THIS MONTH

The official opening of Law Society House
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FGS McClure Watters
Official opening of Law Society House

Opening remarks by Mr Barry P Finlay, President of the Law Society of Northern Ireland

"Today’s official opening is the culmination of nearly twelve years of planning and two years of construction and considerable work on the part of the members of the Law Society’s Project Board who invested so much of their time and showed so much commitment in bringing the dream of a 21st Century Law Society House to a reality.

It might interest you to know that nearly 300 tonnes of steel, 900 tonnes of steel reinforcement, 1000 m³ concrete, 860m² stonework, 52,000 bricks and 66,000 blocks were used in the construction of the building. It would also be remiss of me not to acknowledge on behalf of the Society the considerable work of Mr Garry Hughes of Hughes McMichael, Todd Architects, Turkelton, 1080 (formerly CMB), Taylor & Fagan, Donor Consulting and all of the construction workers, fitters and others who worked so hard to bring this project to completion.

Today we stand in a brand new, state of the art building which has been designed to meet the needs of our members and the challenges of a new century.

Today we stand in a building of space and light - a light that catches the mood of a new dawn for Northern Ireland.

"Thirty years nearly to the day I joined the Law Society Council. It was an unenviable experience to be faced with a room of what seemed to be many of the emanences graces of the solicitors’ profession. The Council Room was still in the Law Courts where the Society had its offices since early times.

The minutes of that first meeting show that the first item on the agenda was the report of the Working Party under Barney Turkelton on the proposal that the Society acquire new premises – the acquisition of this site on which Alexander’s garage was then standing. It was a matter not without its contentious points but it was clear to everyone that something had to be done to provide extended premises for the staff on whom greater demands were being made with the increasing numbers of solicitors, and by more and more Government enquires and proposals in respect of many aspects of our work. The facilities for solicitors themselves were also, shall I say, modest.

Therefore the need to move was pretty well agreed – to where, on what scale, and how it should be paid for were on the other hand the subject of fierce argument. What the minutes record is that contrary to the majority view, I wanted to knock the building down, divide it vertically and pay for it in a manner somewhat different to the way proposed. With a consistency that was remarkable, the minutes over the next year or so show that I was defeated on every point.

I hope I do not do the Council of that time a disservice when I say that the objectives were somewhat practical, even prosaic, and I suspect in that we spectacularly succeeded. Those days were dark days. The profession was caught in the maelstrom of the conflict in this community. In common with other branches of our profession, our members strove to uphold the rule of law in the face of violence and threat. Some paid a terrible price for their devotion to that task. For others, offices were bombed – temporary premises became the norm for many. I suspect it never crossed our minds then to see the new premises in terms of aesthetics. Indeed in some ways such an aim might have been seen as inappropriate. Nevertheless, the premises fulfilled their task.

They provided better working conditions and facilities for a range of services to solicitors – a library, a lecture hall and a restaurant.

But time again dictated change. Even greater demands were being made on Council. Should the premises be vertical? YES!!! Should a new, different financial approach be adopted? YES!!! Should the premises be vertical? NO! Two out of three isn’t bad.

But this time a bold, brave and I believe brilliant course has been taken. We stand in a building of space and light – a light that catches the mood of a new dawn for Northern Ireland. A reflection of a profession that is confident and forward looking. And so it should. It has come through those challenging and difficult years with its principles intact, having served the whole of the community across Northern Ireland without fear or favour. The time had come to reflect that new disposition. It is therefore appropriate that on entering the premises one sees engraved on the magnificent reception desk all of the values that we have aspired to reach and continue to aspire to attain, right at the heart of the premises.

We stand in a building of space and light - a light that catches the mood of a new dawn for Northern Ireland.
When a building comes to be developed for a large group of people it can cause problems. Not everyone agrees with everything. Indeed sometimes no-one agrees on anything. It therefore required a team of dedicated and strong minded people to take on the task – and in that the members have been lucky to find such people. I congratulate all involved – the architects and builders and all those who have used their talents in creating what I believe is a striking and wonderful environment for those working in it and the solicitors who use it, and at the same time is a bold statement of optimism and faith in the rule of law. It gains strength from its juxtaposition to the new Bar Library and the courts – retaining and developing the ‘legal quarter’ which for a long time was a seemingly impossible aspiration.

The greatest praise must be for those in the Society who created this project and saw it through. In particular I mention John Gordon who has lived and breathed this task from day one until today. His contribution has been prodigious.

The opening of these premises is a momentous event in the history of the Society – a rite of passage. It marks a stage in the ongoing development of the Society, another transition into a new phase of its growth and maturity. And so it is with that appreciation of the past, the commendation of the present and with confidence for the future that I declare these premises open.”
The new Library and Business Centre is already being well received and well used by the profession. Responding to the results of a user survey carried out by the library prior to our exit from Victoria Street in 2007, the architects have designed a bright, airy and spacious library complete with accessible balcony.

It is a pleasant and tranquil environment where members can come to carry out legal research, get caught up on recent legal developments or work on a file without interruption.

In addition to the large open plan desks with plenty of natural light, there is also a soft seating area where you can take a break and relax.

New opening hours

For a trial period the library will be open every Thursday until 6.30pm, allowing members staffed after hours access.

Business Centre

The library is wifi enabled, permitting internet access for those members who are using their own hardware. In addition, there is a dedicated Business Centre within the library where members can use Society pcs to access the internet free of charge. These PCs and other digital devices have also been set up on their separate network, allowing members to send and receive emails and faxes. Users also have access to the library’s online products and services via the Business Centre in line with the contracts negotiated by the vendors.

Those unable to visit the library in person are welcome to access the library’s collections vicariously via the library staff who are happy to provide any assistance required.

Facilities on offer at Law Society House

As part of the services on offer at Law Society House members can now avail of the opportunity to use the suite of well equipped consultation rooms, the seminar room or Lecture Hall.

The range of meeting and consultation rooms is already proving versatile. Given the proximity of rooms to each other, they can be used as simultaneous break-out and/or catering rooms. The Society has already hosted arbitrations, mediations, product demonstrations, book launches and private client consultations with legal representatives.

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Consultation rooms

There are now three consultation rooms on offer on the fourth floor, each of varying size and named after Baronies in Northern Ireland. The Dunluce, Lecale and Liberties rooms are all available to members to use for a reasonable charge at a competitive rate. A range of catering options is available from O’Briens Café to meet your particular requirements.

The Dunluce room can comfortably seat up to 16 people and offers integrated IT facilities including plasma screen for video-conferencing and onscreen presentations, conference call facilities, webcam and wi-fi. It provides members with the perfect environment for private consultations or the hosting of seminars.

The Liberties and Lecale rooms both offer quality accommodation with conference call facilities for consultations and meetings for up to 10 people.

Member services available at Law Society House

Library, Information Services and Business Centre

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News in brief

**APPOINTMENT OF NEW CHAIR OF LAW COMMISSION**

The Secretary of State has announced the appointment of Mr Justice McCloskey as the new Chairman of the Northern Ireland Law Commission. He has been appointed for an initial period of three years which may be extended by a further two years. He will work with the Commission on a part-time basis, currently one day per week.

Mr Justice McCloskey succeeds Sir Declan Morgan in the role of Chair of the Law Commission.

**INCREASE IN THE NATIONAL MINIMUM WAGE RATE**

From 1 October 2009, new national minimum wage (NMW) rates came into force. The NMW applies to nearly all workers and sets hourly rates below which employers must not allow pay to fall.

For pay reference periods beginning on or after 1 October 2009, employers have to pay all eligible workers the following:

- £3.57 an hour to workers aged below 18
- £4.83 an hour to workers aged 18-21
- £5.80 an hour to workers aged 22 and above

The agreed behaviours covered by the 1998 Convention include: reckless or dangerous driving; hit-and-run driving; driving whilst under the influence of alcohol or drugs; speeding; and driving whilst disqualified. The Convention does not apply to disqualifications under the totting up of penalty points procedure.

**MAXIMUM WEEKLY AMOUNT FOR REDUNDANCY PAYMENT INCREASED**

Under the Work and Families (Increase of Maximum Amount) Order (NI) 2009 which came into effect on 1 October 2009, the maximum weekly amount used for the purposes of calculating certain awards by the Industrial Tribunal will increase from £350 to £380. This is commonly referred to as the “capped weeks pay” for the purposes of unfair dismissal and redundancy pay calculations.

A. 3 excludes, on this single occasion, the “capped weeks pay” for the purposes of unfair dismissal and redundancy pay calculations. The NMW applies to nearly all workers and sets hourly rates below which employers must not allow pay to fall.

**NEW CHARITY COMMISSIONER APPOINTED**

Social Development Minister, Margaret Ritchie, has announced the appointment of a new Charity Commissioner to the Charity Commission for Northern Ireland.

Ms Rosemary Connolly has been appointed for a period of three years to the position of “legally qualified” Charity Commissioner. The Charities Act (NI) 2008 requires that at least one Commissioner must be a barrister or solicitor of at least seven years’ standing. Ms Connolly is the principal solicitor in a specialist employment and equality law practice in Warrenpoint, County Down. She has 25 years’ experience as a serving solicitor.

Plans are well advanced to have a charity register in place early next year.

The Commission has also launched a consultation on its draft public benefit guidance. This will allow charity trustees to prepare for registration and application of the public benefit test in 2010.

**BANNED DRIVERS TARGETED IN INTERNATIONAL AGREEMENT**

A pioneering deal to keep disqualified drivers off UK and Irish roads will come into force in February 2010. The measures are the result of a deal agreed between Ministers from Northern Ireland, Great Britain and the Republic of Ireland.

The agreement is the first to be drawn up under the terms of the 1998 European Convention on Driving Disqualifications. The EU will confirm the exact date of implementation.

The Convention intends to ensure that drivers disqualified from driving in a Member State other than their normal place of residence should not, on their return home, escape the consequences of that disqualification.

**POPULATION SET TO PASS 1.8 MILLION NEXT YEAR**

The Northern Ireland population is projected to increase by 64,000 people, or 4%, over the next five years (2008-2013).

The population is projected to pass 1.8 million in 2010 and rise to 1.839 million by 2013, according to figures released by the Northern Ireland Statistics and Research Agency.

The figures show that:
- The projected increase in population is primarily due to natural growth. In total between 2008 and 2013 it is projected that there will be 56,000 more births than deaths; and
- Projections indicate a marked increase in the size of the population at older ages. The number of people of current pensionable age is projected to increase by around 11% in the next five years (2008-2013) and by 40% in the next fifteen years (2008-2023).

**CAMPAIGN TO TACKLE SEXUAL VIOLENCE AND ABUSE**

A major public information campaign has been launched to raise public awareness of sexual violence and abuse issues in Northern Ireland. The campaign is being delivered through a number of advertising channels including TV, radio, online sites and outdoor billboards across Northern Ireland. Last year there were 1,943 recorded sexual offences, however this is believed to be only the tip of the iceberg.

The helpline provider chosen to field calls from the general public, victims and survivors is Lifeline. It can be contacted on 0808 808 8000 and lines are open 24 hours a day seven days a week. Calls are free from all landlines and mobile phones.
By the time you read this you should have received the Application Form (PCR1) to facilitate the renewal of your Practising Certificate. The covering letter which accompanied the PCR1 emphasised the importance of correct completion and timely return of the form to the Society. You are reminded again that all forms must be returned not later than 5 January 2010.

As regards correct completion, please bear in mind:

(a) The responsibility for proper completion and return of the form lies with the individual applicant solicitor (i.e. not the firm or employer);
(b) The application must bear the personal signature of the applicant, and be both signed and dated;
(c) The application must be accompanied by the correct remittance. By way of reminder, the Practising Certificate Fee for 2010/2011 is £1100.00. The prescribed Compensation Fund contribution applicable to the applicant is also calculated and shown on the PCR1. For 2010/2011 the relevant full contribution is £599.00 (payable by solicitors with more than six Practising Certificates since admission); the half-contribution is £299.00 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate), and a Nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission.
(d) For solicitors in private practice the Practising Certificate Application Form must be accompanied by the correct and original Professional Indemnity Insurance Certificate. It is common for the Form to arrive with the Society with no Insurance Certificate, with a photocopy of an Insurance Certificate, or with the wrong Insurance Certificate.

In respect of each solicitor a Schedule is also calculated and shown on the PCR1. For 2010/2011 the relevant full contribution is £300.00 (payable by solicitors holding a Practising Certificate in force as at 31st December 2009); the half-contribution is £150.00 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate), and a Nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission.

(e) The Society is particularly keen to optimise communication with members by e-mail. You can fill in details of your e-mail address at Part A (iii) of the application form. Please update as required or if you have not previously done so, please actively consider providing these details.

The Society is appreciative of your cooperation and attention in all these respects.

ALAN HUNTER
Registrar

As we enter the Christmas party season, CPD is probably the last thing on most people’s minds. However, the CPD year is once again coming to an end, and this is a reminder for those who have not yet completed and sent your CPD Record Card to the Society.

It is compulsory for every solicitor who currently holds a Practising Certificate to complete 15 hours of CPD and to send the completed Record Card to the Society. There are some exceptions to this, such as those solicitors who will have worked less than 200 hours during 2009, or those who are retiring before the end of 2009. Other exemptions are given on page 3 of the yellow 2009 CPD Record Card. Anyone who is exempt or partially exempt from the requirements must nevertheless complete a card detailing the relevant exemption so that our records can be kept up to date.

The completed Record Cards should be sent to the Society before 5 January with all relevant sections filled in. We would ask that you do not include certificates of attendance at events, as this generates a huge amount of paper to be stored within the Society. However each solicitor should retain these attendance records on file until the end of 2010 as you may be asked to provide these as evidence. Solicitors are also asked to keep a photocopy of the Record Card they submit to the Society.

Finally, thanks to all of you who have already sent in your 2009 Record Card. Receiving a percentage of the cards before the holiday period means that we can begin processing the cards much earlier.

If you have any queries about CPD, please contact the CPD Co-ordinator at CPD@lawsoc-ni.org

Thank you for your continued support of Law Society CPD events during 2009. Have a wonderful Christmas and we look forward to seeing you all at the Society’s CPD events in 2010.
Improvements to and upgrading of the EJO Case Tracking Service

In this short article Trevor Long, Chief Enforcement Officer at the Enforcement of Judgments Office, highlights use of the case tracking facility as the primary means to make case enquiries from 1 January 2010.

The Enforcement of Judgments Office (EJO) continues to consider the needs of our customers and seeks to improve their experience of the enforcement process. One major objective is to improve the means of communication with customers and to listen and respond to their needs where possible.

Our On-Line EJO Case Tracking Service was first launched in September 2004 and was enhanced in April 2008. The service can be found on the NICIS On-Line Services webpage - www.courtsni.gov.uk.

Within the service, practitioners can:
- download enforcement orders, notices and relevant letters issued by the EJO to customers on-line;
- download and view means reports completed by EJO ‘Enforcement Officers’ and ‘Nominated Officers’;
- view the case balances of related judgment debts;
- use the feedback button allowing you to directly e-mail the EJO Teams [without the need to use an e-mail facility].

One of the business objectives of this facility was to eradicate the need for written enquiries regarding the ‘present position’ on a case, for example, case balances, history of payments, types of enforcement orders issued, confirmation of service of enforcement orders as well as viewing enforcement means reports.

Such activity is extremely resource intensive both for customers and for us. As you can imagine, the volume of this correspondence is very high and if we can reduce it, we will be able to concentrate more resources to casework and actual enforcement activity thereby making further improvements to business processing turnaround times.

In order to expedite this process and confirm the case tracking facility as the primary means to make case enquiries, we plan to cease answering routine ‘present position’ letters with effect from 1 January 2010.

As a result the EJO will no longer answer queries relating to the following:
- Case balance, the balance on a related judgment or if payments have been made on a case.
- Has a specific enforcement order or notice been issued?
- Seeking a copy of the latest enforcement means report.
- Asking for the contact number for an enforcement officer who has charge of an enforcement file.
- Asking if a specific enforcement order has been served.

I realise this represents a major change in our business relationship and will require changes to your case management procedures but I am convinced that it will make the process speedier and more effective.

The Office will continue to respond to enquiries made by telephone (if the enquiry does not fall into the category stated above) and also respond to specific case action if an enforcement notice or order should have issued.

This change must also be seen in the light of considerably increased workloads for all of my teams and the need to be as effective as we can be within our limited resources.

In addition, the proposed changes set out above do not affect your right to lodge complaints regarding the service or performance of the office through the normal complaints process. I am anxious to hear your views on this issue and intend to bring it before the next meeting of the EJO Users’ Forum and will be glad to meet with any of you prior to the effective date.

If you are not already registered, you can contact my IT Development Officer, Brian McNair, on 028 9072 4854 or at ejoaccounts@courtsni.gov.uk to allow access to Case Tracking.

If you are already registered with the Court’s EJO Users’ Forum and will be glad to meet with any of you prior to the effective date.

I am anxious to hear your views on this issue and intend to bring it before the next meeting of the EJO Users’ Forum and will be glad to meet with any of you prior to the effective date.

Very High Cost Criminal Cases

Practice Direction by Taxing Master and Claims Guidance

The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (NI) 2009 (SR 2009 No. 267) introduce a number of changes to the VHCC provisions of the 2005 Rules.

These changes necessitate amendments to the process for claiming costs at the conclusion of the case. The Taxing Master has issued:

(a) Practice Direction mandating the use for costs claims purposes of standard forms
(b) Guidance Notes prepared in respect of the VHCC claims process as authorised by the Master

Copies of both the standard claim form and the Guidance Notes are available from the Taxing Office, 7th Floor, Bedford House, Bedford Street, Belfast.

Tribunal amalgamation

The first step in the creation of a unified Courts and Tribunals Service in Northern Ireland has recently been taken.

The Northern Ireland Court Service has assumed responsibility for the administration of a further five NI departmental tribunals – Special Educational Needs and Disability Tribunal (DE Tribunal); Mental Health Review Tribunal; Care Tribunal; Tribunal established under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 (EHSSPS Tribunal) and the Lands Tribunal (DRP).

The Court Service already administers six tribunals and provides support in respect of UK wide tribunals sitting in Northern Ireland, including the Tax and VAT tribunals; Asylum and Immigration Tribunal and the Information Tribunal.

It is planned to 20 Northern Ireland Tribunals will come under its administrative responsibility in the coming months.

Commenting on the development, Court Service Director, David Laverty, explained the benefits behind the new arrangements and how they have come about:

“This new unified administration will provide a more independent tribunal system which will deliver improved services to the public. It will improve efficiency and offer value for money to the taxpayer.

The Northern Ireland Executive agreed to the creation of a unified administration for Tribunals, delivered by the Court Service and providing benefits for tribunal users. We now see the first step in the delivery of this strategy.”

Northern Ireland’s first Hearing Centre for Tribunals has also opened in Belfast. The Centre provides a single point of contact for members of the public using Tribunals administered by the Court Service and is located at Bedford House, Bedford Street, Belfast where there are hearing rooms, a public desk and office space for staff.

Sittings and vacations of the Court of Appeal and the High Court: 2010-11

Order 64 of the Rules of the Northern Ireland Court of Judicature 1980

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<tr>
<th>Week</th>
<th>Court of Appeal</th>
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<tr>
<td>Michaelmas Term</td>
<td>Monday 6 September 2010 to Tuesday 21 December 2010</td>
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<td>Halloween Recess</td>
<td>Monday 25 October to Friday 29 October 2010 inclusive</td>
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<td>Christmas Recess</td>
<td>Wednesday 22 December 2010 to Wednesday 5 January 2011 inclusive</td>
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<td>Hilary Term</td>
<td>Thursday 6 January 2011 to Friday 14 January 2011</td>
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<td>Easter Recess</td>
<td>Monday 18 April 2011 to Friday 29 April 2011 inclusive</td>
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<td>Trinity Term</td>
<td>Monday 2 May 2011 to Thursday 30 June 2011</td>
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<tr>
<td>Long Vacation</td>
<td>Friday 1 July 2011 to Friday 2 September 2011 inclusive</td>
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The Annual Council Dinner took place at the Balmoral Conference Centre, King’s Hall, Belfast on Friday 23 October 2009.

Sean McCann, Peter Madden and Pearse McDermott

John Shaw, Barry Finlay, Kamala Lakdhir, Michael Lavary OC, John Wotton, Ian Smart, The Honourable Mr Justice Weir and His Honour Judge Burgess

Brian Scullion, Gillian Shaw and Alan Hunter, Chief Executive of The Law Society

Adam Curry, Aine Myler, Simon Murray and Michael Curry

Gerry Daly and Suzanne Bryson

Edward Gorringe and Her Honour Judge Kennedy

Comghall McNally and Antoinette Cunan

Karen Blair, Ian Wimpress and Philip Gilpin

John Greer, Alan Gourley and Ronan Cunningham

John Shaw, Barry Finlay, Kamala Lakdhir, Michael Lavary OC, John Wotton, Ian Smart, The Honourable Mr Justice Weir and His Honour Judge Burgess

Brian Walker, Paul Shevlin, Gerry Daly and Aidan Canavan

The Annual Council Dinner 2009
The right to freely choose one’s partner has been recognised as a right since the UN Declaration of Human Rights in 1948. Over 60 years after the Declaration, the UN estimates that over one million people annually are forced into marriages against their will.

It is almost exclusively women who are forced into marriage and they are often the victims of sinister plots that can involve their closest family members. Often young women in the UK are told they are going on a trip to get to know their family roots but then on arrival are held as captives and threatened into marrying a complete stranger. Due to the sinister nature of forced marriages they often go undetected.

The Forced Marriages Unit at the Foreign and Commonwealth Office (FCO) deal with nearly 300 cases annually. Those are other cases where women are already being held captive in a foreign country and are able to raise their plight with the British High Commission or cases that occur in the UK where young women are often forced to marry strangers so their husbands can have a right to stay in the UK. The Forced Marriages Unit rescues and repatriates around 200 young women per annum who have either been forced or are about to be forced into marriage. Women who are forced to marry can have their marriage annulled under a 14(c) Matrimonial Causes (NI) Order 1978.

Whilst there have been no reported cases in Northern Ireland, the FCO calculates that for every reported case there are nine that go unreported. Therefore it is likely either that forced marriages have occurred in Northern Ireland or that young women from Northern Ireland have been duped into travelling abroad to be forced to marry. In response to the need for UK wide protection, the need for UK wide protection, the need for the County Court to be protected. The court must have particular regard to the person’s wishes and feelings.

A FMPO may contain such prohibitions, restrictions or requirements as the court considers appropriate. Importantly given the nature of forced marriages a FMPO can relate to the primary perpetrators of forced marriage who are the victim of cultural practices which infringe their right to choose who they want to marry and bring with them a whole raft of other abuses. With the growth in migration to this jurisdiction Northern Ireland will undoubtedly be forced into marriages against their will.

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Whilst there have been no reported cases in Northern Ireland, the FCO calculates that for every reported case there are nine that go unreported. Therefore it is likely either that forced marriages have occurred in Northern Ireland or that young women from Northern Ireland have been duped into travelling abroad to be forced to marry. In response to the need for UK wide protection, the then Secretary of State for Northern Ireland, Peter Hain requested that the provisions of the Forced Marriage (Civil Protection) Bill 2007 be extended to Northern Ireland.

The Forced Marriage (Civil Protection) Bill 2007 introduced a preventative measure known as a ‘Forced Marriage Protection Order’ which the court may make for the purpose of protecting a person from being forced into a marriage. The 2007 Act along with the Family Proceedings (Amendment No.3) Rules (Northern Ireland) 2008 which set out the procedure for applying for a Forced Marriage Protection Order (FMPO) came into operation on 25 November 2008.

FMPOs are unlike similar protection orders such as Non Molestation Orders in that an application for one does not have to be made by the subject of the protection order. An application may be made by an organisation or by an interested party who has received the leave of the court through showing a connection with the subject, knowledge of their circumstances and their views. Also the court has the power to make a FMPO without an application where any other family proceedings are before the court and it considers it necessary to protect a person. An application for a FMPO must be filed either in the Office of Care and Protection of the High Court or in relation to the County Court in the relevant County Court Office. Unless the court otherwise directs, an application for a FMPO shall be heard by a judge in chambers. In deciding whether to exercise its power the court must have regard to all the circumstances including the need to secure the health, safety and well being of the person to be protected. The court must have particular regard to the person’s wishes and feelings.

A FMPO may contain such prohibitions, restrictions or requirements as the court considers appropriate. Importantly given the nature of forced marriages a FMPO can relate to the primary perpetrators of forced marriage those who force, attempt to force, may force or may attempt to force a person to marry and secondary perpetrators those who become (or may become) involved in forcing a person into a marriage. Assisting, abetting, counselling, procuring, encouraging, assisting or conspire with the primary perpetrators would constitute involvement. Respondants should be given notice of the proceedings to enable them to make representations to the court. However, where the court considers it necessary to avoid significant harm to the person to be protected by the order or that the respondent is being overtly abusive the order may be made ex parte.

Any person who without reasonable excuse contravenes a FMPO commits an offence and is liable on summary conviction to fine and imprisonment for a term not exceeding six months.

Catherine Dixon, Chair of the Law Society’s Family Law Committee, welcomed the introduction of the FMPO:

“Family protection orders are an important tool to prevent the abuse of young women who are the victim of cultural practices which infringe their right to choose who they want to marry and bring with them a whole raft of other abuses. With the growth in migration to this jurisdiction Northern Ireland will undoubtedly be forced into marriages against their will.

NEW BOOKS

Rasnits, G. The law of compulsory purchase. Tottel Publishing. 2008
Aldridge, T. Boundaries, walls and fences. 10th ed. Sweet & Maxwell. 2009
O’Hare, J. Civil litigation. 14th ed. Sweet & Maxwell. 2009
Nathan, A. McCutcheon on inheritance tax. 5th ed. Sweet & Maxwell. 2009

Do you currently complete forms by hand?
Do you use Case Management software?
Do you want to Email completed forms?
Do you undertake Legal Aid work?
Do you want the latest version of forms?
Do you want automatic calculations?
Disaster recovery planning – why?

Does the mere mention of disaster recovery make you a bit nervous? The thought of implementing an appropriate disaster recovery plan can be extremely daunting; which is why on many occasions it gets pushed to the back burner. Unfortunately there are many instances where a disaster strikes and companies are not prepared and businesses suffer a major loss from which it could not recover. Disaster Recovery should be at the top of the agenda for businesses to protect critical information and reduce exposure to downtime.

Natural or man-made disasters cannot be predicted but with a full disaster recovery plan in place you can troubleshoot against any form of downtime, data loss and minimise the disruption to your business. A fully thought out plan can eliminate the risk of data loss and protect your business from a disaster scenario moving forward.

Ask yourself key questions such as – what happens if a disaster strikes? Am I prepared? Do you have the means of getting your data back? How long will it take? Every day, there is the chance that some sort of business disruption will occur. Companies can experience many different threats to their mission critical systems such as fires, floods, hackers, human error, power failures and viruses. The importance of putting a contingency plan in place cannot be emphasised enough.

Companies have and will continue to cease trading due to a disaster occurring where there were no adequate backup facilities in place. Another consequence that sometimes takes years to claw back is customer confidence and damage to your reputation. All can be saved by spending time looking at your business information and evaluating the best possible route to securing your data and making it available for restore as soon as a disaster strikes.

Disaster Recovery should be at the top of the agenda for businesses to protect critical information and reduce exposure to downtime.

In a nutshell the business continuity plan details how a company will respond to a disaster and reduce its overall effects on the operation of the company. The plan outlines the recovery point objective will often be the end of the previous day’s activity.

Recovery time objectives (RTOs) and recovery point objectives (RPOs) are perhaps the most important key metrics when putting together a disaster recovery solution. An RTO is the amount of time it takes to recover from a disaster event, and an RPO is the amount of data, measured in time, that you can lose from that same event.

Data recovery time

Once you have looked at your mission critical data it is important you understand the length of time it will take to retrieve your data. In the case of online backup as your chosen method of backing up – all data can be restored with the click of your mouse – reducing downtime. The turnaround time for data recovery will depend on the recovery method of choice – see table.

The Society is grateful to Terry Moore, Managing Director, Outsource Solutions for this article. Outsource Solutions are also a partner of JeepThats, Ireland’s largest online backup provider.

Tape

| FULLY MONITORED ONLINE BACKUP |
| Data is more exposed to loss of up to 24 hours as tape usually only takes snapshots once a day. In technical terms this is referred to as Recovery Point Objective (RPO). Tape RPO is <=1 day as opposed to continuous online backup RPO of <= a few minutes. |

| Typically take only one copy of your data. |
| Multiple copies may easily be maintained, at different locations. |

| Setting up backup policies and choosing a staff member can be time consuming. |
| Setting up offline service is simple. Choose to back up everything or specific files. All done by your service provider. |

| Tape can be unreliable and more exposed to error |
| Backups fully monitored making it extra reliable. Data is stored to two separate datacentres |

| Restoring from tape involves locating the right tape, retrieving it, mounting it, locating file and only then restoring it. |
| Although your data is securely stored off-site, it can be located and restored immediately - from your desktop. |

| Restoration of small or single files is challenging, time consuming and inconvenient. |
| The ability to easily retrieve small and single files becomes a daily inconvenience. |

| No automation. |
| Fully automated. |

| No guarantee of a successful restore after a shut down. |
| Data is monitored 24/7 and restore can happen with the click of a button. Each of our customers is indemnified for a million each. |

| Tape recovery – the responsibility lies internally. |
| Highly qualified engineers on hand for all backup and restore related issues. Supporting the system in case of any issues. |

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

Actually, you can. Chest, heart and stroke illnesses claim over 6,000 lives a year in Northern Ireland. But a legacy from you could provide the breakthrough that makes them a thing of the past. Local research funded by NI Chest, Heart and Stroke is saving and improving people’s lives every day.

If you’re looking for the greatest gift you could leave your children and grandchildren, you don’t need to look any further.

For a leaflet on leaving a legacy to the NSCI, please phone Alison in confidence on: 028 90 266 706

Write to us at: 24 Dublin Road, Belfast, BT2 7HB

or email: legacy@nichsa.com

Alternatively ask your solicitor for our Legacy leaflet.
Lord Chief Justice welcomed home to Derry

As everyone in legal circles in and around Derry knows, the Judges’ Dinner organised by our local Association is one of the highlights of the year. When this year’s event was staged as a tribute to our new Lord Chief Justice, it was no wonder that tickets were at a premium!

A massive turn-out of the local profession gathered on 23 October 2009 to welcome Sir Declan Morgan home to the Maiden City. Together with the Recorder Judge Desmond Marrinan, Judge Piers Grant and District Judges Hilary Keegan and Barney McElholm, all present very much appreciated the fact that this was the Lord Chief Justice’s first visit to a local association and indeed that he had passed up on a number of other engagements to join us.

With impeccable timing, Sir Declan arrived to a spontaneous standing ovation which set the tone for a memorable evening. Informality, even irreverence, is usually the hallmark of this occasion (just ask successive Recorders). Therefore it should really have come as no surprise to the principal guest that he was toasted by John Hasson - not only for his legal expertise but also for the quality of his singing in various productions at St Columb’s College! Shining through these personal memories was a clear expression of the genuine warmth of feeling and pride towards ‘one of our own’.

In response, the Lord Chief Justice generously acknowledged the support of the local profession during his career and spoke with sincerity of his delight at being back in Derry. Outlining his hopes and aspirations for the future and reflecting on his own appointment as indicative of the achievability of any of our dreams or ambitions, Sir Declan’s speech met with universal endorsement and acclaim.

Following fitting contributions from the Recorder and District Judge Keegan, a very special evening appropriately culminated in the presentation of a painting to Sir Declan by his (much younger) sister Jane Corr.

Reflecting on the event overall the writer is left with two lasting impressions: first that whilst one standing ovation from Derry solicitors is indeed rare, two on one evening is truly remarkable; and second, even for the Lord Chief Justice, perhaps especially for the Lord Chief Justice, an evening spent with friends is always welcome!

Thanks are due to Patsy and staff at the Beech Hill Country House Hotel and to Conal Casey for organising the dinner with his usual aplomb.

Gerry Guckian

INSTITUTE OF PROFESSIONAL LEGAL STUDIES

Course

The Institute of Professional Legal Studies is offering a five week course in Commercial Conveyancing.

Main Facilitator: Mr Ian Huddleston – McGrigors (supported by members of the Institute staff).

Issues covered in the course include Site Assembly, Building Contracts, Analysis of a Commercial Lease and Finance.

When: Monday, 18 January 2010
Monday, 1 February 2010
Monday, 15 February 2010
Monday, 1 March 2010
Monday, 15 March 2010

Time: 9.30am – 1.00pm

Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast

Cost: £650

Successful completion of the course will lead to a Certificate in Commercial Conveyancing from IPLS

15 CPD points (including 3 Client Care/Practice Management) are awarded for attendance at this course.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: WEDNESDAY, 23 DECEMBER 2009

Applications will be taken on a first-come first-served basis (Places are limited to 30 people)

This course is designed primarily for those who have relatively little practice experience in Commercial Conveyancing.

Commercial Conveyancing Course - Booking Form

Name: ____________________________
Firm: ____________________________
Address: ____________________________

Tel. No.: ____________________________ Email address: ____________________________

I enclose remittance of £ ____________________________
Omagh and District Solicitors’ Association celebrates its 100th anniversary

The Omagh and District Solicitors’ Association, which was formed on 19 February 1909, held a celebratory dinner to mark its centenary on 18 September 2009 in the Silverbirch Hotel, Omagh. It was a glittering occasion attended by most of the judiciary in Fermanagh and Tyrone, many notable members of the Bar and almost every solicitor in the District. Those attending were welcomed by Mr Michael Devlin, Secretary of the Association before being treated to an instructive and witty speech on practices in local Courts by His Honour Judge David McFarland, County Court Judge for Fermanagh and Tyrone. Miss Mary Murnaghan, President of the Association, responded to Judge McFarland, paying tribute to the foresight of their founding members amongst whom she could count her grandfather, the late Mr George Murnaghan.

Local solicitor Mr James Montague reflected on the history of the Association in a speech proposing a toast to the many distinguished guests attending the dinner. The Hon Mr Justice Weir responded on behalf of the guests in an entertaining and amusing speech recalling his own experiences as a young barrister in County Tyrone.

At the end of the evening tribute was paid to Miss Murnaghan for the enormous work which she and her Committee had put into what was, for all attending, a most memorable night.

SLS book launch

The new Law Society premises were the perfect venue for the recent launch of the latest SLS publication Individual Insolvency: the Law and Practice in Northern Ireland by Stephen T Gowdy and William T Gowdy. This is a unique writing partnership consisting of a solicitor and a barrister who also happen to be father and son. Proceedings were introduced by Mr Justice McLaughlin, who is the new Chairman of SLS, and then Lord Justice Girvan, who has been closely involved with the book since its inception, spoke eloquently about the book and its immense value to the profession. Warm tributes were paid to the late Master Hunter, whose earlier works on Bankruptcy and on Personal Insolvency were published by SLS in 1981 and 1992, and so we were particularly pleased to welcome Elizabeth Hunter and her son William to the reception.

Copies of the book are available from SLS Legal Publications, 50 Malone Road, Belfast BT9 5BS. DIX: 4330 NR Belfast 34 Tel: 028 9066 7711 Fax: 028 9066 7733

SPS Small Practice System

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SPS is the new package from OPSIS designed specifically for small firms and start up practices (up to 7 users). SPS is a fully integrated practice management system and provides all of the necessary key tools to improve your practice’s productivity and efficiency:

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The SPS Package Includes:
1. Software for your Practice Management System
2. Installation, training for case management & accounts
3. Starter pack containing precedents and case plans
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5. Software upgrades.

The most affordable practice management package available

There are no hidden or extra costs with SPS. Our SPS package price is all-inclusive and there is the option to spread your costs with extremely affordable monthly payment terms.
John worked from 10 Springfield Road which had been the old family home. He specialised in criminal, family and personal injury law.

In 1972 it might be right to say that John was in everything including the kitchen sink. A Spanish lorry driver on his way to Dublin with a load of wash hand basins was hijacked on the Donegal Road. A local curate knowing that John was studying Spanish brought the driver to the Malone house on the Springfield Road where he stayed for a few days. As a result, John was invited to the driver’s home town of Valdildon in Spain. There he was given a hero’s welcome and was interviewed on local television as an expert and eye witness to the “Troubles”. It was there that John met his wife Amparo.

Apart from the law, John was interested in all things Spanish being a member of the local Spanish Circle. He did not enjoy good health having suffered from a bronchial complaint from early childhood. At the same time this did not prevent him from taking his daily jog.

John retired from practice in 2004 and moved to Spain so that he and Amparo could be near his elderly parents. Sadly, his health declined dramatically at the start of this year and he passed away peacefully on 3 March 2009.

One of the tributes paid by a colleague at the time of his death was that it was well known in the West Belfast area in the seventies and eighties that the Malone brothers at the bottom of the Springfield Road were good, solid and reputable people.

John is survived by his widow Amparo, by his sisters Blenda, Anne and Joan and his brothers Patrick and Paul. His younger brother Michael predeceased him.

PGS
time trial and also a PB of 29 – 44 for 4.2 miles running on Benone beach and also two marathons under my belt and a century ride and a lot of sea swimming. But then 10 days beforehand the wheels fell off. It’s a bit like acting for a passenger in an RTA case and you feel you are on a sure fire winner, then just before you go through the Court room doors you find out that your client knew that the driver was both (a) drunk and (b) uninsured.

Wall my nadir was getting a nasty chest infection whereby I could hardly walk up the stairs at the office - so seven days before race day I started a heavy course of major antibiotics, not ideal but I had no choice.

Seventy two hours before race day we flew to Denmark, then the next day took a bus over the awesome Oresund Bridge linking Copenhagen and Malmo, then drove to Kalmar – the race site. I registered early on Friday morning and saw the flags of the various nations taking part. As a proud member (and former President) of Triathlon Ireland there was a flag for me up there too. How embarrassing

Race day

Fed up waiting for the alarm to go off so got up at 4.30 am to start my preparations. Surprised myself by being able to eat something. Went down to transition where there was the apprehensive banter of 600 drivers. I now tried to focus on 180 kilometres of biking. It’s as much a psychological challenge as a physical one. You just take 1 kilometre at a time. As you know, when your desk is crowded with 50 files you can’t do them all at once. You concentrate on one only, do it and you move on – the Ironman is a bit like that.

In an Ironman the run is all about pain management. Everything hurts, your feet are on fire, your lungs are trying to leave your chest, your joints and bones ache. It’s 30 degrees centigrade and breathing is hard even in the shade of the forest. The crowd are fantastic and the welcome you receive is nearly as good as the welcome that a jubilant joker gets from a pack of young Counsel.

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The sores will heal, the blisters will fade and when the pain disappears the pride will still be there.

We reach the Nirvana of the finish line, my long suffering wife Sharon joins us and we have a group hug and I have a damned good cry to myself.

Now I have got a bike and a wet suit for sale – any offers?

PS Thanks to the wonderful generosity of my solicitor colleagues, I have raised £3,000 for the Rotary Club of Limavady which is destined for the Shelter Box Charity. The Charity supplies emergency health food and shelter for families throughout the world in areas devastated by hurricanes and other natural disasters. I won’t say no if any other of my generous hearted solicitor colleagues make me a donation made payable to the Rotary Club of Limavady.

Last but not least to Paul Boyle of Rafferty & Boyle, Coleraine who guessed a time closest to my actual finish time. Paul is a long distance bike rider himself so perhaps he had an insight!
Clash of libel culture

We are grateful to Paul Tweed, Senior Partner of Johnsons Solicitors, Belfast, for this article.

During the course of the past decade, more and more international celebrities based in the United States have sought to take advantage of Northern Ireland’s more Plaintiff friendly libel laws by bringing legal proceedings in the High Court in Belfast.

However, following what has probably been the most successful lobbying campaign since that initiated by the tobacco industry several decades ago, legislation is now pending in the US aimed at blocking the enforcement of Northern Irish, and indeed all European libel judgments.

On initial consideration, the reason, or rather necessity, for this legislative intervention is certainly not clear. During the thirty years I have practised as a media lawyer, I personally have never once had to seek enforcement of a UK libel judgment in the American courts, nor indeed has Bin Mahfouz, the Plaintiff who received a libel judgment in the American courts, nor indeed all European libel judgments.

By the time the lobbyists had directed their campaign towards Congress, they had garnered the full support and financial might of the US Publishers’ Associations. Now an even more draconian Bill is in the offing, which threatens to penalise any American having the temerity to sue a US publisher in the UK courts with the possibility of a countersuit for triple the damages awarded and costs as a penalty, which would be a considerable deterrent.

Where is this all going to end? Will the lobbyists now seek to cherry-pick other laws that do not meet with their approval? US legislators must distinguish between the acknowledged right of a US citizen to sue for damages for personal injuries suffered in a road traffic accident in our country, as opposed to what is surely a similar right to sue for injury to reputation?

The main losers, so far as the libel tourism legislation is concerned, are US citizens whose reputations are undermined by the media on this side of the Atlantic and who, if they are deterred from taking legal action by this legislation, will be treated as far game by the more unscrupulous sections of the press. In being singled out in this way by their own legislators, any allegations, however outrageous, against US nationals will be assumed to be true as a result of their failure or inability to seek the protection of the law as would otherwise be their entitlement in our jurisdiction.

Further salt has been rubbed into a sore wound by the persistent refusal of the US press to publish the other side of the argument to what many see as one-sided and somewhat self-interested reporting.

I believe that the UK and Irish broadsheets are among the most credible in the world, due in no small measure to the balanced reporting encouraged by our very effective libel laws. [3]

BSA Dinner Dance 2010

The annual BSA Dinner Dance will now be held on

Saturday 30 January 2010 at the Europa Hotel, Belfast.

The pre-dinner Drinks Reception commences at 7.30pm
Followed by dinner at 8.30pm with music provided by The Booze Brothers

Tickets £45.00 per person

The Europa Hotel is offering a preferential rate of £50 per person recommended to book as early as possible to avoid disappointment.

A donation from every ticket sold will be made to the Solicitors Benevolent Association.

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

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This is the third and final article by Law Centre (NI) director Les Allamby on social security issues of relevance to solicitors. The article covers the savings rules for Pension Credit, Housing Benefit and Tax Credits. It also discusses unreasonable disposal of savings and its affect on the main means-tested benefits including Income Support, Income-related Employment and Support Allowance and Incapacity Benefit.

**SAVINGS RULES**

**Pension Credit**

Pension Credit is a means-tested benefit for people aged 60 or over. Unlike Income Support, Income-based Jobseeker’s Allowance (JSA) or Income-related Employment and Support Allowance (ESA), there is no upper capital limit. Capital below £10,000 is ignored. Tariff income applies with £1 of income being deemed for every £350 (or £500) which capital exceeds £10,000.

As there is no upper capital limit, the disregard rules have a different function. Instead of operating to determine entitlement, the rules apply instead for the purposes of calculating tariff income. The rules on disregarding capital, deprivation of capital and how capital is valued are essentially the same as for Income Support, Income-based JSA and Income-related ESA. See Social security update - part 2 in the September issue of The Wilt.

One significant difference from other means-tested benefits is that money or property held in a trust for a claimant or partner which is not a unreasonable disposal of savings and its affect on the main means-tested benefits including Income Support, Income-related Employment and Support Allowance and Incapacity Benefit.

**Housing Benefit**

The capital limit for Housing Benefit depends on whether a person is under or over 60 years of age.

If a person is already receiving Income Support, Income-based JSA or Income-related ESA than no separate capital limit is applied. A person already receiving guaranteed Pension Credit has all of his capital ignored. This means a person can get Housing Benefit even if he or she has savings above £16,000.

For a person under 60, £1 income is deemed to be generated for every £250 (or part of £250) above £6,000 in savings. For those over 60, from 2 November 2009, £1 of income is deemed to be generated for every £500 a person’s savings exceed £16,000.

The rules on capital for Housing Benefit are generally the same as for Income Support, Income-based JSA and Income-related ESA. There are, however, important differences. For example, a child’s savings do not affect the amount of benefit included for a child even if the savings are over £3,000, regardless of when the claim was originally made.

The rules on trusts for people under 60 are those that apply to Income Support and for people over 60 are those that apply to Pension Credit.

**DISPOSAL OF CAPITAL**

**Notional capital**

Regulations provide that a person who deprives himself or herself of an asset in order to secure or increase entitlement to Income Support, Income-based JSA or Income-related ESA has all of his capital ignored. This means a person can get Housing Benefit even if he or she has savings above £16,000.

The rules on capital for Housing Benefit are generally the same as for Income Support, Income-based JSA and Income-related ESA. There are, however, important differences. For example, a child’s savings do not affect the amount of benefit included for a child even if the savings are over £3,000, regardless of when the claim was originally made.

The rules on trusts for people under 60 are those that apply to Income Support and for people over 60 are those that apply to Pension Credit.

**Motivation**

The question which arises in the regulations governing deprivation of capital is one of motive. What was the reason behind the person’s decision to get rid of the asset?

Long-standing case law (for example, R (SB) 40/85, R (SB) 12/91) applies a “significant operative purpose” test to determine motive.

In effect, this suggests that, for the deprivation rules to apply, obtaining benefit does not have to be a primary motive of spending money or other deprivation of an asset. This view was softened in R(SB) 9/91 where a Social Security Commissioner held that there must be a positive intention to obtain benefit and it was not sufficient that this was a natural consequence of any transfer of an asset. In CIS 124/1990, a Commissioner held that, for the deprivation rules to apply, a person must actually know of the capital limits.

A more recent Commissioners decision CJSA 1425/2004 considered this issue in a case where an individual had received a redundancy payment that took capital above the limit for entitlement to benefit.

The money was used to pay off credit card debts and also to pay money to his mother in lieu of financial help given over a past period. A claim for benefit was made and refused. The Commissioner held that the claimant and his wife had cleared the credit card bills and knew this would reduce savings to a level that would trigger entitlement to Income-based JSA. Nonetheless, the Commissioner held that it did not follow that the couple did not intend to pay the bills in order to settle debts and avoid interest. Rather the claimant had mixed motives, the question whether the purpose of obtaining the benefit is a significant operative purpose should be decided by examining whether it was reasonable for the money to be spent in the circumstances. In this case, it was decided that paying off debts to avoid interest charges was reasonable. With regard to the payment to the mother, the Commissioner held that money provided in the past was not intended to create any legal liability and given the quality of the evidence provided it was not reasonable to advance the money to the claimant’s mother. This case suggests that both motive and how money is actually spent will be considered when a social security decision maker looks at the question of deprivation of an asset. In addition, in Vemura Jones v S of S for Work and Pensions (2003) EWCA Civ 964 10 July 2003 unreported, paying off a debt which is required by law to be repaid immediately should not normally be caught by deprivation of capital rules.

In CIS 264/1989, a Commissioner held that the longer the period between disposal of capital and the claim for benefit, the less likely the motive will be for claiming benefit. However, there is no set or safe period which precedes deprivation or capital rules from applying (see R(H) 1/2006 and R(SB) 1/91).

The above rules are modified for Pension Credit and Housing Benefit for those over 60 in that paying money off a debt owed for paying goods or services which are reasonable in the circumstances is not to be treated as deliberate deprivation of capital.

Regulations also set out how notional capital is to be treated as being spent where the rules on deliberate deprivation of an asset have been applied.

The notional capital rules cannot apply to trusts or funds administered by the court which have been set up as a result of a personal injury.

Further information

The Law Centre published further details on social security issues in its CD Encyclopedia of Social Welfare Rights, available free as part of Law Centre membership. An advice line for Law Centre members runs from Belfast (028 9024 4401) and Western Area office normally open from 2433 Monday to Friday, 9.30am to 1pm. For more details on how to become a member, contact David Ashfield at (028) 9024 4401.
ADMINISTRATION OF JUSTICE
DREW KITCHE AND LAGAN HOLDINGS LIMITED
Appeal from an Order dismissing an application made by the defendant for an Order pursuant to O.23 r.8 RSC setting aside the writ in this action on the basis of forum non conveniens for the cause of action in this case.- Held that the trial judge was correct in his conclusion that the Consent Order which purported to settle the proceedings was not in accordance with the handwritten agreement reached between the parties, - declaration sought that the Consent Order which purported to settle the proceedings was not in accordance with the handwritten agreement reached between the parties, was void or voidable due to uncertainty or mistake, and was unlawful, - whether the company acted Legally in pursuing its own shares. - HELD that the applicant's appeal allowed in respect of the respondents' summons COURT OF APPEAL [2009] NICA 84 28 OCTOBER 2009

HART J

CONTRACT
BONNER PROPERTIES LIMITED V MCGURRAN CONSTRUCTION LIMITED
Appeal from an order dismissing a specific performance suit brought by the plaintiff against the defendant. - whether the offer to purchase was made. - whether contractual negotiations were concluded. - pre-contract negotiations and correspondences. - definition of subject to contract and whether it can derive correspondence of the effect of being a rejection of an offer. - authority of a solicitor in the negotiation of a contract. - HELD that the trial judge was correct in his conclusion that the plaintiff had failed to prove that there was a binding and enforceable contract and that there was a rejection which terminated the offer and that there was thus no offer in law for the vendor to accept. - appeal dismissed COURT OF APPEAL [2009] NICA 49 26 OCTOBER 2009

MORGAN LJI, GIYRAN LJI, WIBER J

SEAN DEVINE LIMITED, SEAN DEVINE AND MARY DEVINE V ROE DEVELOPMENT'S LIMITED, DANIEL MCAFETER AND GAVIN MAGILL
Appeal by the second named defendant from an order arising out of 2 summonses brought by the parties. - declaration sought that the Consent Order which purported to settle the proceedings was not in accordance with the handwritten agreement reached between the parties, was void or voidable due to uncertainty or mistake, and was unlawful. - whether the company acted Legally in pursuing its own shares. - HELD that the applicant's appeal allowed in respect of the respondents' summons COURT OF APPEAL [2009] NICA 6 28 SEPTEMBER 2009

HOGAN LJI, GIYRAN LJI, COGHLIN LJI

CORONERS
IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR JUDICIAL REVIEW
Application that the Senior Coroner be removed from the inquest hearing on the grounds that the Senior Coroner has predetermined the outcome of the applications for the granting of anonymity and/or screening of a number of witnesses. - Senior Coroner's conduct in relation to notes of consultations between witnesses and in relation to obtaining and disclosing the investigating officer's report. - whether the Senior Coroner failed to attach the requisite degree of importance to a prompt holding of the inquest. - whether the Senior Coroner permits a practice whereby the Crown Solicitor's Office make applications to him to which he accedes without permitting the applicant to participate in the process. - role of the Senior Coroner in relation to disclosures. - HELD that the applicant has failed to establish that the actions of the Senior Coroner have been indicative of apparent or actual bias on his part, or that he has in any respect predetermined matters which are to be considered before him. - application dismissed COURT HIGH COURT [2009] NQAJ 76 17 JULY 2009

HART J

AN APPLICATION FOR JUDICIAL REVIEW BY SIODHAN RAMSBOTTOM
Application for judicial review of decisions of the Coroner concerning the Inquest into the death of Gerald Lawlor, a partner of the deceased who was murdered. - refusal of Coroner to permit examination of the relevance of a witness at the Inquest. - refusal of Coroner to provide for disclosure of documents in relation to the investigation concerning the witness. - refusal of Coroner to recuse himself from the conduct of the Inquest. - HELD that there are reasonable grounds for suspecting that the evidence of the witness relates to the means by which the deceased met his death and that there should be a full and public investigation into all the circumstances. - HELD that a declaration to be made that the information provided by the witness is relevant to the Inquest, and that the Coroner has not predetermined the issue and need not be recused COURT HIGH COURT [2009] NQAJ 55 26 MAY 2009

WEATHERUP J

CRIMINAL LAW
R V CASSIDY
Sentencing - manslaughter - aggravating and mitigating circumstances. - whether the defendant acted in self defence and record of previous domestic violence. - HELD that the defendant be sentenced to 3 years' imprisonment followed by 2 years' probation COURT HIGH COURT [2009] NCC 57 18 SEPTEMBER 2009

HART J

R V PATRICK MARTIN SMYTH, MARK FRANCIS O'NEILL AND JOHN SEAN HUGHES
Sentencing. - defendants pleaded guilty to "tiger" kidnap and robbery. - personal circumstances of the defendants. - risk of harm to the public and likelihood of reoffending. - procedural requirement for a custodial sentence. - mitigating and aggravating factors COURT HIGH COURT [2009] NCC 64 13 OCTOBER 2009

STEPHENS J

ATTORNEY GENERAL'S REFERENCE (NO. 8 OF 2009) CHRISTOPHER MCCARTNEY
Sentencing. - offender pleaded guilty on assignment of 30 counts of making an indecent image of a child and was sentenced to 4 years probation on each count with a condition that he participate in a sex offenders programme. - application for leave to refer the sentence under s.36 Criminal Justice Act 1988 on the ground that it is unduly lenient. - nature of the indecent material and the extent of the offender's involvement in it. - whether the offender was properly sentenced because the origin of the offending lay in the corruption of the offender as a child when he was at a vulnerable stage in his life, was isolated and confused about his sexuality, and the offending was a product of that corruption. - whether special circumstances exist. - HELD that the corruption was a significant factor in the offending that occurred and that the sentence was not unduly lenient COURT OF APPEAL [2009] NICA 52 30 OCTOBER 2009

MORGAN LJI, GIYRAN LJI, COGHLIN LJI

DISCLOSURE
IN THE MATTER OF AN APPLICATION UNDER SECTION 36 OF THE INQUISITIONS ACT 2005 BY THE CHAIRMAN OF THE BILLY WRIGHT INQUIRY AND IN THE MATTER OF IAN PAISLEY JUNIOR MLA
Application for an Order pursuant to the inherent jurisdiction of the court that a 24 RSC requiring the chairman of the Billy Wright Inquiry to disclose documents. - whether it was reasonable in all the circumstances to require the respondent to comply with a notice under s.21 Inquiries Act as has been determined by the Chairman of the Inquiry. - procedure of the Inquiry including discovery in the conventional sense. - whether the court should order discovery as requested. - HELD that disclosure be made according to the narrow terms outlined in the judgment HIGH COURT [2009] NQAJ 14 7 JULY 2009

GILLEN J

EDUCATION
APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY NK (EDUCATION TRIBUNAL)
Application for leave to apply for judicial review of 2 decisions in relation to the transfer of a pupil to secondary school - decision of Board of Governors of a Grammar School, pursuant to a special circumstances application, not to alter a C1 grade awarded to the pupil in the transfer test. - decision of Independent Education Appeals Tribunal which affirmed the decision of the Governors. - pupil was subsequently unable to secure a place at the Grammar School. - limited comparative information made available by the Principal of the Primary School to support the special circumstances application so pupil was not regarded. - whether the Tribunal failed to assess the application for an upgrading based on the limited information provided by the primary school. - whether in the interests of fairness

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High Court and Court of Appeal Decisions

the Tribunal should not disregard additional relevant information. - HELD that decision be remitted to the Tribunal to assess the grade of the pupil in the light of comparative information furnished to the Tribunal by the primary school.

High Court [2009] NICA 50
30 SEPTEMBER 2009
STEWART, J

CIARAN AND NAMH
Application for contact order in respect of his daughter where application is opposed by the mother (the respondent) on the basis that the applicant had sexually abused the daughter and had been physically and verbally abusive to her. - applicant accuses the respondent of subjecting her daughter to emotional abuse by causing her to believe her father abused her. - HELD that the evidence of the applicant is accepted and that a finding is made that there was no sexual, physical or verbal abuse committed by the applicant on his daughter and Prohibited Steps Order made that the child’s place of residence should not be changed from Northern Ireland except with the leave of the Court.

HIGH COURT [2009] NIA 19
30 SEPTEMBER 2009
STEWART, J

FALSE

RE SABINA AND TAMIM
Application for leave to remove his daughter and son from the jurisdiction for a period of 2 months to allow him and the children to travel to Bangladesh (a non Hague Convention country) and with which country the children were born.

HIGH COURT [2009] NIA 18
28 SEPTEMBER 2009
STEWART, J

REAL PROPERTY

NOEL GALLAGHER V NORTHERN IRELAND HOUSING EXECUTIVE
Appeal from an order awarding the respondent possession of disputed lands and rejection of the applicant’s counterclaim asserting possessory title to the disputed land. - whether applicant could claim he was entitled to a declaration of ownership by reason of his adverse possession of the land for a period in excess of the statutory limitation period which had previously been laid from the Londonderry Corporation. - applicant used the land for grazing horses. - HELD that the applicant’s evidence fell short of establishing possession and the trial judge was correct to dismiss the applicant’s counterclaim and appeal dismissed.

COURT OF APPEAL [2009] NICA 50
20 OCTOBER 2009
HIGGINS, LJ, GRIVAN, LJ, MCCLAUGHLIN, J

Library Update

Public Procurement – Part 2

The Public Contracts Regulations 2006/5
These Regulations implement, for England, Wales and Northern Ireland, Directive 2004/18/EC of the European Parliament and Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts. These Regulations specify the procedures to be followed in relation to the award of public works contracts, public supply contracts and public service contracts by public bodies called contracting authorities. They also provide remedies for breaches of these Regulations in order to implement Council Directive 89/665/EEC of 21 December 1989 which requires member States to provide effective remedies at national level for breaches of Regulations relating to procurement.

In force: 31 January 2006

The Utilities Contracts Regulations 2006/6
These Regulations implement, for England, Wales and Northern Ireland, Directive 2004/17/EC of the European Parliament and Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. These Regulations specify the procedures to be followed in relation to the award of public works contracts, works contracts and services contracts by utilities for the purpose of carrying out activities in the water, energy, transport and postal services sectors.

In force: 31 January 2006

Articles on NI Caselaw
General principles of public review and public procurement: Sheridan Millennium Ltd v Department for Social Development and a subsidiary Corp.

Working for the man (considers the problems and implications of legal challenges being made against the conduct of tender processes and discusses NI caselaw).

Heard: Co L 1, 2005, 31st (Feb), 11-15

Standard notice in respect of Part 8 services: the decision in Federal Security Services Ltd v Chief Constable of the Police Service of Northern Ireland and Resource Group Limited (considers the application of standard 21st periods with regard to the award of Part 8 or non priority service contracts).

McGovern: 2009 P.L.R. 4, NA181-188

Recent cases under the Public Contracts Regulations 2006 from the Northern Ireland courts

Consider Northern Ireland case law on the Public Contracts Regulations 2006, namely including Partners Ltd v Department of Finance and Personnel; McConnell Archive Storage Ltd v Belfast City and Henry Brothers (Magnetall) v Department of Education for Northern Ireland Remayment: 2008 P.L.R. 3, NA100-103

Remedies for violating the procurement rules on setting up a framework: McCaughlin and Harvey Utilities Ltd v Department of Finance and Personnel (No.3) (comments on McCaughlin & Harvey Ltd v Department of Finance and Personnel (No.3) concerning the appropriate remedies for breach of the duty under the Public Contracts Regulations 2006 reg 47(1))

McGovern: 2009 P.L.R. 2, NA62-70


Articles on NI Caselaw

Public procurement (summarises the Northern Ireland’s Schools Modernisation framework must be scrapped, rather than making an award of damages)

Schools’ framework scrapped (discusses the Henry Bros’ case and whether Northern Ireland’s Schools’ Modernisation framework must be scrapped, rather than making an award of damages)

2009: Cons. Law, 20(2), 4


Schools’ framework scrapped: CAU report (discusses the Henry Bros’ case and whether Northern Ireland’s Schools’ Modernisation framework must be scrapped, rather than making an award of damages)

2009: Cons. Law, 20(2), 4

McGovern: 2009 P.L.R. 2, NA62-70
Missing Wills

Re: Selina Spence (deceased)
Late of: Oakridge Private Nursing Home, 16 Oakridge Manor, Magheraknock Road, Ballinaheen, County Down BT24 8JT
would any person having knowledge of the whereabouts of any Will by the above named deceased please contact: Michael Giffnock
Fax: 028 3832 5111
Tel: 028 3832 7319

Re: Joseph Dubh (deceased) (previously known as Joseph Stewart Dowds)
Formerly of: 5 Holm Terrace, Dromore, County Down BT25 1HN
would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Re: Mark Campbell (deceased)
Late of: 11 Brynafrod Place, Belfast
would any person having knowledge of the whereabouts of the Will for the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Re: John Martin (deceased)
Late of: 97 Fortwilliam Park, Belfast BT15 4AS
would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Re: Roberta Rush (deceased)
Formerly of: 1a Lawnbrook Drive, Hilden, Lisburn
would any person having knowledge of the whereabouts of a Will for the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Re: Mary King (deceased)
Late of: 13 Clontigora Road, Newry, County Down
would any solicitor/person having knowledge of the whereabouts of any Will for the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Re: Daniel Joseph Marian O’Connell (deceased)
Formerly of: Convoy Road, Newry
would any person having knowledge of the whereabouts of any Will by the above named deceased please contact: Karen McQueenie
Fax: 028 9362 6656
Tel: 028 3626 1811

Missing Title Deeds

Folio: AN12387
County: Antrim
Registered Owners: James K Humphreys & Jennifer E Humphreys

Lands of: 5 Redbrae Road, Carrickfergus
Contact: John H Hughes & Co

Tara take any notice that any person having custody of or any 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: John H Hughes & Co
Fax: 028 9032 0837
Tel: 028 9024 5017

Folio & SD
Property of: Armstrong
Registered Owners: Kent Bonderup and Patricia Bonderup

Lands at: 125 Thomas Street, Portadown, County Armagh BT62 3AH
Tara take any notice that any person having custody of or any 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: Kent Bonderup and Patricia Bonderup
Fax: 028 7138 2356
Tel: 028 7138 2180

Folio: 18047
Property of: McKeown
Registered Owners: M D McKeown

Lands at: 16 Hamilton Street, Larne
Tara take any notice that any person having knowledge of the whereabouts of the deeds and documents of title relating to the above premises produce said deeds including a lease dated 13 May 1965 by Arabella Matthews and Margretta Welsh McKeown to T R McKeown and communicate such information to: M D McKeown
Fax: 028 7138 2356
Tel: 028 7138 2180

missing separation agreement

Re: Irvine Orr (deceased)
Formerly of: 34 Glasdrumman Road, Annalong, Newry BT44 4QH
Date of Death: 10 March 2009
would any person having knowledge of the whereabouts of a Separation Agreement entered into between the above named deceased and Edith Orr, between 2003 or thereabouts and his date of death please contact: Karen McQueenie
Fax: 028 3833 5418
Tel: 028 3833 0481
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We have indicated to the Stormont Executive that we are now setting up a Steering Group of solicitors to assist in establishing the full extent of child abuse in Northern Ireland.

If you are interested in participating as a member of this group or you have information that is likely to assist, please contact:

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Email: J.Rice@johnjricessolicitors.com or newtownards@johnjricessolicitors.com

Contact:

JOE RICE or HUGH LESLIE.

John J Rice & Company, Solicitors, 3rd Floor, Pearl Assurance House, 2 Donegall Square East, Belfast BT1 5HB
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