage
- Include staff retention in the appraisals of line managers
- Develop your people by giving them a clear route map for progression and career development
- Give your employees a voice by giving them information on the business and consult them as much as possible

Be flexible by accommodating preferences on working hours etc
- Consider your organisational culture and values
- Provide job security by managing the business well and celebrating its successes
- Always treat people fairly and evenly especially when it comes to rewards and bonuses

Employees also need to feel valued and involved. The practice benefits if employees understand how their work contributes to the business’s goals and success. Taking the time to build and maintain employee engagement will be fully repaid in performance benefits. Most employees like to be engaged and like to feel they have an influence on the development of ‘their’ practice. They should be able to feed their views upwards, be well informed about what is happening in the practice and feel that they are part of a team that is committed to the business. Additionally, well planned training and succession planning gives employees opportunities to develop the job and perform well. A genuine feeling that the practice is concerned with the employees’ health and well-being helps the employee to feel valued.

Keeping an eye on the HR ball contributes significantly towards making work meaningful and engaging for employees, which in turn improves efficiency and helps to grow the business.

For further information contact Bentley Robinson, a business and management consultant based in Belfast specialising in providing business and human resources advice to small and medium sized businesses and organisations in the private and voluntary sectors within the UK – see www.bentleyrobinson.co.uk
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Putting on the Ritz at the Law Society Annual Conference 2012

Following the success of the 2011 Amsterdam Conference, President Imelda McMillan led 220 delegates and guests to the Ritz Carlton Hotel, Powerscourt, County Wicklow for a two day conference in late April 2012.

The Society’s Communications Officer, Paul O’Connor, reflects on his experience of the Conference.

After nine months’ planning, the weekend of the 2012 Annual Conference had finally arrived. As I packed my suitcase for the journey down to the Ritz Carlton Hotel in Powerscourt, County Wicklow for a two day conference in late April 2012.

Would all 220 delegates and guests arrive on time? Would our nine key speakers have their presentations ready? Would our sponsors and exhibitors have an opportunity to speak to conference delegates? Most worryingly of all would I fit into my tuxedo for the Saturday night Gala Dinner?

With these thoughts swirling in my mind, I loaded my car up. Before leaving I recalled what my father had said to me the night before “Only a stupid person could get lost on the way to Wicklow son”. Little did he know how stupid his son really was!

An hour later I was zooming down the motorway past Newry and straight on to the N1 heading towards Dublin. It wasn’t long before my stupidity became manifest as I sat in front of a toll booth praying that the barrier would lift despite my lack of euros to pay. No such luck! With car horns honking and expletives filling the air, I finally managed to get the €1.80 paid and once again set off for Wicklow.

On arriving at the Ritz Carlton, I was taken around the hotel by Clare Horgan, Events’ Manager, who showed me the Grand Ballroom and lecture suites we would be using for our events.

I then checked into my room and to my utter surprise it was massive with my own private balcony over-looking the spouting fountain in the main grounds of the hotel. Unbeknownst to me, my room was the norm and all rooms were just as elegant and big.

After a good night’s rest I awoke at 6.00am. It wasn’t long before I was in the lecture hall setting up for the business session in the afternoon. With everything ready, I awaited the arrival of the President and her Conference Chair, Rory McShane, to review the setup in preparation for their opening remarks to Conference.

Despite the Friday morning being busy, the atmosphere by the afternoon amongst those attending and presenting was relaxed, with an expectation in the air of a great Conference ahead.

The session began with the Conference Chair inviting the President to address the Conference on the theme of “Growing your Legal Practice in 2012”.

Our next speaker was Feargal McCormick from FPM Chartered Accountants who provided an inspirational presentation on realising business opportunities and motivating staff.

Reema Mannah from First Title Insurance followed with a fascinating presentation on the growing importance of renewable energies as potential areas of business for solicitors’ firms.

The break offered delegates an opportunity to attend the exhibitor stands and to speak to the representatives of companies such as Brightwater Recruitment, Peapod, Bighand, 3FiveTwo Healthcare and Lawlink. The second part of the business session began with our key note speaker for the day Senator Ivana Bacik who provided an insightful presentation to delegates on the theme of “Women in Law.”
Our last speaker was Tim McKane from Navajo, the Social Media Agency who offered delegates an overview of the growing significance of social media in business and the opportunities of realising its potential. With the first business session concluded, delegates took the opportunity to relax in the company of colleagues, friends, spouses and partners in the hotel pub, café and splendid grounds.

I returned to my room to change for dinner out of my business suit into something smart casual. I reappeared wearing my favourite check shirt only to be greeted by Rory McShane with the comment – “I know I said smart casual but I didn’t mean smart lumberjack.” I pondered momentarily as to whether I had time to change but decided I’m a lumberjack and I don’t care and joined the delegates for the festivities to come.

Before dinner the President welcomed all attendees, making particular reference to the Presidents and Chief Executives from the Law Societies of Scotland, England and Wales and the Republic of Ireland and members of her own family including her mother.

The President also took the opportunity to thank the principal Conference sponsor, First Trust Bank and other key sponsors including Marsh, Zurich and First Title who had shown great commitment to the Society and the 2012 Conference. The President also thanked all of the exhibitors, particularly Agnew Corporate Fleet which had brought ten high performance cars to Wicklow from Belfast for attendees to test drive.

After dinner entertainment was provided by Scottish Law Society Junior Vice President, Austin Lafferty, whose comical one liners and reflections on the legal profession in Scotland left the room wanting more.

Perhaps the highlight of the evening was the charity event in which attendees were offered - for a mere £20 - the chance to enter a ‘High/Low’ competition to win a two week all expenses trip to Mauritius. After ten tense minutes, two finalists stood nervously before the last question was asked, the competition being won by Emer Murnaghan from Omagh. As the evening came to a close, delegates withdrew to the hotel pub for a final night cap. In fact it was quite a long night cap for some.

The next morning I was in the lecture hall for 8.00am ready for the first business session of the day. Our key speaker, Brendan Keenan, economist with the Irish Independent was already preparing for his talk. An hour later the room had filled to hear him speak on the state of the Irish economy.

After an informative and humorous presentation, delegates once again took time to meet with exhibitors before joining the next business session from Bill Montgomery from Invest NI on investment opportunities. The final speaker was Law Society of Scotland President, Cameron Ritchie, who reflected on how devolution in Scotland had impacted on the legal profession. The afternoon ahead was to prove equally as busy as delegates once again met up with colleagues and spouses to avail of the multitude of activities on offer including the golf tournament, spa treatments, test drives of cars, a shopping trip and activities which had been organised for children.

More than 40 delegates set off for the beautiful golf course at Powerscourt. From all accounts some of the play was good but some was pretty bad with ugly moments as balls spun off into locations in space that even the Hubble Space Telescope couldn’t find. Nevertheless, by the end of the evening winners were to be crowned.

Noel Phoenix headed to Tinnehinch Fishery near Powerscourt for an afternoon’s fly fishing. Over a two hour period, he caught seven rainbow trout most of them weighing in and around five pounds and all of which he returned safely to the water.

Further excitement was brewing with a significant number of delegates heading off to Dublin to watch the Ulster v Munster rugby game. Given the late kick-off time I prayed that they were wearing their tuxedos under their Ulster tops for the Gala Dinner later that evening.

Arriving at the Grand Ballroom I checked the tables once more, instructed staff and then went to the pub only to find it full of solicitors and partners cheering Ulster on. Soon enough the game was over with a brilliant Ulster victory.

Thankfully, those who had been to the match started to arrive back in a timely manner and...
before long the dinner venue was full as we waited for the President to make her final address to Conference.

Before she did so she invited Joseph McGowan from First Trust Bank to make some comments and as ever he was most gracious in his support for the Society.

The President thanked all delegates, sponsors, exhibitors and children for attending the Conference and paid a special tribute to her colleagues at O’Reilly Stewart.

After another incredible dinner the winners of the golf tournament were announced. The men’s tournament had been won by Stephen Reid who by all accounts should have been renamed Rory (that’s McIlroy not McShane) and the ladies’ tournament by Claire Loughrey.

With dinner over, the Joe Donnelly Band kicked the night into full swing with great renditions of classic rock songs. It wasn’t long before the Young Solicitors were on the floor dancing, ably joined by Gilbert and Alison Nesbitt and John and Janet Leckey whose dance moves were worthy of finalists in Strictly Come Dancing!

I joined many of the delegates in the pub which had been forced into darkness by a power trip. Rumour had it that Joe’s band had sucked the entire electricity out of Wicklow with their rendition of Mustang Sally. It wasn’t long before it was back on and familiar faces joined the large gathering to sing, drink and be very merry. Once again I had promised myself an early night but this time it was 4.00am as I left the pub only to run into a senior solicitor who grabbed me and in raised tones and swaying motion said: ‘Excellent Conference young man. Where are we going next year?’

Indeed where I thought as I dragged myself to bed “Where…?”

To all who attended the Conference - delegates, spouses, partners, speakers, sponsors and exhibitors - the President and Chairperson of the Conference Organising Committee wish to thank you for your ongoing support and hope to see you next year in……. now that would be telling wouldn’t it?
President presented with ceremonial robe

Following the April Council meeting, Society President, Imelda McMillan was presented with a ceremonial ‘Robe of Office’ by Alastair Rankin, Chairman of Cleaver Fulton Rankin Limited and a Past President of the Society who has donated the robe to the Society.

Mediation class of 2012

In March 2012, 18 solicitors and barristers successfully completed the SLS/Law Society’s Mediation Training Course 2012.

Now in its 11th year the Course provides training in advanced negotiation, dispute resolution and mediation. The Course is delivered by experienced mediators and skills’ trainers led by Brian Speers, Senior Vice President of the Society, David Gaston and Alva Brangam QC.

Solicitors and barristers, along with their tutors, who completed the 2012 Course.
President welcomes students to Law Society House

The President, Imelda McMillan, welcomed pupils from four schools in Northern Ireland to Law Society House for a seminar on becoming a solicitor. Pupils from St Malachy’s College Belfast, Our Lady of Mercy Girls’ School Belfast, Glenlola Collegiate Bangor and Bangor Academy attended the interactive seminar which provided an overview of the work of the solicitors’ profession and how to become a solicitor in Northern Ireland.

Speaking afterwards the President of the Society said:
“I am delighted that the Sixth Form pupils have joined us today and have shown such an interest in the solicitors’ profession. I wish them well for their future careers.”

Senior Solicitor trainees at the Graduate School of Professional Legal Education had the opportunity to cross-examine members of the PSNI recently in a mock trial held at the School. The officers, who played the parts of police witnesses in a criminal trial involving an allegation of criminal damage and assault, were from Strand Road PSNI station. They were accompanied by Chief Inspector Gary Eaton, the local area commander, on his first visit to the School.

The GSPLE has forged a close relationship with the PSNI at Strand Road since the School was established in 2008. Solicitor trainees undertake a visit to the custody suite at the police station as part of their Criminal Procedure module. Detectives from Strand Road then conduct mock interviews with trainees at the School on campus.

This year, for the first time, police officers also played the role of witnesses in a trial hosted at the School’s courtroom. The trial lasted for most of the day, with all trainees having an opportunity of examining or cross-examining witnesses and making submissions to the judge for the day, barrister Ivor McAteer, who combined the roles of dispensing justice along with tips on improving advocacy.
Taking the stress out of practice

Sixty solicitors recently attended a ‘pampering evening’ which took place at Law Society House with profits going to the Friends of the Cancer Centre - the Society’s chosen charity for the year.

Those attending took the opportunity to experience the wide range of products and therapies on offer, as well as receiving expert tips and advice from exhibitors including Peter Mark, Man Grooming, Fit for Business, Molton Brown and the Complementary Therapy Co-ordinator from Belfast City Hospital.

All of those exhibiting gave their time free of charge in support of the Friends of the Cancer Centre and the Society wishes to place on record its sincere thanks to them. Nearly £1000 was raised during the evening for the charity.

Local solicitor provides members with her Australian experience

Northern Ireland solicitor, Kiara Tarrant, recently visited Law Society House to provide local solicitors with an overview of her experiences of the Australian legal environment. Members will recall that in November 2011, Alex Ward, the former President of the Law Council of Australia, visited Law Society House and presented on legal work opportunities in Australia.

Kiara informed members about her experiences of making the transition to work in Australia.

Speaking after the presentation, Brian Speers, Senior Vice President said: “We are grateful to Kiara who has taken time out of her busy schedule to visit the Society today and to reflect on her experiences of being a solicitor in another jurisdiction.”

When you make a Will, you probably think the one thing you can’t leave your loved ones is good health.

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Write to us at: 21 Dublin Road, Belfast, BT2 7HB
or email: legacy@nichs.org.uk
Alternatively ask your solicitor for our legacy leaflet.
Derry law firm appoints a new Partner

Michael McGee LL.B. has been made a Partner of Hasson & Company Solicitors, Derry.

Michael, who is the son of Mr Henry and Dr Maria McGee of Culmore Road, Derry, lives locally with his wife and two sons. He graduated from Queen’s University Belfast with an LLB (Hons) in Law and after completing his apprenticeship with Hasson & Company, qualified as a Solicitor in 2007. He now heads up the Criminal Law Department and advises in all areas of Criminal Law and specialises in Criminal Defence Work. Michael’s other areas of expertise include Personal Injury Claims and Road Traffic Accident Claims.

Paul Hasson, the Senior Partner, said that Michael’s considerable skills and expertise are a welcome addition to the firm.

Hasson & Company came to prominence recently when instructed to act in the high profile Murder Appeal for Hazel Stewart.

Pinsent Masons opens doors in Northern Ireland

Following its recent merger with McGrigors, Pinsent Masons is the only global law firm in Northern Ireland to offer legal services direct to local businesses. It is also one of the largest, employing nearly 100 people in Belfast and 2500 around the world. The merger follows the tie-up between firms McGrigors and L’Estrange & Brett in 2009.

Paul McBride, Head of Belfast office, said: “The merger on 1 May has created a unified firm that is equipped to respond both to the needs of the local business community and to the significant growth opportunities for legal services in international markets. It is a firm that offers an outstanding track record and a comprehensive range of relevant expertise backed by an enhanced depth of resource. Together, it has all the experience, skills and resource needed to meet the requirements of clients in Northern Ireland and to handle major UK and international transactions, projects and disputes.

“The merger will bring significant opportunities for the firm’s people with investment continuing in quality lawyers who can help grow the business whilst offering high-end legal work in Northern Ireland, across the rest of the UK and exciting international opportunities.

“The firm has market-leading UK coverage, with a significant presence in each of the UK’s three legal jurisdictions. Its international profile encompasses four offices in Asia Pacific (Shanghai, Beijing, Hong Kong and Singapore) and two offices in the Gulf (Dubai and Qatar). Two more offices in France and Germany are expected to launch during 2012.”

Solicitor makes a splash

John McKee & Son Solicitor, Philip McBride, recently made a splash at the Irish Long Course Masters’ Swimming Championships in Limerick. Competing in the 35 -39 age group, Philip set one Irish Masters Record and six Ulster Masters’ Records on his way to winning three gold medals and two silver medals at the Championships.

Philip’s gold medals came in the 100m backcrawl, 200m backcrawl and the 400m frontcrawl, with silvers in the 50m backcrawl and the 200m frontcrawl. Next up for Philip is the Titanic Triathlon on 1 July 2012.
RECRUITING THE BEST LEGAL TALENT

As both a local and global leader in legal recruitment, we understand that timing is everything. We can help you prepare for the next step in your career as a lawyer and to be ready for new opportunities as they arise. Our experienced legal consultants are recognised experts in their field and are always on-hand to provide you with accurate and honest advice.

Because we partner with an unrivalled range of clients from leading law firms, multi national corporations, banks, charities and public sector bodies, we can provide you with a first class selection of opportunities, throughout Northern Ireland, across the UK, the Republic of Ireland and overseas.

Below is a brief snapshot of the many interesting roles we are currently working on.

**Senior Projects Solicitor**
*Belfast, £Excellent Salary & Benefits*

Top national firm seeks to expand its projects team. You will have excellent experience in a top commercial law firm and will provide advice on procurement and public law to central and local government across the UK. Excellent career move.

**Senior Commercial Litigation Solicitor, 8+PQE, Belfast, £Excellent salary package**

A leading international law firm requires a partner designate Lawyer for their Belfast office. Candidates must have a solid background in commercial litigation with a leading law firm. Dual qualification (NI and England & Wales) is desirable. This is an excellent opportunity for career progression with a leading private practice.

**Environmental & Planning Solicitor – All PQE**
*Belfast, £Competitive*

A leading Belfast law firm seeks an experienced Professional to strengthen their existing team. The ideal Candidate will have a minimum 2:1 law degree and experience in a large commercial law firm. As no PQE level has been set for this role, all applicants with the requisite experience will be considered.

**Pensions Lawyer, 2+ PQE**
*DUBLIN, £Negotiable*

Top 5 Dublin law firm requires an experienced Pensions Lawyer to strengthen their existing team. Excellent academics and experience in a top city law firm required. All levels of PQE will be considered for this role.

**Senior Legal Counsel**
*DUBLIN, £Excellent salary package*

International organisation requires a senior Banking Lawyer to act as in-house legal counsel in their Dublin office. The role will involve the provision of advice to senior leadership on cross-border transactions and regulatory issues. Excellent opportunity to work with multi-disciplinary teams along with significant bonus potential.

For further information on any of the above roles, please contact Fiona McCoy on 02890 446911 or Fiona.mccoy@hays.com in total confidence.

hays.co.uk/legal
The hidden truth

Some years ago a young lawyer called the LawCare helpline. She was looking for a little extra support because, she explained, she had recently been diagnosed with depression. Her GP had prescribed anti-depressants but she didn’t want to take them. The helpline advisor asked why not, expecting the usual reply that she was concerned about becoming addicted, or wanted to try counselling or natural remedies first. In reply, the woman asked whether there were any types of anti-depressants which didn’t say “avoid alcohol” on the bottle.

Similarly, a more recent caller, under extreme stress due to an increased workload after several colleagues went on long-term sick leave, made the apparently throwaway remark: “I don’t know how I’d cope without a bottle of wine in the evening. I look forward to it all day.”

Comments such as this are red flags to LawCare’s trained staff. We know that the legal profession is very stressful and many lawyers have problems coping with anything from bullying superiors to dealing with the aftermath of mistakes but we also know that it is far easier to call a helpline and complain of stress than it is to admit to a possible alcohol problem. We also know that surveys in the US show that lawyers are abusing alcohol at up to three times the rate of the general population.

Addiction hides behind denial. As the substance becomes more and more important to the person, their mind performs astonishing feats of reality distortion to prevent them from realising what is happening to them. As a result it’s not unusual for us to receive calls from legal professionals who say: “My wife/friends/colleagues think I drink too much but actually I’m just under stress”. The assumption is that because we are the experts we will naturally agree with the caller’s assessment. In reality we are very aware that we may have spoken to the caller for barely five minutes when the wife/friends/colleagues have seen the problem develop, and lived with it, for several years. We would never presume to dismiss their concerns just to appease the caller’s conscience and thus affirm their drinking behaviour.

That’s not to say that we assume that every helpline caller is a closet alcoholic. We have to take what we are told on the helpline at face value, and we know that most people do drink responsibly. We do not disbelieve those who say that alcohol is not an issue for them. But we are aware that there is a tendency towards heavy drinking within the profession and we do take care to look out for any indications that it may be a problem which needs to be addressed and which is being ignored, for whatever reason.

Although we are an organisation that helps with a number of problems – bullying, eating disorders, redundancy, stress and depression – we have to remain aware that alcohol can be a factor in any of these issues. Alcoholism is a common, chronic and progressive disease which, if left untreated, eventually leads to death but which can be treated successfully if it is addressed in time. It would be remiss of us to allow callers to continue to deny an evident problem, or to fail to act on the clues we are sometimes given.

We do not underestimate that it is difficult for anyone to admit to an alcohol problem, even over a confidential helpline. Part of that fear may be that callers expect to be required to go into a twelve-week residential addiction treatment unit, which will involve admitting their problem to colleagues and managers so that they can take the required time off work. In fact, part of LawCare’s strength is that we are well aware of the nature of the professional and can help to arrange treatment options which are just as discreet as our free helpline service.

Whatever your problem – intolerable stress, worry about exams or disillusionment with the profession – we are here to listen attentively, to support you, and to get to the root of the problem in order to help you make a plan to deal with it. Sometimes that may include looking at how much you are drinking. We want to help with that too.

LawCare’s free and confidential helpline is available from 9am to 7.30pm Monday to Friday and 10am to 4pm at weekends and on Bank Holidays. The number to call is 0800 279 6869. There is also a comprehensive website at www.lawcare.org.uk.

“I need totally confidential help with a personal problem”

We all face challenges at times, especially when working in the stressful legal world. When we need to seek help, we don’t always want those around us to know about our problems.

LawCare is a registered charity which helps lawyers, their families and staff, with issues such as stress, depression, alcohol and substance abuse. Calls to our helpline are free and completely confidential. You don’t even need to give your name. And since we’re based outside Northern Ireland, you can be doubly sure that your business remains exactly that.

0800 279 6869
www.lawcare.org.uk
WYG has a strong track record in providing expert planning advice to legal professionals and other professional consultants across Northern Ireland, to resolve all manner of planning disputes for their clients. We have a growing reputation for excellence in expert witness representation in the Courts, in appealing planning enforcement notices and in negotiating planning disputes.

We offer a friendly and well established local service and can also draw upon the experience and expertise gained across our 11 regional offices. We are well placed to give you the advice and expertise you need to achieve a resolution. We provide a completely bespoke, tailor-made town planning consultancy service designed to meet your needs and the needs of your client and we offer a free initial consultation which will provide you with direction from the outset.

For an informal, no obligation discussion about the services we offer and how we can support you and your clients, contact Michael Graham in our Belfast office:

Michael Graham MRTPi
Regional Director
T: 028 9070 6000
M: 077 8891 3797
E: michael.graham@wyg.com
www.wyg.com
A recent Housing Rights Service case highlighted the impact of Article 8 in domestic housing cases.

At issue was the right of an introductory social tenant, facing possession proceedings, to have a court consider the “proportionality” of the granting of a Possession Order.

Under the Housing (NI) Order 2003 a social landlord can be granted possession of an introductory tenancy provided that the legal procedure is followed. The tenant is only entitled to a review which is carried out internally by the landlord but not to a court hearing on the facts.

The facts of the particular case were highly unusual. The defendant applied for social housing. He became aware that a nearby flat was vacant and asked the Housing Executive if it could be allocated to him. He was granted the tenancy but soon afterwards was advised that the tenancy was intended for another applicant with the same name.

He was accused of fraudulently misrepresenting himself as being the other person, despite having produced photographic identification with his date of birth. The defendant denied any wrongdoing and refused to leave the tenancy. The Housing Executive issued possession proceedings.

Following intervention from Housing Rights Service, the possession proceedings were adjourned to allow for an application for judicial review. The judicial review was based on the contention that the 2003 Order was incompatible with Article 8.

Counsel relied on the recent Supreme Court case of Pinnock v Manchester [2011] 1 AER 285 which held that a court, which is asked by a local authority to make an order for possession of a person’s home, must have the power to assess the proportionality of making that order and in making the assessment, to resolve any factual disputes between the parties.

At the leave hearing it was conceded by the Housing Executive that domestic law must be read in light of Article 8 and the Supreme Court. This meant an introductory tenant is entitled to have the court consider the proportionality of granting a Possession Order.

The case was referred back to the County Court. Happily for the defendant the judge accepted that there had not been misrepresentation by him. The Housing Executive duly agreed to grant him a secure tenancy in his home.

Generally, a social tenant’s Article 8 rights are protected in that a court will only grant a Possession Order when it is reasonable to do so. The issue of proportionality will only arise when the tenant does not have that right under the domestic legislation. In such cases representatives need to ensure that the tenant’s Article 8 rights are raised in court.

Human rights and housing
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contact fiona or ron

tel: 028 9045 2864

email: info@whitespaceni.com

website: www.whitespaceni.com
In April, the Committee of the Employment Lawyers’ Group (NI) was delighted to welcome the Committee of the Employment Lawyers’ Association of Ireland (ELAI) from Dublin to Belfast, for a first inaugural meeting at Law Society House. This unique and momentous occasion was spearheaded by Rosemary Connolly, Solicitor, who is a Committee member of both Associations.

The inaugural meeting allowed Committee members and the respective Chairs, Mark Mc Evoy BL and Carol Fawsitt, to share experiences of employment law practice in both jurisdictions and it has ensured solid foundations for future relations with ELAI, which has promised a reciprocal collaborative meeting in Dublin in the future.

Following the inaugural meeting, Professor Christopher McCrudden of Queen’s University Belfast, presented a talk entitled: “The personal scope of EU Anti-Discrimination Law” to the respective Committee members and wider ELG (NI) membership. The emphasis of the talk was on the issues in the UK Supreme Court case of Jvrav v Hashwani [2011] UKSC 40, and his interesting and informative presentation engendered much audience participation and discussion.

**Carol McClean**
Honorary Secretary ELG (NI)

**Membership renewal**
ELG (NI) members should note that renewal of membership is now due. If you wish to renew your current ELG(NI) membership or would like to become a member, please forward a cheque for £15, made payable to ELG(NI), to our Honorary Treasurer, Orlagh O’ Neill Solicitor, Carson McDowell Solicitors, Murray House, Murray Street, Belfast, BT1 6DN.

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**Mediation Training - Autumn 2012**

SLS, Queen’s University Belfast invites expressions of interest from those wishing to attend a Mediation Training Course in Autumn 2012 commencing 26 September.

SLS at Queen’s University, Belfast, propose a mediation training course in Autumn 2012. This will be the 14th time this popular and highly respected course has been offered.

The course will run for 7 evenings between 6.00pm and 8.45pm. There will also be an all day Saturday programme. The exact dates will be advised to all those expressing an interest in attending.

The course will take the well-established format, which has proved so successful in the past and be delivered by local experienced mediators and skills trainers. Those who have taken part in previous courses have found the course to be excellent preparation for acting as a mediator, for representing clients involved in mediation and for advising clients about mediation. They have also indicated that the course was of great interest, value and enjoyment. Attendance at the course will allow an application to be made for inclusion on the Dispute Resolution Service mediator’s panel.

The nature of the course means that the maximum numbers attending is restricted and anyone interested is asked to register their interest as soon as possible. The course is open to solicitors and barristers with 5 years’ post qualification experience. The likely cost will be £1,495 per person. This compares extremely favourably with mediation training course fees offered by other providers. The course attracts 24 hours CPD training including 3 hours’ client care.

Our recent training course was significantly over subscribed and therefore if you have an interest in attending, you should register your interest now.

**Please contact:**
Miriam Dudley
SLS Legal Publications
028 9066 7711
m.dudley@qub.ac.uk
O’Nolan, O’Brien, Na gCopaleen and the Law

The writer Flann O’Brien was born Brian O’Nolan in 1911 in Strabane, the fifth of twelve children. He was a subversive, a modernist and hilarious Irish novelist, who was the author of four novels - The Dalkey Archive, At Swim-Two Birds, The Hard Life and The Third Policeman. He wrote a satirical work in Irish entitled An Béal Bocht, translated as The Poor Mouth. Later in life he penned the Cruiskeen Lawn columns in the Irish Times for 26 years under the pseudonym Myles na gCopaleen, lampooning many of the sacred cows of Irish society including dishonest politicians, sanctimonious clergy, pretentious lawyers and the philistinism of the official nationalist culture.

Brian O’Nolan, the civil servant, was to creep into the skin and personae of Myles na gCopaleen and Flann O’Brien, two of his pen names. His writings exhibit throughout a fascination for all things legal (and illegal) in an Ireland, with its cultural and economic progress stifled by the oppressive structures of State and Church.

He was of course no stranger to the late night habits of some of the legal fraternity as he shows in the Cruiskeen Lawn.

- A Solicitor well known to the west – I do have jars with him on me holidays when the Circus is in town
- The Plain People of Ireland; The Circus?
- Myself: Sorry. The Circuit. But there is not much difference, really, when it gets on to midnight in the bar

**Background**

After several uprootings, his family settled in Dublin in 1922 and in 1929 he enrolled in University College, Dublin, ostensibly to study German, Irish and English, but where he devoted much of his time to developing his skills at debating, billiards and raising glasses of stout.

In 1935, he joined the Civil Service and since it was forbidden for State Officials to publish under their own name, O’Nolan used a number of pseudonyms.

The author’s career began promisingly with the publication of a novel, At-Swim-Two-Birds, in 1939, but was then interrupted by the rejection the following year of his second book, The Third Policeman (eventually published posthumously, in 1967). After The Poor Mouth, under the na gCopaleen name, his next foray as Flann O’Brien, the novelist, was in 1962, when The Hard Life was published.

What O’Nolan was doing in this long hiatus was writing a worthy column for the Irish Times entitled Cruiskeen Lawn. He had been approached by the editor, R M Smyllie, after he had stirred up the incestuous world of literary Dublin by writing a series of fake letters to the newspaper.

Cruiskeen Lawn was an instant success. By the early 1940s, it already consisted of several well honed themes and characters, much appreciated (and at times feared) by its readers including the Research Bureau, the Plain People of Ireland, Keats and Chapman, The Brother and the catechism of clichés where many legal themes are explored. All of these were cleverly written and seemed so natural that it is difficult to tell if they captured the authentic timbre of Dublin speech or if all Dublin speech itself was based on them.

**The law**

He had a considerable and perhaps surprising respect for the law. His themes, unresolved tales and conflicts mirrored the everyday stories of the legal world around him.

From its first appearance in the Irish Times in October 1940, his column Cruiskeen Lawn placed the new independent Ireland under a microscope.

The following instance leads the catechism of cliché into the subject of the law and its representation:

- What physical qualities have all barristers in common?
- Keenness of face and hawkiness of eye

Their arguments are:
- Tranchant
- Their books?
- Dusty tomes; but occasionally musty old legal tomes
- In what do they indulge?
- Fights of oratory
- If they are women, what is their description?
- They are Fair Portias.

The oeuvre of (the columnist) Myles na gCopaleen, (the novelist) Flann O’Brien, (the civil servant) Brian O’Nolan, and his other aliases was logistically drawn to the language of law.

The first of Myles na gCopaleen’s wartime courtroom dramas in Cruiskeen Lawn begins as such:

- Owing to pressure of work in the courts of justice, withdrawal of judges, electric heaters, bicycle-crime and other matters, the public spirited Myles na gCopaleen Central Research Bureau has persuaded several impatient litigants to bring their differences before the Cruiskeen Court of Voluntary Jurisdiction.

Myles’s new alternative court is to handle the overspill from Ireland’s already crowded legal system. Delay and backlogs in cases were problems even then.

Myles does not do much to the legal language he finds in court cases and legal books around him.

- the lawyers do not like to spend too much time rehearsing jargon and citing cases, fearing that the whole spiel will be ruled out as inadmissible. Hence, justice is rough, not to say ready

He uses this to provide a background of solemn farce for one of Myles na gCopaleen’s most insistent concerns: the role of cliché in public discourse.
The presiding judge in the Cruiskeen Court, Mr Justice Twinfeet is apt to correct the lawyers, Mr Law, Mr Juteclaw, Mr Faix not on what might be thought substantive ground, but on purely idiomatic points. The gravest error that a counsel can make in this court is a linguistic one.

As well as recalling counsel to their proper clichés, Twinfeet J also seeks to hold the line against the foreign-sounding “jargon”:

- Justice is a simple little lady not to be overmuch besmeared with base Latinities.

In a District Court report he mischievously refers to mentioning an elderly man who gives his name as Myles na gCopaleen was charged with begging, disorderly conduct, using bad language and with being in illegal possession of an arm-chair. He was also charged with failing to register as an alien. After he was convicted, the Defendant asked that 6,352 other offences should be taken into consideration.

Later in Cruiskeen Lawn he teases with a mock heroic tone:

- DO NOT for that singular interval, one moment, think that I have been overlooking this new Intoxicating Liquor Bill. I am arranging to have an amendment tabled because it appears that there is absolutely nothing else you can do with amendment.

- My idea is to have the hours altered so that public houses will be permitted to open only between two and five in the morning. This means that if you are a drinking man you’ll have to be in earnest about it.

He indulges in an examination of all manner of Bores in Irish Society, from The Man who buys Wholesale, to the Man Who Never Gives Pennies to Beggars, by way of the Man Who Spoke Irish At A Time When it was Neither Profitable Nor Popular (Don’t forget that Lad) until his laconic eye eventually comes to rest on the Man Who is his Own Lawyer:

- Is it fork out me good-lookin’, money to them hooky solicitors? Them fellas, that has th’office on a weekly tenancy and a season ticket to Belfast, ready to skip the mint they get their claws on some unfortunate orphan’s dough? Ah no, thanks all the same. I think I’ll just carry on a little bit longer the way I am. And I’ll tell you this much: I know more law nor any ten of them put together. I didn’t want the help of any solicitor back in nineteen and thirty-four when I made the landlord take down and rebuild back wall and replace gutters, and pull out the joyces in the front drawin’ room and put in new wans. Oh Gob no bloody fear, I know me rights. I took out the probate single-handed after the mother went and I got ten pounds nine for Christy the time he was humped off a bike be a luny. I know me law and I know me rights.

He continues in a relatively sympathetic vein towards lawyers:

- The foregoing samples, of course, represent attitudes. There are, however, troglodytic specimens who can get their effects by a single and unwavering remark which, injected into thousands of conversations in the course of their lifetime, enables them to take leave of humanity knowing that they have done something important to it.

In At-Swim-Two-Birds he gives us a relevant excerpt from the Press describing the arraignment of a gang of corner boys before Mr Lamphall in the District Court yesterday morning on charges of riotous assembly and malicious damage; mentioning their horse play in the streets was the curse of the Ringsend district. Here heroic and folkloric figures – Finn McCool, The Good Fairy, the Pooka MacPhellimey set alongside the cowboys Slug and Shorts.

In The Third Policeman, a hallucinatory existential murder mystery, (with footnotes), the nameless hero is under the tutelage of a name called Divney who was given weekly cheques of pay by an office of solicitors in a town far away. I had never met these solicitors and never met Divney but they were really all working for me.

In The Hard Life, the solicitors Sproule, Higgins and Fogarty are instructed to deal in the estate of poor Mr Collop and Mr Sproule was an ancient wrinkled thing like his own parchment, remarkably, like a character out of Dickens. He rose to a stooped standing and shook hands with us, waving us to chairs.

Sproule right away comforts the beneficiaries by assuring them that you don’t mind to be troubled with the legalistic rigmarole we lawyers must insist on.

In The Third Policeman, he draws on detective stories, science fiction, theology and medieval Gaelic literature and there is even a murder at the heart of the story. In a land of wonders there is a police station, run by the irrepressible Sergeant Pluck, who is overly concerned with bicycles, and the equally strange Policeman MacCruiskeen who spends his time on marvellous inventions, including a mangle that converts light into sound.

A third policeman Fox is as mad as a hare, he never interrogates the public and he is always taking notes. O’Nolan later wrote himself:

None of the rules and laws (not even the law of gravity) holds good, there is any amount of scope for back-chat and funny cracks

In this world where bicycles listen to conversations, characters play truant while novelists sleep, heroes from legend can blunder into suburban sitting-rooms.

Amazingly, an appearance of The Third Policeman’s dust cover on the famous cryptic television show Lost in 2006 in the US, led to more copies being sold in seven days following the episodes airing than it had in the previous ten years. The New York Times, USA Today and LA Weekly all piled into the story.

I am sure the Tyrone man would have approved.

We are grateful to Joe Rice, Solicitor, Belfast for this article.
A trained mediator is able to offer alternatives to those in conflict and assist them in finding agreement instead of reverting to a Court process or more destructive techniques. Family Mediation NI (FMNI) will deliver a further Family Mediation Foundation Training course in Northern Ireland, commencing in September 2012. This course is approved by The College of Mediators (UK) plus the pending approval of the Mediators’ Institute of Ireland and ensures reciprocity across Ireland. It also complies with the European Union Directive on mediation. This course is provided by FMNI’s own team of experienced trainers.

The Mediator is an independent person who facilitates alternatives to conflict whilst remaining impartial and non-judgemental. As a service provider, FMNI specialises in Family Mediation and in particular mediation between couples who are separating or divorcing.

Due to the complex nature of conflict and the very real impact this has on people’s lives, the Mediator needs to have the requisite knowledge, skills, experience and self-awareness.

The 2012 programme will be delivered in Belfast and will consist of 12 days of intensive training and approximately 20 hours of reading and preparation.

**Dates:**

| Module 1 | 28 & 29 September |
| Module 3 | 19 & 20 October |
| Module 5 | 23 & 24 November |
| Module 2 | 5 & 6 October |
| Module 4 | 2 & 3 November |
| Module 6 | 7 & 8 December |

**Cost:** £2100 includes: training materials, catering, family mediation certification

**Aimed at:**

- those involved in social science, family law, education, couple counselling, family work, mediation or conflict transformation,
  - who wish to become professional and accredited Mediators specialising in family and separating couples for whom this is the necessary **first stage** in a continuous process of professional development and accreditation in Family Mediation
  - or
- those professionals who wish to add to their skills base in the area of family mediation.

To receive an application pack or get additional information please contact

Family Mediation NI, 7 University Street, Belfast BT7 1FY
Tel: 028 9024 3265 Email: administration@familymediationni.org.uk

**Closing date for receipt of applications:** 11 July 2012
Legal Support Project - The important role of pro-bono work

On 1 March this year, Mr Justice Stephens spoke at the launch of the Law Centre’s Legal Support Project. Below is a summary of his speech.

I want to thank all those involved in the Legal Support Project for the invitation to participate in this important event. This is one of a number of projects providing free legal advice and assistance in Northern Ireland. It is aimed at providing assistance to unrepresented litigants in Social Security Appeals and in Industrial Tribunals. These are two important areas where the decisions of tribunals have considerable impact on the lives of individuals.

The project will rely on altruistic people volunteering their time and legal expertise. So at the very start I would like to acknowledge the valuable work that will be done by those volunteers, who I anticipate will make this project work, and the valuable contributions that are made by others.

This Law Centre project has secured three year’ funding from Atlantic Philanthropies which is a real endorsement of the ideas behind the project. This launch has been sponsored by Allen & Overy Solicitors, who have a long standing commitment to pro bono work.

The project is committed to working with the Bar of Northern Ireland and the Law Society of Northern Ireland. It has the support of the Lord Chief Justice, the head of the judiciary in Northern Ireland. You may recall that the Lord Chief Justice, in his address to the Law Society last September, said that pro bono can never replace a properly funded independent legal profession. But he said it has an important role, especially when people are in straitened circumstances and are experiencing problems, whether in the traditional legal system or in less formal spheres such as social security.

The Lord Chief Justice has asked me and I have agreed to act as honorary chairman of the Project’s Advisory Group. So you can see that support comes from a number of different areas and also that the project demonstrates the ethos of working together with others. This is a Law Centre project but it wishes to draw on and draw in others to provide real positive benefits to individuals in these two very important areas of social security and employment.

Addressing the need for tribunal representation

Social security payments are a vital part of our social contract to secure that those in need do not go without appropriate assistance. The ability to obtain and retain employment is a cornerstone of a stable life.

The areas of social security and employment are extremely important areas for individuals and for families but the rights of individuals in these areas amount to nothing unless the rights are able to be successfully brought home before either the Social Security Appeal Tribunal or the Industrial Tribunal. A large number of litigants in those tribunals cannot afford legal representation.

To obtain redress, there has to be access to justice and equality before the law for all. Those tenets underpin the legal system. In 1957, the Franks Committee asked whether in every circumstance the legal system complied with those basic tenets. The government’s response was to set up the tribunal system, the intention being that those elements of the legal process would be easier and faster and people would be able to negotiate it by themselves without having to employ a lawyer.

It is correct that tribunals do not adhere as strictly to procedural formalities and also that there is an obligation on those presiding at tribunals to allow a considerable degree of latitude to personal litigants and to provide assistance to them. This project recognises however, that it is not every litigant who can present their own case even before a tribunal. Unrepresented individuals may not have the ability to identify the issues or what evidence is needed, especially if they suffer from disability either physical or mental.

How the legal profession can help

I would like to say something about the existing emphasis by both branches of the legal profession on corporate social responsibility policies. On the website of many law firms in Northern Ireland are such policies demonstrating their commitment to supporting and giving something back to the community. I have spent some time looking at various of those policies. I am aware of the commitment of the Bar of Northern Ireland and the Law Society of Northern Ireland to charities in Northern Ireland and both professions commitment to providing free legal assistance through a pro bono scheme under the auspices of the Northern Ireland Lawyers Pro Bono Group established in 2000. Against that background, I am glad that the Bar and the solicitors’ professions are prepared to give further assistance to this project.

I am keen to enter into a constructive dialogue with both professions to identify ways in which they can be of assistance to this project. I would like to suggest a number of ways in which individual members of these professions may assist, which may well vary depending on the stage of the individual’s career.

For young barristers starting out in their profession, there is the potential to volunteer their time. It might be appropriate for instance that barristers, during their pupillage, are seconded for short periods of time in liaison with their pupil master and with the authority of the Bar Council to the project so that there is a firm reliable commitment for those periods. In making that suggestion, I am more than aware of the difficulties in the present economic climate. Young professionals are eager to start their legal careers by giving the highest level of commitment possible to their own work.
However, with the perspective of hindsight, short periods of voluntary pro bono work do not have any long term adverse impact on career development but rather provide valuable experience. So I would like to consider with the project and with the Bar ways in which barristers in pupillage might assist this project.

Secondly I am interested in exploring how solicitors could be encouraged to give of their time and I would welcome discussion about this. I have no doubt that there are many firms who wish to support this project and see its potential for giving trainee and newly qualified solicitors valuable experience.

In relation to barristers and solicitors with heavy workloads, I would wish to explore other ways in which they could assist, for instance by providing training or mentoring or general advice and guidance. There are no doubt numerous ways in which the professions can assist and I am going to invite those who lead the professions in Northern Ireland to meet with me to discuss what can be done.

The strengths of the project

There are a number of important points to emphasise in relation to the Legal Support Project.

(a) It facilitates access to justice. We are currently living in difficult economic times. People have to make do with less. There are cuts in public funding coupled with reforms in the welfare state. In that context, it is particularly important that those who are entitled to social security payments and to remedies in relation to their employment difficulties are able to secure those remedies.

(b) The project draws on the experience in our sister jurisdictions. Significant contributions to pro bono work can be seen through the efforts of Law Works in the United Kingdom and Free Legal Advice Centres (FLAC) in the Republic of Ireland. Law Works is a charity which aims to provide free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid. FLAC was established in 1969. It has an ethos of promoting equal access to justice for all. The backbone of the organisation is volunteers from across Ireland who offer free legal advice and information in communities throughout Ireland who may otherwise not have access to legal expertise. When you speak to FLAC representatives, it is remarkable how many big names in the legal world have been involved over the years.

(c) It draws on a number of pro bono initiatives. Many of you will be aware of the Northern Ireland Lawyers’ Pro Bono Group which was established in 2000, a joint venture sponsored by the Bar Council and Law Society. It provides free legal advice and representation in cases with a public interest element where legal aid or other funding is not available and where an applicant is unable to afford legal assistance. In Northern Ireland, we also have the PILS Project. It concentrates on cases where there is a significant point of public interest by providing advice and financial assistance. Within the Royal Courts of Justice, we have identified an opportunity where pro bono advice may prove beneficial. The High Court has seen a significant rise in the number of personal litigants. In recognition of the delay and difficulty with access to justice, the Lord Chief Justice’s Office is in discussions with the Bar and the Law Society to see if we can develop a small scale pro bono scheme within the Royal Courts of Justice to assist personal litigants bringing actions in the High Court with advice as to practice and procedure.

(d) The project sits alongside other organisations which provide valuable advice and assistance such as, for example, Citizens Advice Northern Ireland, the Children’s Law Centre and Housing Rights Service. Take the increase in repossession cases in our Chancery Division. Colleagues who hear those cases tell me that the advice facility provided by Housing Rights Service has changed the outcome, or at least brought much needed advice, to many people facing the prospect of losing their home.

(e) This is a Law Centre project. This means that it can call on the considerable expertise built up by the Law Centre. At the centre of voluntary service provision of legal advice, the Law Centre has stood for 35 years playing a key role in the legal landscape in Northern Ireland since its establishment in 1977. Its work is of inestimable value and it has secured...
access to justice for many people who would have been without legal redress.

(f) Those who use the services of the Legal Support Project can be assured that the volunteers are trained. All aspects of the project have been fully considered, from supervision of less experienced volunteers to the handling of case files and information in accordance with the Lexcel quality standards.

Conclusion

This project is a drawing together of various facets of the legal community, working together on common ground, to secure access to justice for people in real need. In order for the project to thrive, the singular requirement from the legal profession is a regular and ongoing commitment. We in the legal profession need to explore ways in which we can tend the green shoots in this field. It could be as straightforward for example as including pro bono as part of a barrister’s pupillage or encouraging an apprentice solicitor to donate some hours to a local scheme. Not only is it important that lawyers engage in pro bono work in order to ensure access to justice – a basic human right – but it is also provides an opportunity for barristers and solicitors to build confidence and skill and to utilise it for the benefit of their community.

A concerted effort and willingness by barristers, solicitors, third sector organisations and pro bono initiatives to work in partnership can only serve to improve access to justice and forge strong working relationships for the benefit of the community which you all serve.

I conclude by quoting the President of the United States of America, Barack Obama who said:

“In a world that’s more and more interconnected, we all have responsibilities to work together to solve common challenges.”

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**CPD training at Law Centre (NI)**

Law Centre (NI) training programme 2012-13 is now online:

www.lawcentreni.org/Publications/Training/

TrainingProgramme2012-13.pdf

Enrolment has started. Some courses can be booked together to save 20%.

**June courses**

27 June - Pregnancy and Benefits - Belfast
26 June - Financing Residential Care - Derry
29 June - Immigration Law and People Trafficking – Belfast

**August courses**

8 August - WRAP refresher – Disability Related Benefits – Belfast (half day)
15 August - WRAP refresher – Disability Related Benefits – Derry (half day)

For more information, contact Noirin Hyndman and our Western Area Office: 028 7126 2433
noreen.hyndman@lawcentreniwest.org
Saturday 25th August 2012
Belfast Boat Club

Sign up & bring the family for this fun challenge to row, row, row your own boat!

Registration fee is £10 per person.

We hope that each person can raise a minimum of £50.

Each boat requires 17 participants. Individuals/smaller groups can also be accommodated.

Registration Form overleaf
Please make cheques payable to: **Friends of the Cancer Centre**.
Alternatively, call ‘Friends’ to make a debit or credit card payment.

All the money raised will support projects that make a real and meaningful difference for local cancer patients and their families. Thank you for supporting our hospital charity.

Public liability insurance is in place but this does not cover personal accidents. We have taken all reasonable steps to eliminate the risk of injury but there is a certain minimal risk in every activity and you should withdraw from the event if you have any doubts. We reserve the right to remove any participant who does not abide by the rules.

I have read, understood and agree with the above statement.

Signed (parent/guardian if under 18): ________________________ Date: ________

**PLEASE RETURN YOUR REGISTRATION FORM AND FEE TO:** Kelly at Friends of the Cancer Centre, The Cancer Centre, Belfast City Hospital, Lisburn Road, Belfast BT9 7AB
Telephone: **028 9069 9393** info@friendsofthecancercentre.com www.friendsofthecancercentre.com

If you have a special reason for supporting us and are prepared to be part of our publicity drive to support fund-raising we’d love to hear from you. Just tell us in a few words why Friends of the Cancer Centre is close to your heart:
The Irish Legal History Society

A three-million euro restoration project was recently completed on a building known as the Main Guard in Clonmel, the courthouse built in 1675 by order of James Butler, Duke of Ormonde, for the Palatinate of Co Tipperary. In its day, it must have been an impressive sight, stone-built with arches, columns and carved capitals; some of the stone recycled from a ruined Cistercian abbey nearby.

Abandoned in favour of a new courthouse in 1810, the Main Guard was later converted into shops, and in the twentieth century, it gradually fell into a state of dilapidation. By the 1980s, it was considered to be on the point of collapse and was closed up. But in the early 1990s, a conservation architect, Margaret Quinlan, began to research the building’s architectural history and found evidence of the building’s seventeenth century origins, including stonework bearing the mason’s mark of the Cistercians.

The building was designated a national monument, vested in the Office of Public Works, and a painstaking programme of restoration begun. The result – one of Ireland’s finest buildings with an exquisite palladian façade (Irish Times, 31 January 2012).

But what happened there? Without more, this former courthouse must remain a beautiful empty shell. Happily, we find in the pages of the American Journal of Legal History for 1961 a fascinating and vivid account of the Palatinate Court of the Liberty of Tipperary, by Vincent Delany, based on such documentary fragments as survive. As a palatinate – a kingdom within a kingdom – Tipperary had until 1715 its own chief justice, justices, master of the rolls and attorney general, and the Main Guard was in fact an important training ground for leading players who would eventually progress to the Four Courts in Dublin.

Legal history matters. It is this belief that motivates the members of the Irish Legal History Society and unites us with our sister legal history societies within the British Isles: the Welsh Legal History Society (founded in 1999 – www.welshlegalhistory.org/), the Stair Society (1934 – www.stairsociety.org/), and the Selden Society (1887 – www.selden-society.qmw.ac.uk/).

The Irish Legal History Society (ILHS) was founded in 1988 with the objects of encouraging the study and advancing the knowledge of the history of Irish law, especially by the publication of original documents and of works relating to the history of Irish law, including its institutions, doctrines and personalities, and the reprinting or editing of works of sufficient rarity or importance. We enjoy the patronage of the serving chief justice, south and north.

It is, of course, the case that notable Irish legal historical scholarship pre-dates the formation of the Society. We have already noted Delany’s work, and other significant contributors to Irish legal history discourse before 1988 were Nial Osborough (founder of the ILHS and for many years, literary editor, and former president), Geoffrey Hand, R F V Heuston, Francis Newarke, Daire Hogan, Paul O’Higgins, Paul Brand, and John McDowell, among others.

Since its inception, the ILHS has aimed to promote and encourage legal historical research, and our publication programme is central to our activities. Some 20 volumes have been published under the aegis of the ILHS, in conjunction with our publisher, Four Courts Press of Dublin. Our most recent publications are Murder Trials in Ireland, 1836-1914 by W E Vaughan (2009), and The Court of Admiralty of Ireland, 1575-1893 by Kevin Costello (2011). Full details of the ILHS publications programme may be viewed at www.ilhs.eu. Members receive copies of our publications, which are also available for purchase: www.fourcourtspress.ie

We meet twice a year, in Dublin or Belfast, and a paper is read at each meeting. In addition, the ILHS Bursary is made available annually to promote research in the field of Irish legal history, and from 2012 onwards, we plan to award the W N Osborough Composition Prize in legal history – details of both bursary and prize are on our website: www.ilhs.eu. The Society can also be followed on Twitter and Facebook.

New members are very warmly invited to join the ILHS. Please see www.ilhs.eu for details of how to apply, or email Dr Thomas Mohr, Hon Secretary, Thomas.mohr@ucd.ie. We shall also be very pleased to welcome new student members.

Professor N M Dawson
President
Moir on Land Registration
A Review by Neil Faris - Part Two

Introduction

In Part One of this Review (published in the previous issue of the Writ) I reprised briefly the contents of this text book, welcoming it as an indispensable adjunct to conveyancing practice in Northern Ireland.

I went on to discuss the conundrum between the conclusiveness of the register provided by section 11 of the Land Registration Act (NI) 1970 (‘the 1970 Act’) and section 69 which contains provisions for rectification and I drew attention to the authors’ conclusion that the courts have ‘an overriding discretion’.

In my years of practice (until the imposition of compulsory first registration – ‘CFR’) I cannot recall any transaction where one had to grapple with the complexities of section 69. But the question which now arises - are applications for rectification under section 69 set to increase, because of the introduction of solicitor certification as the foundation of the CFR system?

In short (and in colloquial terms) has government introduced CFR ‘on the cheap’ through the solicitor certification procedure with the consequence of increased likelihood of errors on CFR leading to increased submissions to Court for rectification under section 69 and claims on the compensation fund under section 70?

In Chapter 1 the authors refer to a review by a government efficiency unit of the Land Registry in 1989 which criticised it:

"... for adhering to high standards of accuracy without particular regard to the cost effectiveness of this approach."

Surely the guarantee of conclusiveness of title in section 11 is dependent on such ‘high standards of accuracy’ in actual operation of the Land Registry system? If the CFR solicitor certification system was adopted on the basis that title would no longer be subject to rigorous check by the Land Registry then that puts new pressure on the provisions of section 69.

I suggest we have not reached the end of this story but at least Moir on Registration should be a helpful guide to the difficulties ahead.

As I indicated in Part One of this Review, a valuable part of the work is the many precedents which it contains. I am pleased to see some detailed treatment of leases of apartments in Chapter 14. I declare an interest in regard to the Northern Ireland Law Commission’s Multi-Unit Development Project on which I am currently working with research staff of the Commission. We shall be publishing a consultation paper later in the year and are actively seeking views and submissions – including from any reader of The Writ!

It is notable that the authors record that they give special attention to the topic of leases of apartments because ‘many such leases which are encountered by Land Registry staff contain serious errors’1. I therefore suggest we would all benefit from at least refreshing our expertise by reading this section of the work.

It is also very helpful that the authors include precedents for apartment conveyancing. But of course care should be taken in using these. The authors suggest that anyone carrying out the conveyancing drafting for an apartment development should also refer to the relevant precedent books. The precedents in this work are included only to suggest formats which are acceptable to the Land Registry.2 There is of course much else for the conveyancer to consider.

To under-score that point, I would refer to the following for further consideration:

• Precedent 14.D – Simple Lease of an Apartment

As the authors explain, this has been drafted for the circumstance of an apartment in a two-storey building where common areas have not been demised and no management company has been formed. I would suggest that in such case the drafter needs to consider who is to be the lessor. I suggest it is unlikely that the developer or builder with the freehold will wish to retain long-term the role of lessor and that a scheme of this sort entails that one of the apartment owners takes the freehold subject to the leases of the other apartments. Then the lease will need to contain, as the authors suggest, provision for cross covenants between the parties to cover in particular provisions for responsibility for maintenance and repair and if appropriate service charge.

• Precedent 14.E – Lease of an apartment in a development

This is for the more usual case where there is a management company. The precedent sets out some detail of the recitals involving the formation of the management company and the intended transfer of the freehold by the developer to the management company. The precedent suggests that this is to occur when the developer has granted all the leases in the development. But is this necessarily the appropriate point of transfer as it entails continuing developer control until the (perhaps now-a-days long deferred) date when the last apartment is sold? On the other hand if an earlier date is stipulated – such as on sale of the first apartment – does this deprive the developer of necessary control required for completion of the entire development with consequent funding problems as his lenders will of course require the security of his title until the development is completed?

We are finding in our Commission research and stakeholder work that there are divergent views as to what is the proper date of transfer so I would welcome readers’ views on this.

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1 Commissioner, Northern Ireland Law Commission, but this review is written in my personal capacity
2 Chapter 1, at p.6
3 Para 14.7, p.221
4 p 222
The precedent might be described as a framework draft and of course much detail, such as the service charge provisions requires to be supplied by the drafter to fit the particular circumstances of each development. In that regard the definition of ‘service charge contribution’ in clause 1.17 of the precedent raises a further question. The definition suggests that contribution is to be a ‘due proportion (to be determined by the [Management] Company or an agent appointed by the Company)’. But should a fixed proportion be specified and, if so, should that be calculated by reference to the number of apartments in the development or by reference to the floor areas of the apartments (where they may differ quite markedly in size)?

Finally, we are finding a worrying indication of lack of sinking fund provisions for some developments (whether arising from deficiencies in some cases of lease drafting or in other cases simply because the management company has not operated a sinking fund). Clearly, this means that as a development ages and may require substantial funds for major maintenance or repair the company does not have sinking fund assets on which to draw for the purpose and in reality the individual apartment owners may find it a daunting task to raise the required amount of service charge. Is reform in this regard required and, if so, what should be the nature and extent of the required reform?

These various points just highlight the great value of this work as the now indispensable reference work for every conveyancing solicitor in Northern Ireland. I would recommend not only that each firm of solicitors should acquire a copy but in particular if you are a conveyancing solicitor you should ensure your own personal copy to keep at the side of your desk as a constant reference.

Neil Faris, Solicitor

NOTE: The rectification provisions of section 69 of the Land Registration Act (NI) 1970 were discussed in Part One of this Review. It should be noted that section 69 has been judicially considered by Deeny J in Hayes v McGuigan [2011] NICH 25. At para 11 the learned judge cites with some approval “the useful summary (of sections 11,64 and 69) at section 2.20 ff in Moir on Land Registration (2011)”

Moir on Land Registration by Arthur H Moir LL.B and Emily K Moir LL.B
Published by SLS Legal Publications (NI) 2011
Price £135

Leaving a Legacy

Please consider CONTACT when advising your clients about leaving a Legacy to charity or making a gift.

Contact was established in 1977 in response to a growing recognition that people have complex and diverse emotional and mental health needs which are not always met in existing support structures. We offer:

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For further information on our work contact: 1st Floor Lanyon Building, North Derby Street, Belfast BT15 3HL.

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WEB: contactni.com

Lifeline - 24/7 Freephone Helpline For anyone in distress or despair

TEL: 0808 808 8000
WEB: lifelinehelpline.info
On Thursday 19 January the BSA began its CPD Programme for 2012.

Already a number of prominent talks have taken place, most particularly those provided by Paul Givan, the Chairman and Raymond McCartney, the Deputy Chairman of the Justice Committee, who spoke to BSA members and engaged in a constructive question and answer session at a CPD event on 15 February.

The Attorney General for Northern Ireland, John Larkin QC and Mr Justice McCloskey, have also provided talks during the current CPD Programme as has the new Director of Public Prosecutions, Barra McGrory QC, who is pictured here with the present BSA Chairman, Reg Rankin.

As with previous years, the presentations take place in the main Lecture Theatre at Law Society House at 1pm with tea and sandwiches available from 12.30pm. The BSA CPD programme is both extensive and competitive and for a BSA member you can complete your full 10 hour group study for £210 including the mandatory three hours’ client care/practice management.

Work is already commencing on the CPD Programme for 2013 so if anyone would like to see a particular topic covered at a forthcoming event, please contact us with your suggestions.

From left: Reg Rankin, BSA Chairman with Director of Public Prosecutions, Barra McGrory QC.

Olivia O’Kane, committee member of the Belfast Solicitors’ Association and solicitor with Carson McDowell Solicitors, is running the New York Marathon on 4 November 2012 in aid of Action Cancer.

All costs of doing the Marathon are covered by her so that every penny she raises goes directly to Action Cancer Northern Ireland.

Action Cancer is the BSA nominated charity and in a small place like Northern Ireland it is sad to learn that every year 820 cervical cancers are detected resulting in 21 deaths. Every year 1000 women are diagnosed with breast cancer and 300 lose their lives. Sadly, testicular cancer is the most common cancer in men aged between 15 and 45 years and 60 men are diagnosed with testicular cancer each year. Prostate cancer is the third most common cause of cancer death in men accounting for over 200 deaths per year.

Action Cancer is a local charity for local people of Northern Ireland and its good work saves lives and supports patients and families. It depends on your support.

If you can please donate to www.justgiving.com/OLIVIA-O-KANE. Every little goes a long way.
Action Cancer is charity of choice for Belfast Solicitors’ Association

From 1 April 2012, Belfast Solicitors’ Association is supporting Northern Ireland's leading local cancer charity, Action Cancer. Action Cancer provides breast screening, counselling, complementary therapies, healthy lifestyle education and a mobile unit, the Big Bus.

Kerry Anderson, corporate fundraising officer with the charity, is appealing to BSA members and the legal profession to support the charity this year.

“As an entirely local charity we rely on support from individuals and local businesses to raise the £3m we need each year to maintain our services. As we all know someone who has been affected by cancer, it’s easy to imagine the difference your support will make. We have lots of initiatives and events to take part in including our annual Golf Day and the MoonLight Walk.

“Something as simple as a coffee morning in work can enable us to screen another woman for cancer and through early detection like this we can save lives. If you can help, please give us a call on 028 9080 3347.”

Some ideas of how you can support the charity are below:

**Action Man Month in June**
Not just for the boys – give your office a ‘blue hue’, with hair sprayed blue, blue face paints or simply everyone dressed in blue. Your funds will enable us to provide male MOT health checks and raise awareness of prostate and testicular cancer.

**Action Your Will – Saintly Solicitors Needed! - October 2012**
We are seeking participant solicitors to register their interest in the Action Your Will Campaign. Solicitors provide a free will service throughout the month of October and this enables the charity to raise funds.

For more information please call Kerry Anderson on 028 9080 3347 or email kanderson@actioncancer.org

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**ATTENTION ALL PROSPECTIVE MASTERS**

Are you interested in taking on an apprentice for the two-year term commencing September 2012?

If you are in private practice and have
1. practised as a solicitor for at least seven years, and
2. been a principal for at least three years
Or
If you are in the public sector and have been in practice for at least 10 years and, in either case, if you can provide training for students, you may wish to consider becoming a Master.

The Education Committee will also consider applications from prospective Masters who have less than the requisite number of years in practice.

The Society’s present recommended wage for apprentices is:

(a) for the first 16 months of the apprenticeship £240 per week
(b) for the last 8 months of the apprenticeship £270 per week
(c) During the Institute/Graduate School term, when the apprentice is in his/her Master’s office each Monday, a minimum wage of one-fifth of the prescribed first level rate (namely £48 per week)

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**MASTERS 2012/2013**

I confirm that I am interested in acting as a Master as and from September 2012 and am willing for my name to be added to a list of potential masters and circulated to students seeking apprenticeships.

Name of intending Master

Name of firm

Contact Name and details of person to whom application should be made (if different from prospective Master)

Would you prefer to receive applications from applicants by:
CV
Post
Firm’s own recruitment procedure (please detail)

Date

Return to: Admissions Officer, Law Society House, 96 Victoria Street, Belfast BT1 3GN or email: admissions@lawsoc-ni.org
The Northern Ireland Young Solicitors’ Association represents and promotes the interests of all members of the profession in Northern Ireland under the age of 36.

We pride ourselves on our ever expanding calendar of events, from the educational to the social, which, we believe, contributes to an overall improved experience working in this profession.

The Committee is delighted to announce that the NIYSA has recently become a member of Business in the Community (BITC), a not-for-profit membership organisation providing advice, support and opportunities for engagement in the local community.

Every one of our members can now benefit from the numerous volunteering schemes set up by BITC. From Reading in Schools, to providing Work Experience, to hosting advice and support workshops for community organisations, the advantages to be gained by individuals and their firms in becoming involved are boundless.

Not only will it allow participants the chance to engage and advance their corporate social responsibility, it is likely to lead to improved professional skills and provide members with an avenue to do something which will have a real and positive impact on some aspect of the community.

You will be given access to new networks which in itself could create numerous and varied opportunities. You could be helping to improve literacy in young people and giving school leavers a focus for their future.

The NIYSA has committed a considerable sum to the contribution requested from members of BITC. We believe that the doors it will open for our members will make it worth every penny. If you are a partner in a small to medium firm, with young solicitors in your practice, I hope that you will read this and appreciate how it could not only benefit your organisation on the whole but also improve the overall experience of your employee, and encourage that person to get involved.

If you would like to find out more and want to register your interest, please e-mail me at mariamccloskey@napiers.com and I will answer any questions you might have and pass your details on to BITC.

Franklin D. Roosevelt once said: “Happiness lies not in the mere possession of money. It lies in the joy of achievement, in the thrill of creative effort.” We support that notion and believe that by becoming a member of Business in the Community we have taken a huge step, on behalf of our members, towards proving it.

Maria McCloskey
Vice Chair NIYSA
In the last issue of The Writ, Peter Jack told how he spent his birthday attempting to complete Ireland’s first Indoor Ironman. In this, the second part of his article, we find out if he achieved his goal.

Anyone familiar with Monty Python’s Flying Circus will remember the clarion rallying call of: “No-one expects the Spanish Inquisition!” But there were to be many times over the next five hours that the worst excesses of the Spanish Inquisition would have been more welcome than the mind-numbing, spirit crushing, feet swelling pain of the treadmill but cometh the hour, cometh the man and that man was a guy who will forever be referred to in my house as “St Stephen”.

I had swum the 3.8K in the Roe Valley Leisure Centre pool, I had biked 180K on the gym bike and now I had between me and the Finish Line of Ireland’s first ever Indoor Ironman, a marathon on the treadmill ie 42.195K.

My Triangle Triathlon club mate, Stevie Keown, had told me a few days before this that he would do the run with me. Now, I interpreted this to mean that he would accompany me for 40 or 50 minutes or maybe 10 or 15K at the most but what Stephen meant was the whole run.

In terms of sacrifice and help, I couldn’t have asked anyone or indeed paid anyone to do this. A burden shared is a burden halved.

I was to discover over the course of the next 300 minutes that big Stevie, if not wasted as a teacher, certainly has a career as a psychologist. If I heard: “you are doing great Peter” once, I heard it, or a variation of it hundreds of times and “another twenty minutes, then we can walk for a minute” or “only another 3K and you can go and splash water over your face”. Stephen provided the bridge to enable me to hop from one stepping stone to another with bite sized goals and Stevie wasn’t the only one.

On the other side of me, Kieran Doherty, did 21K on his treadmill and Rotarian President, Darren, ran 100 minutes, while Kevin Tierney, whose longest run ever had been 10K, did 32K before heading for a well deserved shower. There were people queuing up to run beside me. Between that and the banner downstairs draped over reception highlighting what I was doing all day it was proving to be a difficult day to keep an already rampant ego in check but I felt truly humbled by this outpouring of support.

At the end of the day, it was going to be my feet, my heart and my lungs that would have to step up to the mark. I was conscious that my longest training run had been 15K so I needed to increase that somehow to 42K. Well, I am nothing if not an optimist.

What speed do I set out at? In training, I was comfortably running at 10.5K an hour but I didn’t want to be like a firework ie go out in a blaze of glory and I had to be more circumspect, so I went for 9.5K an hour. Now this is where big Stevie knocked me out – he set his machine for exactly the same speed. I had been a bit concerned about this as I had to set a pace that I could sustain and not get carried away with anyone else’s game plan. Stevie’s pace setting, like Mervyn’s earlier, was impeccable. We decided on a 30 minute run, one minute walk strategy and it worked like a treat. I had the “carrot” of the rest period to look forward to.

I can honestly say that the first kilometre was fine... only +41.195K to go! I then just started to feel horrible. Then I realised after 40 minutes that Brendan O’Brien’s fan which had provided me with much needed cooling breeze on the bike was not in sight, so I just hollered “fan!” and lo and behold it was brought over to me. Surrounded by well wishers with fans in the crowd and a fan to cool me down, what could be better!

The plan had been to start the run before 3.00 pm and so far there was no deviation from the race plan. Stevie would reach me flat Coke and a gel (I later discovered all my gels and the electrolyte drink were actually out of sight behind me) and tell me to keep consuming liquids and carbs. I don’t think Stevie got much by way of thanks from me, other than a grunt but he didn’t let up for a moment with his steadfast and unwavering support.

The first hour saw 9.43K being ticked off, the second hour 9.41K up to 5.00 pm and at this stage I was really struggling, mentally as well as physically. My stomach was no longer willing to accept food of any description. So all I had were cool drinks to propel me onwards. Sometimes I tried to talk to a well wisher, but
I found I would practically lose my balance on the machine and stumble, swaying like a drunk on a Friday night, so I had to try and just focus, focus, focus and keep my eye on the prize.

There is only one other bloke in the UK who had done this form of indoor masochism before me, Mark Kleathous. In fact he did his bike section on a turbo trainer so I suppose I was the only one who could claim to have done my 180K on a gym bike. Mark kindly told me that treadmill running was particularly sore on the joints and muscles as there was just no different movement compared to an outdoor marathon. There was just exactly the same repetition of 170 strides every minute, minute after minute, hour after hour in exactly the same position.

I have acted for clients with repetitive strain injury cases and believe me I will be even more sympathetic in future. Mark had advised me not to look at the numbers on the screen in front of me as when you are doing an outdoor marathon you don’t run with your head at that angle but like a car crash, I found it horribly fascinating to constantly monitor the numbers and distance slowly increase but my pulse stayed about the same i.e 120 which at least proved the engine was working - even if the chassis seemed in imminent danger of collapse.

I had mentioned earlier about my cause, my purpose, my goal. The French would call it their “raison d’être”. Well I had that – in bucket loads – but what about my fellow runners especially Stevie? They were going through all of this agony and all this pain – and for what? It was enough to make me weep. I was just blown away by their stoicism and their practical help. If I had been doing 42K on the road or on the treadmill on my own I would have been walking many hours previously but I simply couldn’t let these guys down.

Limavady Ultra runner extraordinaire, Fran McFadden, and living legend, Hannah Shields, appeared. Rhodri Jones and Mark Henderson were eventually able to get a machine free beside me on which to run but guys, that third hour was the equivalent of a long dark tunnel of pain. I wasn’t even at the half-way stage and I could very easily have gone for a lie down in a very dark room - anything to stop this relentless pain.

But I had Stevie beside me so how could I stop? “Come on Pete, another 10 minutes and then we walk for a minute. Then you are doing your live Radio Ulster interview with Seamus McKee at 5.50 pm, then you can walk, then there is the last full hour, then just some of the next hour, then you are going to make history, you can do this, you will do this.” Stevie was right, the interview with Seamus proved to be the tipping point.

I had asked for the music to be switched off, the entire gym went quiet while I gabbled to Seamus about God knows what for three or four minutes (the bit of my brain that controls both sense and memory had long since gone for an early bath) but I was sufficiently buoyed to be able to recognise that the end, whilst perhaps not in sight, was at least just a few corners away. That third hour saw 8.78K ticked off and in the next hour 8.83K flew by. By this stage my good friend, Colin Loughery, was in charge of logistics and fetching me drinks and working out how long I had to run my last stint to hit the magic 42.195K. The figure I had to hit was another 5.75K, hallelujah, I could do this!

As I thought back over my previous eleven Ironman finishes worldwide I had three or four under the 12 hour 50 mark and I thought I wouldn’t be more than a beagle’s goway away from those type of numbers but do you know, I didn’t even want a PB (and I fully appreciate it would be an entirely false one in any event as there were few waves or sea water in Limavady pool, nor were there any hills or wind on the gym bike). I just wanted to finish but I thought it would be rather cool if I broke 13 hours and even cooler if I broke 12 hours 50. I shouted over at Colin and asked him to do the maths and with that information put one foot groggily in front of another.

Again the music was turned off and everyone could see the numbers creep up towards the Nirvana needed of 5.75K. I cleared my dry throat and tried to thank all of those who had made my dream a reality. I knew as soon as I finished, a welcome form of mayhem would break out and I wanted to share the champagne and Ironman cake which Sharon and Mark had brought in with them.

I was on the crest of a wave and was buoyed by this tsunami of support and affection. Stevie insisted on stepping off his machine just a few metres shy of his own marathon to allow me to have my moment in the sun. I was covered in a comparatively fresh shirt, that of my beloved Triangle Triathlon club which I put on as I walked in my last break with only 19 minutes to go and people kept telling me I looked as fresh as the proverbial daisy. Guys, appearances can be deceptive but hopefully I thanked all those who made it possible.

After posing for more photos than the editor of the News of the World when he was a witness at the Leveson Inquiry, I quaffed my champagne and found it to be slightly more acceptable than an electrolyte replacement drink. I went down the stairs, somewhat unsteady on my feet into the solitary changing rooms where I sat slowly down, alone for the first time all day and silently shed a tear in thanks for all of those who had shared and sacrificed and supported me and striven so much. There was just about room on my dog tags to add the Latin L, to change it from XIX to XII, but was there room for XIII??

That question would have to be answered another day.

And what about my weight? Well, although I lost a kilo during the run I still ended up with a net gain and ended up heavier, which just goes to show you that sometimes sport, like life, can be unpredictable. Maybe I will celebrate my next birthday in a more conventional fashion but as regards a memorable way to mark the passing of another milestone, I will always remember my Indoor Ironman.
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Winners will be selected at random. For full terms and conditions see btnorthernireland.com/samsung-comp.
From the Courts - abstracts of some recent case law April - May 12

ADMINISTRATION OF JUSTICE

ROISIN MCKENNA V AIDAN QUINN
Application by plaintiff for extension of time to comply with a Court order that unless the plaintiff made discovery of documents within 14 days judgment would be entered for the defendant against the plaintiff. - plaintiff issued summons claiming damages for loss and damage arising from the negligence and breach of contract of the defendant as solicitor for the plaintiff in the purchase of property. - plaintiff claims that instructions were given to the defendant in 2004 and upon the transfer of the property the title proved to be defective as no easement had been provided for a soakaway for a septic tank, as a result of which the plaintiff claims for loss of value to the property and added expenses. - plaintiff granted an extension of time and an Order was made requiring the plaintiff to reply to particulars and striking out the action unless the plaintiff provided discovery on a certain date. - plaintiff did not comply with the requirement to provide discovery. - whether the default of the plaintiff in complying with the unless order had the effect that the defendant had judgment against the plaintiff. - position in relation to unless orders. - HELD that the plaintiff’s application for extension of time to comply with the unless order is granted.
HIGH COURT
13 FEBRUARY 2012
WEATHERUP J

BANKRUPTCY

SHEILA MCTEEER AS EXECUTRIX OF JAMES KEVIN MCTEER, DECEASED V WALTER LISMORE AS TRUSTEE OF THE INSOLVENT ESTATE OF JAMES KEVIN MCTEER, DECEASED
Application brought by the applicant who is the widow and executrix of the estate of the deceased. - application against the respondent who is trustee in bankruptcy to the estate. - applicant contends that the sale by the respondent of the former dwelling house with attached lands was at an undervalue and in breach of the duty on the respondent. - whether trustee should be removed and should not be entitled to any remuneration out of the estate of the deceased. - duty of trustee in bankruptcy to take reasonable care to realise the best price on the sale of the trust property. - whether, if failure to take reasonable care was established, the applicant can show that that failure, on the balance of probabilities, caused loss to the estate. - whether compensation should be awarded. - HELD that the property was sold at an undervalue, and that the breach of the duty to take reasonable care on the part of the respondent did cause and contribute to the sale at undervalue. - defendant ordered to pay £122,500 compensation.
HIGH COURT
9 MARCH 2012
DEENY J

CONTRACT

EASYCOACH V DEPARTMENT FOR REGIONAL DEVELOPMENT
Contract procurement exercise which had resulted in the rejection of the plaintiff’s tender. - contract was to offer pre-bookable transport for persons who, due to disability or age, find public transport difficult or impossible to use. - plaintiffs argued a structural challenge to certain aspects of the contract selection criteria grounded on a complaint of lack of objectivity or transparency. - whether the 2 successful bidders did satisfy the contract selection criteria in certain respects, giving rise to a manifest error on the part of the Department and/or a violation of the principle of equality of treatment. - due diligence exercise. - HELD that while the selection criteria were unlawful on account of lack of objectivity or transparency, this aspect of the plaintiff’s challenge fails as no ensuing loss or damage or risk has been demonstrated. - that the Department’s application of the selection criteria was unlawful as it infringed the principle of transparency; that the Department was guilty of manifest error in concluding that the successful bidders had satisfied the criteria. - HELD that the impugned contract award decisions be set aside and plaintiff awarded 70% of its costs.
HIGH COURT
28 FEBRUARY 2012
MCCLOSKEY J

BERNARD J FITZPATRICK, NAOMI FITZPATRICK, JOHN G MCILWAINE AND CLAIRE A MCILWAINE
Interpretation of an agreement between the parties with regard to the construction and purchase of an apartment in Belfast. - clause relating to delay and extensions of time. - determination of preliminary questions which are common to a number of actions. - plaintiffs entered into a building agreement and agreement for lease. - whether the plaintiffs have validly rescinded the contract owing to the repudiatory conduct of the defendant and seek repayment of their deposit. - defendant counterclaims for a declaration that it is entitled to an extension of time to complete the apartment and an order for specific performance of the 2 agreements. - failure of defendants to assert contractual rights on delay. - whether the defendant required an
extension of time under the clause of the building agreement to complete the construction of the apartment after the date for completion contained in the agreement. - whether the defendant was obliged to take any particular step in order to be entitled to such an extension of time. - whether failure to take this step amounted to breach of contract. - whether the plaintiff was required to take any steps in order to exercise its right to rescind the contracts. - defendant seeks equitable relief. - HELD that the defendant required an extension of time under the agreement as they were unable to complete, that the defendant failed to take the required step. - plaintiffs succeeded on their claim and counter claim and are entitled to return of their deposit with interest
HIGH COURT
17 APRIL 2012
DEENY J

OXIGN ENVIRONMENTAL LIMITED V SHAUN MULLAN AND BRIAN MULLAN
Application for summary judgment under Order 14 Rules of the Court of Judicature claiming the sum of £200,000 on a promissory note signed by the defendants and said to have been dishonoured. - failure of defendants to make payment on demand under the promissory note signed by the defendants. - plaintiff approached the defendants with a view to developing a joint venture agreement and an oral agreement was entered into. - defendants incurred costs and plaintiff transferred £200,000 as agreed by the parties. - joint venture did not proceed and plaintiff requested return of the £200,000. - whether the plaintiff is in breach of contract and the company has incurred considerable costs and expenses. - specific performance. - definition of promissory note. - HELD that the plaintiff should have judgment against the defendant on the promissory note and the defendants make payment into Court of the amount due on the promissory note
HIGH COURT
29 FEBRUARY 2012
WEATHERUP J

CORONERS
IN THE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY BRIGID MCCAGHEY
Application for leave to apply for judicial review of a decision of the coroner concerning disclosure to the applicant, as next of kin of the deceased, of documents in relation to soldiers involved in a shooting incident. - applicant seeks declaration that the applicant is entitled to information about the involvement of the soldiers in other lethal force incidents; a declaration that the failure to provide such information denies the next of kin an opportunity to make representations on the probative value of the other incidents and deprives them of equality at arms. - declaration sought that the Coroner’s ruling was reached in a procedurally unfair manner. - timing of application for judicial review given that the inquest had commenced. - HELD that the inquest should not be interrupted and that there was nothing exceptional about the application that would warrant the grant of leave at this stage. - leave to apply for judicial review refused
HIGH COURT
12 MARCH 2012
WEATHERUP J

CRIMINAL LAW
APPLICATION BY SARAH MCKIERNAN FOR JUDICIAL REVIEW
Proceedings relating to a search warrant granted pursuant to Terrorism Act 2000 which authorised the search for forensic trace evidence. - search took longer than the applicant had been advised by the respondent. - whether the respondent had extended its search beyond what was reasonably required under the terms of the relevant search warrant. - safeguards relating to execution of warrants under Police and Criminal Evidence (NI) Order 1989. - whether the search had ended triggering a requirement for a further warrant if the police wanted to re-enter and search. - HELD that the forensic trace warrant justified the search complained of and that no further warrant was required - police search was lawful and judicial review proceedings dismissed
HIGH COURT
15 SEPTEMBER 2011
TREACY J
From the Courts - abstracts of some recent case law April - May 2012

IN THE MATTER OF AN APPLICATION BY BG (AN APPLICANT FOR BAIL)
Application for bail by an accused person recently charged with murder. - applicant had been remanded in custody after having been charged with conspiracy to commit robbery when he was further interviewed by police about unrelated offences and charged with murder. - applicant now applies to the High Court to exercise its inherent jurisdiction to grant him bail. - whether it is appropriate in principle for either the Magistrates’ Court or the High Court to purport to grant bail to an accused person who, by virtue of his status, will remain in custody for an indefinite period. - whether, as a matter of good practice, it is desirable that the later application for bail should be considered entirely in isolation from a similar application for bail in respect of the earlier charges. power to grant bail in the Magistrates Court, Crown Court and High Court. - ECHR considerations. - HELD that application for bail be dismissed since the application is a misuse of process
HIGH COURT
7 MARCH 2012
MCLOSKEY J

R V ROBERT JAMES BROOKE ALBERT CLARKE
Appeal against conviction for murder. - whether the evidence of the convictions had been wrongfully admitted as bad character evidence under the provisions of the Criminal Evidence (NI) Order 2004; whether the learned trial judge failed to give proper and adequate consideration to eye witness evidence inconsistent with the guilt of the appellant in a case that was founded primarily upon circumstantial evidence; whether the trial judge erred in holding, to the criminal standard of proof, that the finger and palm print found on the storage door must have belonged to the gunman; whether the trial judge erred in drawing an adverse inference from the fact that the appellant did not give evidence at his trial; whether the trial judge erred in refusing the appellant’s application for a stay of the criminal proceedings upon the basis that a fair trial was not possible; whether prejudice resulting from delay. - HELD that the conviction is safe and appeal dismissed
COURT OF APPEAL
17 FEBRUARY 2012
MORGAN LCJ, HIGGINS LJ, COGHLIN LJ

R V STEPHEN O’BRIEN
Appeal against sentence imposed in respect of 2 convictions for cultivation and possession of cannabis. - appellant received a determinate sentence of 12 months imprisonment and a fine of £1,000. - HELD that given the factual evidence, expert reports and recommendations this is an exceptional case in which the sentence was manifestly excessive and that the community would be best served by a non custodial sentence. - fine reduced to £200 and appellant placed on probation for 3 years
COURT OF APPEAL
17 JUNE 2011
HIGGINS LJ, COGHLIN LJ, HART J

R V KEVIN O’KANE
Sentencing remarks - offences to be included. - obtaining money transfer by deception. - obtaining property by deception. - sentencing guidelines for fraud. - aggravating and mitigating factors. - HELD that the defendant be sentenced to 4 1/2 years imprisonment
CROWN COURT
10 FEBRUARY 2012
MCLAUGHLIN J

R V JOHN PAUL WOOTTON, BRENDAN MCCONVILLE AND SHARON WOOTTON
Defendants are charged with the murder contrary to common law of PSNI Constable Stephen Carroll, possession of a firearm with intent and attempting to collect or make a record of information likely to be useful to a terrorist. - burden and standard of proof. - forensic evidence relating to the weapon and ammunition used. - DNA findings. - identification evidence. - application to exclude witness evidence. - tracker device evidence. - applications that the defendants had no case to answer. - direction applications. - HELD that the defendants are guilty on all counts
CROWN COURT
30 MARCH 2012
GIRVAN LJ

CRIMINAL PROCEDURE

IN THE MATTER OF AN APPLICATION BY GARY HAGGARTY FOR JUDICIAL REVIEW
Application to challenge the refusal of the Police Service of Northern Ireland to provide applicant and his solicitor with tapes of police interviews conducted with him as an assisting offender following the making of a written agreement with a specified prosecutor pursuant to Serious Organised Crime and Police Act 2005. - whether the refusal is unlawful since the PSNI refused to
provide the interview tapes in accordance with its obligations under the Police and Criminal Evidence Act 1984 para 4.19 of Code E. - whether the applicant had a legitimate expectation that the tapes would be provided to his solicitor because he was advised that the interviews were being carried out in the spirit of PACE; that he was supplied after the interviews with a notice under PACE telling him that he or his solicitor could arrange to listen to the tapes if he was prosecuted and that his solicitor had indicated that the usual practice of the PSNI was to provide tapes immediately and in any event no later than 2 weeks after the conclusion of the interviews. - whether the reasons given by the PSNI for the refusal to provide the tapes are concerned with confidentiality and are irrational since the applicant was present at all the interviews, his solicitor was free to take notes. – whether the refusal will result in delay in criminal proceedings against the applicant.

- HELD that application be dismissed as a collateral challenge to issues which should be dealt with in the course of the trial of the charges against the applicant.

HIGH COURT
9 MARCH 2012
MORGAN LCJ, HIGGINS LJ AND TREACY J

DAMAGES

MCCALLION BROTHERS LIMITED V GRAHAM FISHER, NORTHERN IRELAND HOUSING EXECUTIVE AND CLANMILL HOUSING ASSOCIATION LIMITED

Damages. - negligence. - application by first defendant to join as a third party to the action a firm of solicitors who are currently the solicitors for the plaintiff. - plaintiff company wished to and did purchase from the first defendant premises in Belfast. - solicitors were retained for the plaintiff and defendant. - solicitors carried out searches which did not reveal that the first defendant had ceased to be the legal owner of the premises as it had been vested in the Northern Ireland Housing Executive. - plaintiff has paid money for property to which there is no title. - plaintiff sued all defendants. - first defendant wishes to join the solicitors for the plaintiff on foot of the Civil Liability (Contribution) Act 1978. - whether the solicitor in question is liable in respect of the same damage as the vendor. - joint and several liability. - HELD that the first defendant is given leave to join the third party.

HIGH COURT
10 JANUARY 2012
DEENY J

ROBERTA ANN YOUNG V ANDREW SYDNEY HAMILTON, JAMES SAMUEL HAMILTON, MARGARET JOAN HAMILTON, DAVID RUSSELL, THOMASINA PHYLLIS ALEXANDRA RUSSELL, DAVID BOYD AND LORRAINE THOMPSON (FORMERLY PRACTISING AS THOMPSONS SOLICITOR)

Damages. - quantum and costs arising from the Court’s earlier judgment. - Court had ruled that the defendants made material misrepresentations which induced the plaintiff to enter into a contract to purchase a site from them, and that the plaintiff’s solicitor was negligent and in breach of her duty of care to her clients. - valuation and accountancy evidence. - overriding principle in assessing damages by doing justice on the particular facts of the case. - relevant date for assessing any loss. - HELD that plaintiff entitled to £2500 damages and that costs are awarded on the County Court scale to the plaintiff against the defendants, and should be abated by 50%

HIGH COURT
24 FEBRUARY 2012
TREACY J

EDUCATION

AN APPLICATION BY L FOR JUDICIAL REVIEW

Applicant is a 9 year old boy with Special Education Needs including dyslexia. - mother claims that she had been told that her son would receive direct literary teaching within a specialised unit. - whether the family had a legitimate expectation that direct teaching support would be provided. - Board’s resource implications. - whether the Board had applied new criteria which had not been ratified by the Board’s Commissioners. - whether the Board failed to consider its duty under the Education and Libraries (NI) Order 1986, failed to have due regard to the Code of Practice on the identification and assessment of pupils with special educational needs, had regard to irrelevant considerations, acted out of improper motive, gave insufficient weight to relevant factors and breached the applicant’s ECHR rights.

- whether decision was disproportionate, Wednesbury unreasonable and unlawful. - HELD that the Board has a statutory duty to exercise its powers with a view to identifying all those children who require statutory assessment and to have appropriate regard to the resources it has available to it to meet non statutory obligations and that the intervention proposed by the Board is not sufficiently intensive to satisfy the requirements of the Code. - the intervention to be delivered to the applicant should be direct literary teaching from a literary specialist as indicated by the educational psychologist.

HIGH COURT
13 MARCH 2012
TREACY J

EMPLOYMENT

PRAXIS CARE GROUP V GERALDINE HOPE

Appeal by the appellant from a majority decision of a fair employment tribunal.
From the Courts - abstracts of some recent case law April - May 12

(cha irman dissenting) that the claimant was constructively and unfairly dismissed. - whether the majority of the tribunal properly found that the effective cause of the claimant’s resignation, and hence her constructive and unfair dismissal, was because the appellant conducted itself in a way that involved a breach of the implied term of mutual trust and confidence between employer and employee. - whether the factual matrix of the evidence and findings of fact pointed in the opposite direction to the conclusion arrived at by the majority. - appropriate test to be applied by an appellate court when considering the reasoning of an employment tribunal. - whether the appellant can show that the decision of the majority was one which no reasonable tribunal could have made. - HELD that the decision of the tribunal was not held to be perverse and appeal dismissed

COURT OF APPEAL
30 APRIL 2012
COGHLIN LJ, SHEIL, SIR JOHN, HART, SIR ANTHONY

EVIDENCE

PUBLIC PROSECUTION SERVICE
V WILLIAM ELLIOTT AND ROBERT MCKEE

Appeal by way of case stated from a decision of Craigavon County Court whereby the respondent’s appeal against their conviction for theft were allowed and the prosecution case against them dismissed because the trial judge ruled that the evidence of finger impressions taken by the Livescan electronic scanning mechanism was inadmissible since the device had not been approved as required by the Police and Criminal Evidence (NI) Order 1989. - whether this was correct in law. - whether legislation states that the fingerprint evidence is inadmissible.

- purpose and intent of legislation. - whether in the public interest that a crime is effectively investigated and prosecuted. - whether there is a distinction between a device to scan fingerprints and a device to detect drink driving or speeding offences. - consequences of non-compliance with legislation. - whether evidence which has been unlawfully obtained in that it arises from finger impressions taken with a device which had not been approved is inadmissible as a matter of law. - HELD that the evidence is not inadmissible and appeal allowed

COURT OF APPEAL
28 SEPTEMBER 2011
HIGGINS LJ, GIRVAN LJ, SHEIL, SIR JOHN

FAMILY LAW

RE A (A CHILD) (ABDUCTION)

Child born in Latvia to Latvian parents who divorced and remarried. - one parent came to Northern Ireland while the child and other parent remained in Latvia. - child visited his parent in Northern Ireland and during the visit disclosed that physical abuse had occurred at the hands of his step-father while in Latvia. - parent in Latvia was informed that the child would not be returning. - application under a. 12 Hague Convention on the Civil Aspects of International Child Abduction for an order to return the child to Latvia. - whether there are exceptions to the child being wrongly retained in a country in which they are not habitually resident where there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. - whether judicial or administrative authority may refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. - principles governing the Hague Convention and the return of children. - HELD that an exception to the requirement that normally an order for return of the child must be made since a defence has been made out to the extent that the court is satisfied that there is a grave risk that his return would expose the child to physical or psychological harm, and that the child has attained an age and degree of maturity at which it is appropriate to take account of his views that he does not want to return to Latvia

HIGH COURT
7 DECEMBER 2011
GILLEN J

SH AND RD AND RH

Application by father of a child for a joint residence order and application by mother of the child for leave to remove the child to live with her in Australia. - mother is Australian citizen who had come to Northern Ireland to work and had subsequently lost her job but had received a job offer in Australia. - father is a Northern Ireland citizen who is not employed. - best interests of child. - welfare checklist. - HELD that provided suitable contact arrangements can be agreed or ordered and suitable safeguards put in place the child’s welfare will be best served by permitting her to relocate to live with her mother in Australia

HIGH COURT
28 FEBRUARY 2012
WEIR J
LEGAL AID

JOHN J RICE AND COMPANY V THE LORD CHANCELLOR

Appeal against a decision of the Taxing Master whereby he determined the amounts payable to the appellants for professional services to their legally assisted client in connection with criminal appeal proceedings in the Northern Ireland Court of Appeal. - appellant requested enhanced fees due to the exceptional nature of the appeal and the exceptional competence and dispatch. - whether the uplift obtained represented fair and reasonable remuneration and is unexplained. - whether the deduction of preparation time hours is unreasonable and is unexplained. - factors which constitute exceptionality. - whether there are grounds upon which the court should interfere with the measurement of the Taxing Master’s uplift. - HELD that the Court would not interfere with the Taxing Master’s calculation of hours and that the fees be uplifted by one-third

HIGH COURT
24 APRIL 2012
MCCLOSKEY J

NEGLIGENCE

STEPHEN HYNDMAN AND WILLIAM BROWN V COLIN BRADLEY LIMITED

Appeal against a decision of the trial judge who entered judgment for the plaintiff against the first named defendant for damages amounting to £71,124.70 and gave judgment for the second named defendant against the appellant. - liability of the second named defendant. - appellant was harvesting potatoes while employed as a seasonal worker by the first respondent, an agricultural contractor. - second named defendant was the company who grew the potatoes who contracted the first respondent to harvest the potatoes. - plaintiff was driving agricultural equipment supplied by the second named defendant. - whether breach of statutory duty and negligence on the part of the second named defendant. - whether the appellant had established a sufficient relationship of proximity between himself and the second named defendant. - whether it was fair or reasonable to impose a duty of care on the second defendant. - degree of control exercised by the parties at the time of the accident. - whether the plaintiff’s injuries were caused by defective equipment. - HELD that the trial judge was justified in the decision that he reached with respect to the liability of the second named defendant and appeal dismissed

COURT OF APPEAL
17 FEBRUARY 2012
HIGGINS LJ, GIRVAN LJ, COGHLIN LJ

FRANK MCBREARTY AND PATRICIA MCBREARTY V AIB GROUP (UK) PLC TRADING AS FIRST TRUST BANK AND FIRST TRUST INDEPENDENT FINANCIAL ADVISERS LIMITED

Liability. - conjoined actions. - Bank seeking to recover loans allegedly due and owing by the plaintiffs. - plaintiffs allege that the Bank and Financial Advisers were guilty of breach of contract, negligence and breach of fiduciary duty in the investment of the plaintiff’s monies and claim damages accordingly. - whether the plaintiffs were assured that following an investment period they would be assured of an enhanced return. - whether the plaintiffs were induced into making banking arrangements. - alleged promises and representations made by the defendants’ servants and agents on which the plaintiffs claim to have relied. - duty of care of financial advisers to bring to the plaintiffs’ attention the true terms of the various investment documents and ensuring that the plaintiffs understood them. - HELD that the defendants breached the terms of the contract between the plaintiffs and defendants, that the defendants were guilty of negligent misrepresentation

HIGH COURT
28 FEBRUARY 2012
MCCLOSKEY J

REAL PROPERTY

CALLENDER V LIDL

Leases. - covenants.- prohibited uses clause. - declaration sought that, on the true construction of the lease it did not prohibit the user to operate as a variety store retailing a variety of products with 30% food, and alcohol restricted to no more than 2% of the total racking in the demised premises. - whether the proposed lessee is a supermarket for the sale of discounted goods as prohibited by the clause. - duties of expert witnesses to be independent. - definition and purpose of supermarket. - HELD that proposed lessee fell within the definition of a supermarket for the sale of discounted foods and that the declaration sought was not granted. - found for the defendant

HIGH COURT
10 MAY 2012
DEENY J
Hague Convention on Child Abduction

In Northern Ireland child abduction involves both the civil and criminal law. However, once a child has been removed from the United Kingdom, parental abduction is usually treated as a civil matter. In Northern Ireland the legal aid, Advice and Assistance (Northern Ireland) Order 1981 and the Legal Aid (General) Regulations (Northern Ireland) 1985 provide financial support for litigants, the Family Law Act 1986 has provisions for making orders for the protection of children and the Child Abduction (Northern Ireland) Order 1985 makes it a criminal offence for a person connected with a child to take or send the child out of the United Kingdom without the appropriate consent. A parent can also be charged with the common law offence of kidnapping. The Revised Brussels II Regulation (“Brussels IIa”) is effective without the need for domestic legislation and the court rules have been amended to accommodate the regulation. (NI Court Service website)

**Legislation**

All legislation listed is available either in hard copy or electronically from the Law Society Library. Please ask a member of library staff for details.

- Child Abduction and Custody Act 1985
- Child Abduction (Northern Ireland) Order 1985
- Family Law Act 1986
- The Legal Aid (General) Regulations (Northern Ireland) 1985
- The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981
- Council Regulation (EU) 2201/2003 (Brussels IIa)
- The Children (Northern Ireland) Order 1995
- The Magistrates’ Court (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996
- The Family Proceedings Rules (Northern Ireland) 1996
- The Family Proceedings (Amendment No.2) Rules (Northern Ireland) 2005
- Family Law Act (Northern Ireland) 2001
- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
  [http://www.hcch.net/](http://www.hcch.net/)
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

**Websites**

- **NI Courts and Tribunals Service**
  This website is the central authority for cases dealing with child abduction. It has an extensive section dealing with child abduction with useful website addresses, legislation, advice for parents and guidance. Follow the link on the right hand site entitled child abduction.
- **Hague Conference on Private International Law**
  The Hague Conference is a global intergovernmental organisation. It has a wealth of information available including access to all the Conventions, full status reports, bibliographies, information regarding the authorities designated under the Conventions on judicial and administrative co-operation and explanatory reports
  [http://www.hcch.net/](http://www.hcch.net/)
- **Reunite International Child Abduction Centre**
  The leading UK charity specialising in international parental child abduction and the movement of children across international borders.

**Articles**

- **Happy holidays?**
  Gives advice to lawyers dealing with parental contact issues relating to holidays and other family occasions.
  *Kelly: 2011 L. Ex. Jul, 34,36*
- **Representation of children in Hague proceedings: a welfare perspective**
  Considers the situations in which it is appropriate to join children as parties to applications under the Hague Convention and whether CAFCASS should advise on this.
  *Honeyman: 2011 Fam. Law 41(Jun), 613-616*
- **The enforcement of custody and access decisions under the Revised Brussels II Regulation**
  Explores, with case law illustration, the recognition and enforcement of judgments in relation to parental responsibility under EU law.
  *Lowe: 2011, IFL Mar, 21-30*
New books in the Library

- **Sanfey, M. Bankruptcy law and practice.** 2nd ed. Sweet & Maxwell. 2010.
- **Sheldon, R. Cross border insolvency.** Bloomsbury Professional. 2011.
- **Furst, S. Keating on construction contracts.** 9th ed. Sweet & Maxwell. 2012
- **Warwick, M. Break clauses.** Sweet & Maxwell. 2011.
- **Pether, M. Bingham’s & Berryman’s personal injury and motor claims cases.** 13th ed. LexisNexis. 2010
- **Dunford, C. Litigation in the commercial list in Northern Ireland.** SLS Publications NI. 2012.
- **Calnan, R. Taking security: law and practice.** 2nd ed. Jordans. 2011
Missing Wills

Re: Richard Alan Stokes  
Late of: 37 Carrive Road, Silverbridge, Newry, County Down BT35 9NG  
Date of Death: 5 March 2012  
Would anyone having any knowledge of the whereabouts of a Will made by the above named deceased please contact: Campbell & Grant Solicitors 17 Sugar Island Newry County Down BT35 6HT Tel: 028 3026 6660 Fax: 028 3026 5080 Email: law@campbellandgrant.com

Re: Margaret Rose Dunn (deceased)  
Late of: 177 Brompton Park, Belfast  
Date of Death: 3 March 2012  
Would any solicitor having any knowledge of the whereabouts of a Will made by the above named deceased please contact: Paul M Graham Solicitor 70 Andersonstown Road Belfast BT11 9AN Tel: 028 9060 3223 Fax: 028 9060 2678

Re: Robert Hamilton (deceased)  
Of: 32 Tillysburn Park, Holywood Road, Belfast  
Would any solicitor having any knowledge of the whereabouts of a Will made by the above named deceased please contact: Nesbitt Solicitors 167 Upper Newtownards Road Belfast BT4 3HZ Tel: 028 9047 1851 Fax: 028 9065 4411

Re: MacIntyre Hylands (deceased)  
Late of: 13a Wind Rush Avenue, Belfast BT8 4LY  
Date of Death: 30 August 2011  
Would any solicitor having any knowledge of the whereabouts of the Will made by the above named deceased please contact: McLaughlin & Co Solicitors Willowfield House

Re: Miss Christina Mulholland  
Late of: 15 Lagan Close, Aghagallon, Craigavon, County Armagh BT67 0BE  
Formerly of: 2 Moss Road, Gawley's Gate, Aghalee, Aghagallon, County Armagh Also formerly of: Clifton Park Avenue, Belfast  
Date of Death: 1 March 2012  
Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact: Neil Mulholland Gallery & Campbell Solicitors 48a Church Place Lurgan County Armagh BT66 8AH Tel: 028 3832 4112 Fax: 028 3832 1758

Re: Robert David Stevenson (deceased)  
Formerly of: 16 Corby Drive, Lurgan, Craigavon, County Armagh BT68 7AF  
Late of: 1 Toberhewny Manor, Lurgan, Craigavon, County Armagh BT66 7FN  
Date of Death: 20 February 2012  
Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact: Watson & Neill Solicitors 23 High Street Lurgan County Armagh BT66 8AH Tel: 028 3832 5111 Fax: 028 3832 7319 Email: watsonandneill@aol.com

Re: David O’Hagan  
Late of: 51 Maryville, Greencastle, Omagh, County Tyrone  
Date of Death: 30 April 2012  
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact: Rafferty & Donaghy Solicitors 2 Donaghmore Road
Re: **Matilda Lynch Dodds**
Also known as: **Tillie Dodds**
Home: 1 Orchard Road, Strabane,
County Tyrone BT82 9QR
Formerly of: 28 Allen Park, Donemana,
Strabane, County Tyrone BT82 0PD

Would any person having knowledge of the whereabouts of a Will for the above named person please contact:
Michael Scally
Crawford, Scally & Co
Solicitors
45 Bowling Green
Strabane
County Tyrone BT82 8BW
Tel: 028 7188 3591
Fax: 028 7138 2298

Re: **Denise McMeekin** (deceased)
Late of: 44 Windsor Avenue,
Newtownards, County Down BT23 4QQ
Date of Death: 23 April 2012

Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
Boyd Rice & Co
Solicitors
6 Mill Street
Newtownards
County Down BT23 4LU
Tel: 028 9181 7715
Fax: 028 9181 2374

Re: **David Hannaford** (deceased)
Late of: 221 Mountpottinger Road,
Belfast BT5 4LF
Date of Death: 26 November 2011

Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
O’Reilly Stewart
Solicitors
Courtside House
75-77 May Street
Belfast BT1 3UL
Tel: 028 9032 1000
Fax: 028 9023 1959

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Re: **Eileen Brennan**
Originally of: 10 Carlisle Road, Belfast
BT15 2PT
Latterly of: 3 Woodlands Avenue, Belfast
BT14 6BY and
Greerville Manor Clinic, 192
Newtownbreda Road, Belfast BT8 6QB

Would any person having knowledge of the whereabouts of the Will for the above named deceased please contact:
Jones & Company
Solicitors
4th Floor
The Potthouse
1 Hill Street
Belfast BT1 2LB
Tel: 028 9024 5471
Fax: 028 9032 6879

Re: **Christopher Joseph James**
Late of: 98 Haywood Avenue, Belfast
BT7 3BB

Would any Solicitor holding or having knowledge of the whereabouts of a Will for the above named deceased please contact:
Alastair J Rankin
Cleaver Fulton Rankin
Solicitors
50 Bedford Street
Belfast BT2 7FW
Tel: 028 9024 3141
Fax: 028 9024 9096

Re: **Paul Loney** (deceased)
Late of: 15a Ballyvannon Road, Glenavy,
Crumlin

Would any Solicitor having knowledge of the whereabouts of a Will executed by the above named kindly contact:
Kieran Barrett
Haughey
Solicitors
138 Upper Lisburn Road
Finaghy Crossroads
Belfast BT10 0BE
Tel: 028 9043 1222
Fax: 028 9061 2511

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Re: **Missing Title Deeds**
Folio: 27855
County: Antrim
Registered Owner: Eleanor Palmer
Property at: 39 Harmony Hill, Lisburn

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:
Reid & Co
Solicitors
48 Bachelor’s Walk
Lisburn
County Antrim BT28 1XN
Tel: 028 9266 3310
Fax: 028 9266 3340

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