THIS MONTH

President’s Council Dinner speech
Contains local up to the minute data loaded as soon as it is received

• High Court and Court of Appeal decisions
• Industrial tribunal decisions
• Practice directions
• Primary and secondary legislation ...................and much more

Searchable across a range of fields using simple, uncluttered search screens with intuitive navigation

COMPLETELY FREE OF CHARGE TO MEMBERS OF THE SOCIETY

FREE ONSITE TRAINING AVAILABLE FOR ALL FIRMS WHICH CAN COUNT TOWARDS CPD ACCREDITATION
INDEX

05 Cover Story: President’s Council Dinner speech

04 President’s message

09 Bail reform

12 Recall of prisoners on licence

14 Council Dinner - photographic record

19 Challenging a homeless decision

23 New online services go live

26 Technostress

28 Case of HN

37 One field with too many balls

40 High Court and Court of Appeal Decisions

44 Library Update – Developments in Holiday Compensation

CHECK IT OUT AT
www.lawsoc-ni.org

Writ readers can access back issues of the magazine as far back as October/December 2000 at www.lawsoc-ni.org - follow Publications link

You can also find details on the website about:

• Libero database
• Latest CPD courses
• Employment opportunities
• Forthcoming events

Copy deadline for Winter 2010 Edition:
Friday 19 November 2010
As I am near the end of my Presidency, this is my final message for the Writ. Last November the year ahead to me seemed to stretch forward like an eternity with unknown but daunting challenges. I can assure you I was not disappointed in this regard! Now, however, almost a year later, it seems somewhat strange that the ‘eternity’ does have a finality and it has arrived.

It has been an extremely busy year. When I started I believed that in recessionary times our membership more than ever was looking to the Society for leadership and inspiration to help in some way to get through the bad times our profession was experiencing. It was a year I believed when the representational side of the Society should be more to the fore. The Society’s hugely important regulatory work would of course continue but I felt it was a year for the Society to reach out to its membership.

Communication with our membership is all important to not only explain some of the work which the Society is carrying out but also to explain the issues we face and to increase collegiality and inclusiveness within our profession. I think we have made progress with these issues but this will always be a work in progress and we cannot become complacent.

We sought to achieve this with the Law Society roadshows to eight locations around the North as well as meeting our Young Solicitors’ Group. We launched our new website and E-informer and our new twice yearly Local Association Chairs’ and Secretaries’ meetings, which will provide a valuable conduit to explain Society policy and issues facing us and to listen to our members’ concerns. These initiatives, I believe, were very successful. We also launched our new Solicitor Recognition Awards to help publicise in the media some of the good work which our members do and we also launched our Claims Advice Service to counter the sometime insurance company practice of ‘door stepping’.

I have spoken frequently of the need for our profession to have more belief and pride in our professional qualifications and talents, in our ability to give advice and take decisions and in our ability to mediate, arbitrate and advocate. Where required, we need to upskill, specialise and further train. We need to believe more in our own profession and have greater pride in it.

The last Council elections, which were hotly contested, showed that there is greater engagement with the Society by our members. I believe our next elections in November 2011 will further demonstrate this trend.

The devolution of Policing and Justice occurred in April of this year and we now have our own Department of Justice, our own Justice Minister, David Ford MLA, and a new Committee for Justice. The Society has had to learn how to engage with all of these new institutions and people within them and a lot of work has gone into establishing these hugely important new relationships. Alan Hunter, our Chief Executive, has been leading on this work and we have good and strong relations, particularly with the new Minister for Justice, David Ford MLA, his special advisor, Richard Good, and his senior officials. Again this work is constantly ongoing.

As I write this, publication of the new Justice Bill is imminent. We continue to press for appropriate clauses to be included within it to introduce Rights of Audience for solicitors in the higher courts, namely the High Court and Court of Appeal. There will be an expectation by the Minister and the Committee that the Society shall put in place suitable accreditation and regulatory rules in respect of these rights. I am confident we can satisfy the Committee in all respects in these regards.

As you can see, it has been a busy and challenging year indeed. So as that ‘eternity’ for me nears its end, it remains only for me to say thank you for allowing me to give a little back to the profession. It is a profession which has given much to me and is one of which I am very proud. Our profession undoubtedly will face many challenges in the future, not least from the current ongoing fundamental review of the provision of legal services in Northern Ireland by the Department of Justice. However, if all sides abide by the inscription on the wall of the new Supreme Court in London - ‘Justice must not be for one side alone but both’ - then the public whom we serve and our profession should have nothing to fear.

Norville J Connolly
President
President’s Council Dinner speech

The President of the Society, Mr Norville J Connolly, has warned against a ‘two tier justice system’. His remarks were made to an invited audience, including the Minister for Justice, David Ford MLA and the Attorney General, as part of a wide-ranging speech at the Society’s Council Dinner in Belfast City Hall on Friday 24 September 2010.

President’s speech

Tonight’s dinner occurs at a time which is an historic watershed. Devolution of Policing and Justice took place in April of this year and tonight we are honoured to have as our guest speaker, the Minister for Justice Northern Ireland, David Ford MLA, whom I want to specifically welcome. The Society, in our discussions with the Minister so far, finds him open-minded, fair and appreciative of the contribution which solicitors make to the community, to clients, and indeed, to the economic infrastructure of this jurisdiction. We look forward to regular engagement with him and to further discussions on the important challenges which we face together.

The Northern Ireland Assembly and Northern Ireland Executive now include within their area of responsibility all issues relating to Justice. For the first time in many years, it will be a local Minister for Justice who decides upon, not just matters of practical interest to our members such as the level of jurisdiction of the County Court, the number and location of the Courts and the level of Court fees, but also that matter which is of strategic importance to the whole community and which is an important dimension of any modern democratic state, namely…. Access to Justice.

Confidence in the justice system is fundamental in any society…. particularly in a society emerging from conflict.

Devolution of justice occurs at a time when the economy is suffering its most significant downturn for a generation. Recovery in Northern Ireland this year and next will at best be lacklustre. 0.8% growth is forecast in 2010 and 1.8% in 2011. A weak recovery in the United Kingdom over the next few years is also predicted but significantly, Northern Ireland is likely to lag behind the UK average. The legal sector has not been immune from the downturn. The profession is suffering just as many other sectors in society are suffering. There have been job losses, short-time working and restructuring of practices. Many in the profession have had to downsize and refocus. The considerable numbers of support staff employed within the profession, originally estimated between 4000 to 5000, has dropped also. The Society has run programmes to provide advice on managing practices through this difficult time and we will continue to do so. The strategic way forward outlined to us in our meetings with the Secretary of State is to grow the private sector and reduce the dependency on the public sector. This may be done by looking at ways to reduce our Corporation Tax levels and to increase incentives to invest in Northern Ireland. We encourage Government in this work and look to Government to make Northern Ireland an attractive place in which to do business.

There has been much discussion of the imminent cuts to be made across the public sector in order to reduce the overall budget deficit. As part of the devolution settlement, funds were set aside and ring-fenced for the purposes of legal aid to ensure that citizens in Northern Ireland have access to the legal help they require. Northern Ireland is one of the most economically deprived areas of the United Kingdom. There is a high dependency upon the Welfare State and less opportunity for employment. There is therefore a higher dependency upon legal aid than most other parts of the United Kingdom. The Minister has announced a fundamental review of Access to Justice in Northern Ireland and the way in which Government procures legal services on behalf of the public. The Society shall, of course, engage with the review, but in so doing, we must make it absolutely clear that the citizen must be entitled to access to justice through a solicitor of his or her choice. To take away this choice, i
believe, will risk undermining the trust our citizens have in the justice system. In order
to ensure the citizen has confidence in the legal system he/she must have confidence in their legal representative and in the legal process. **Confidence in the justice system is fundamental in any society…. particularly in a society emerging from conflict.**

Legal aid provides an important safety net for those who cannot afford justice. Justice is not a commodity which any Government can ration. If it is not accessible to all, the result will undoubtedly be an unequal society. There can be no equal justice where the type of trial you get depends on the amount of money you have. We cannot have a two tier justice system - one for ‘the haves’ and another for ‘the have nots’. Nor can we have a system where there isn’t equality of arms. For example, where the Prosecution is better equipped than the Defence or where a potential private citizen Plaintiff without means, is dwarfed by the wealth and resources of the opponent, whether that opponent be a government department, private company or wealthy individual. The Society welcomes any proposals to improve access to justice and we will positively engage with the review with this outcome in mind. **But we warn…. that improvements to access to justice will not be achieved if the primary driving force is the short-term expediency of reduced costs to the legal aid budget. In fact, such a narrow policy may lead to increased costs elsewhere in the system.**

Access to justice is an expression of process and not just an outcome from an individual’s perspective. It is about the enforcement of rights and the resolution of disputes. From a social perspective, it is concerned with supporting social order, supporting economic activity and supporting both social justice and social inclusion.

In October 2009, the Lord Chief Justice of England & Wales, Lord Justice Judge, said: “The alternative to people being able to access justice is mayhem. You end up with the peace being broken and you end up with crimes being committed. There can be no effective Rule of Law if there is no proper access to justice.” The Law Society reminds Government that denial of access to justice may create a vacuum into which others may step.

The Law Society represents over 2,400 solicitors, in 540 firms, practising in 74 geographical locations throughout Northern Ireland. This network of solicitors provided an invaluable service to the community through the very difficult times we are now emerging from. The network of solicitors’ firms provides, in real terms, a community service that is the envy of many a society. Surely no one wants legal deserts where disadvantaged or vulnerable people have to travel long distances to obtain legal advice or representation.

**Disadvantaged people require uncluttered access to justice.**

The Society believes that access to a local solicitor of choice has provided a strong, reliable and independent interface between the citizen and the state. **Disadvantaged people require uncluttered access to justice.** The work which many solicitors do, some of it paid, some of it unpaid, the Society believes has been, and will continue to be, an invaluable foundation of social cohesion in this jurisdiction. The amount of pro bono work carried out in solicitors’ practices is substantial and is too often overlooked, taken for granted and never costed - but what will it cost to replace it, if the network of solicitors’ firms which we currently have is destroyed? Importing systems from other jurisdictions will not work here. We are a different jurisdiction with a different past and different current problems. **This jurisdiction has been served well by the network of solicitors’ firms and Government would undermine this at its peril.**

We have a particular history and experience in Northern Ireland. We are not long or far removed from the bad memories, which we all hold and share together. Nevertheless, there is optimism as we look forward to work with a new Assembly, in the context of devolution of justice and the opportunity to engage directly and meaningfully with our local Executive and legislature.

The Department of Justice has brought forward proposals to revise downwards the level of fees paid for criminal defence services in Northern Ireland. The fact is that much of the work of solicitors working in the criminal field in Northern Ireland has carried with it a heavy responsibility. The Society has been actively engaged in discussions with the Department about these new rates. It is, however, important that Government recognise and value the high levels of skill, professionalism, dedication and independence, which solicitors bring to the justice system and without which the justice system will undoubtedly malfunction.

**Business, legal or otherwise, will not come here of its own volition, we must go out and find it.**

Upholding the Rule of Law, of course, does not only fall to the solicitors’ profession and the independent Bar. Upholding the Rule of Law falls ultimately to the judiciary and the independence of the judiciary, which is enshrined in statute, must be cherished and protected.

The Society, despite economic and other pressures, remains committed to preserving its own independence. The core values of the profession… Integrity, Independence, Respect for the Rule of Law, Acting Always in the Best Interests of Clients and Equality for All before the Law, must remain intact. The independence of the profession ensures that citizens have the best advice available to them, without fear or favour, and that professional help is available to them, even against the
weight of the State, where that is an issue. It is critical, as we move forward, that the independence of the profession is underscored and valued by the Minister for Justice and by the Department.

The Bain Report will, when implemented, lead to a new structure for the governing bodies of the profession in Northern Ireland. It remains the authoritative text on a proportionate and rational model for this jurisdiction and has been accepted by Government as the way forward. For obvious reasons, implementation of the Report, which requires legislation, has not yet been taken forward by the Assembly. The Society calls upon the Minister to bring forward legislation, at the earliest opportunity, to implement the recommendations contained in the Bain Report. We have taken many steps administratively to implement the proposals, but some of these recommendations do require legislative authority, without which we cannot move further. The Society urgently needs the powers set out in the Bain Report in order to meet the challenges we face.

In the meantime, we have taken several significant steps. We have been reviewing our client complaints procedures, we have introduced new regulatory requirements in terms of engagement with clients and complaints from clients and we have developed our CPD programme to learn from our experiences. Also, we have developed our new website so as to increase accessibility to the public.

Last year, the President of the Society, Barry Finlay, said that we would be a more outward looking and a more engaged Society generally. I am pleased to report that in the course of the past year, I believe we have fulfilled that promise. As the political landscape and society changes, the Law Society has changed too. We have met with all of the political parties and political leaders and we have engaged proactively with the new devolved administration at the Assembly. We shall continue to do so. I believe the Society is now much more engaged with the public, the political establishment and with other jurisdictions. We have an enviable legal jurisdiction which I believe we can sell abroad.

Our new Practice Development Committee is tasked with looking outside our boundaries to see what is happening with the professions there and if there are opportunities for us. I believe we will make progress in this regard. Business, legal or otherwise, will not come here of its own volition, we must go out and find it.

We have also met more widely with the business and private sector. We have held meetings with the banking and lending institutions, with the insurance industry and with business interests outside Northern Ireland, to increase the visibility of the profession beyond these shores in terms of the services which we offer to their clients here and generally, I believe also we are also uniquely placed to go abroad and tell our story to other countries developing their own Rule of law systems. We may be a small jurisdiction but we have a very big story to tell. I know from my travels this year we can be very influential in international Pro Bono work. I believe we have a duty to teach and give back what we can from our experiences here to such countries.

We are in a recession at the moment but will not always be. As this jurisdiction changes and as its economic circumstances change, the profession has always, and shall continue to be, ready also to change and to respond to the emerging needs of clients and to new structures and processes. The Chief Executive and I have just completed a series of road-shows to various parts of the North to connect better with our membership, to listen to their concerns and to emphasise the need to further train, to specialise, to have belief in their own abilities, in their advice and decision making and in their abilities to mediate arbitrate and advocate. Our CPD programme is empowering our members to do so. In doing so, I believe we are instilling confidence in our profession and making it ready to adapt to the changing legal landscape and to the changing needs of clients. Our members have the ability to serve in judicial office at the highest level and we need to encourage that. Our Judicial Appointments Commission should continue to take such steps as are necessary to encourage such applications from our solicitors. We look forward to the appointment of our first solicitor High Court Judge.

In conclusion, I want to thank you, friends old and new, for joining with us in this important work. As I reflect upon our great and historical profession, I remind myself again of our values of:

- Independence
- Integrity
- Respect for the Rule of Law
- Acting Always in the Best Interests of Clients and Equality for All before the Law

I reflect that if we all share those values in addressing the challenges, both in the economy and in the community, we can move forward with confidence in the future. Our new Law Society House is a symbol of the confidence which we hold for the future of our profession and of the confidence we have in our profession’s own abilities in all aspects of law and practice. I affirm the Society is working hard to build a stronger, prouder and more united profession - one which will play its full part in dealing with the opportunities and challenges ahead in this new emerging Northern Ireland.

I affirm the Society is working hard to build a stronger, prouder and more united profession - one which will play its full part in dealing with the opportunities and challenges ahead in this new emerging Northern Ireland.
The Minister’s reply - Rights of Audience: Access to Justice Review

Legal Aid reform

Turning to the second area of specific interest to this body, I would like to say something about Legal Aid - one area of public policy where there really isn’t a “do nothing option”. Change here is both inevitable and necessary.

As some of you will recall, I was interviewed by the media on this subject not long after I had been appointed Minister of Justice. To say that this provoked a public reaction would be an understatement.

It is clear that there is a widely held sense within our community that the Legal Aid system isn’t working as it should. This is not just an opinion held by some disaffected people who have been on the wrong end of a court case - it is a view shared by many well informed sectors within our society.

The fact is that the Legal Aid system in Northern Ireland in its present form is not sustainable. Any system which – as is the case this year – has a budget of £85m but an expenditure of £104m is living on borrowed time, particularly in the current economic climate.

That’s why I have moved to publish for consultation a new fees regime for Crown Court criminal cases. I am grateful to the Law Society and the Bar Council which have worked with my officials on the development of these proposals.

I have accepted the representations made by both organisations that whatever we develop should be tailored to Northern Ireland. The proposals aim to maintain access to justice, they make no changes to eligibility for legal aid, and I believe that the new scales are both fair and affordable.

The Society and the Bar gave evidence to the Justice Committee that the greatest reductions could be made in respect of Very High Cost Cases, and again I have accepted that advice. The changes proposed would reduce the total remuneration paid to the legal profession, but in the majority of cases the rates will remain slightly more generous than in England and Wales – a fact not lost on some of those who will have to be convinced that, against the backdrop of the current budgetary discussions, I should not be going further.

But for me the critical test has been, and should remain, whether the proposals will deliver a Legal Aid budget of no more than £79m per year by 2013.

I hope that, throughout the current consultation period, both the Society and the Bar will continue to engage as constructively as they have done to date on this issue.

Fundamental Legal Aid review

While budgets have dictated that my immediate priority on Legal Aid reform has been to halt the dramatic growth in the cost of Legal Aid, I don’t want our vision to be focussed on budgets alone.

Whatever the budget may be in future, I believe the time is now right to think about a bigger question: what is our public legal aid system for? If its purpose is - as I believe it should be – to ensure access to justice for everyone, then how confident can we be that it is achieving that purpose?

This is why I have announced a fundamental Review of Access to Justice.

I have invited Mr Jim Daniell to lead that review and he has already begun work. Jim will be known to most of you as – until very recently – the Chairman of the Northern Ireland Legal Services Commission. He also led the Criminal Justice Review which, like the Patten Review of Policing, flowed from the Belfast Agreement, and which established the blueprint for the devolved system of justice we now have in Northern Ireland.

As with the Bill, and as with Legal Aid, it will be important that the Law Society plays its part in the debate around this review.

NOTE: Following the intervention of the Attorney General, there have been some further developments on the issue of rights of audience in the higher courts. The Society will continue to press for inclusion of these clauses in the Justice Bill.
A consultation on the reform of bail law and practice in Northern Ireland was launched by the Northern Ireland Law Commission on 1 October 2010. The bail project is the Commission’s first criminal justice project and it is anticipated that a wide range of views will be received on the reform of this interesting and complex area of law and practice. In the Consultation Paper, ‘Bail in Criminal Proceedings’, the Commission invites views on the desirability of reforming the bail system in Northern Ireland.

The Northern Ireland Law Commission was established under the Justice (NI) Act 2002 and its purpose is to keep the law of Northern Ireland under review and to make recommendations for its systematic development and reform. Bail law and practice represents a particularly suitable topic for consideration by the Commission. The current law on bail is arguably complex and inconsistent. The consultation is also timely in light of the recent transfer of policing and justice powers to the Northern Ireland Assembly.

The Consultation Paper presents a detailed analysis of the current law relating to the grant of bail by both the police and the courts in Northern Ireland, as well as the findings of extensive preliminary discussions and comparative research carried out by the Commission. Consideration is also given in the Consultation Paper to the human rights obligations which govern this area of law and practice, in particular the right to liberty under A. 5 of the European Convention on Human Rights.

In the Consultation Paper, consultees are invited to consider over 50 specific questions relating to reform of bail law and practice in Northern Ireland. Topics examined include the legal framework, bail decision making, bail conditions, breach of bail, monitoring and support, the role of victims and the provision of reasons for bail decisions. A separate chapter and particular questions are devoted to issues concerning children and young persons. Views are also welcomed on other bail related matters not directly addressed in the Consultation Paper.

In this brief article, a selection of issues addressed in the Consultation Paper are outlined in order to provide readers with a flavour of the broader content of the Paper. The focus here is on reform of the law relating to bail. However, it must be noted that the Consultation Paper is not limited to law reform only. The Commission acknowledges that legislation alone may not ensure the effective operation of a bail system in practice. Views are also sought in the Consultation Paper, therefore, on the development of appropriate administrative arrangements to complement the legislative scheme.

### The right to bail

The cornerstone of any bail regime is arguably the right to bail. In Northern Ireland, the presumption in favour of bail for persons charged but not convicted of criminal offences can be traced to the Police and Criminal Evidence (NI) Order 1989 (PACE (NI)) in respect of bail granted by the police and longstanding common law authority in respect of bail granted by the courts. The right to bail has also been significantly strengthened in recent years by the incorporation into domestic law of the European Convention on Human Rights and the A. 5 right to liberty, in particular. Despite the differing sources, therefore, the right to bail is well established in this jurisdiction. The grounds for the refusal of pre-trial bail, by the police and courts, however, are not so precisely defined.

It is common ground that bail can be refused by both the police and the courts where there are substantial grounds for believing that the accused will:
- fail to surrender to custody;
- interfere with witnesses or otherwise obstruct the course of justice or;
- commit offences while on bail.

In addition to these grounds, PACE (NI) permits the refusal of bail by the police for a number of other reasons, including the accused’s own protection. On the court side, it is well established in the High Court that bail can be refused if there is a likelihood that the accused will fail to comply with bail conditions. Overlying this difference of emphasis between the legislation which regulates police bail and practice in the courts, the European Convention jurisprudence offers a further ground for the refusal of bail, namely the preservation of public order.

The grounds upon which a person charged but not convicted of a criminal offence may be denied their liberty in this jurisdiction are arguably uncertain and potentially inconsistent. Legislation provides the police with authority to deny bail to a person charged with an offence on the grounds that detention is considered necessary for the accused’s own protection, for example, but no equivalent power is conferred upon the courts. The Commission is of the provisional view that there is a case for the enactment of a statutory right to bail for persons charged but not convicted of criminal offences, which would apply to both police and court decisions. The Commission seeks the views of consultees regarding whether such a provision should set out the grounds upon which bail can be refused, as is common in almost all jurisdictions examined during the comparative analysis.

If the fundamental proposition that a right to bail and the grounds for refusal of bail should be enshrined in statute is accepted, the Commission welcomes views on the precise wording and content of those grounds. Consultees are invited to consider whether the three established grounds, outlined above, should be retained in their current form. The denial of bail for the prevention of offences, although well established, remains a contentious issue in some quarters. The Commission also asks consultees to consider whether any or all of the additional grounds currently applied by the police and the courts or set out in Convention jurisprudence should be included in legislation and if any other grounds should be introduced. In some jurisdictions, for example, bail can be denied in order to secure the safety or welfare of victims.
The question of the grounds upon which a person can be denied bail is pivotal to any bail legislation and will, to a large extent, determine the issue of whether an appropriate balance has been struck between the individual right to liberty and the interests of society in the prevention of crime, the protection of the community and the effective administration of justice.

**Bail conditions**

The conditions which may be attached to bail are also pivotal to the fairness of any bail system. This topic gave rise to much debate during the preliminary discussions conducted by the Commission. During these discussions views were expressed that bail conditions are often inappropriate or ineffective. Some participants suggested that bail conditions should be realistic and tailored to the circumstances of the accused and the offence charged.

In our analysis of bail conditions in Northern Ireland and elsewhere, the Commission adopted a distinction, common in other jurisdictions, between ‘financial conditions’ such as recognisance, surety and security and ‘conduct conditions’ such as reporting conditions or geographical exclusions. Financial conditions may, for obvious reasons, be difficult for some accused persons to fulfil and in several jurisdictions there are limits placed on the powers of bail decision makers to impose such conditions. It is common in some jurisdictions for a statutory obligation to be imposed requiring the imposition of the least onerous conditions necessary to ensure compliance with bail, based on an sliding scale of bail conditions. After considering these issues and those raised in preliminary discussions, the Commission invites views on whether detailed guidance should be provided to bail decision makers on the imposition of bail conditions. Further, if such guidance is considered necessary, should it have a statutory basis?

**Breach of bail**

One aspect of the bail system which attracts considerable public attention is the perceived flouting of bail by persons released by the police or the courts. Breach of bail can take several forms and consideration is given in the Consultation Paper to failures to surrender to custody, breaches of bail conditions and offending while on bail. The police enjoy powers of arrest in respect of breaches of bail and it is an offence to fail to surrender to custody, but the question of whether a breach of a bail condition, such as a curfew or a geographical exclusion, should be criminalised, produced a finely balanced debate. While on the one hand, there is much support for a robust response to breaches of conditions, it has been suggested that such an offence would disproportionately impact upon children and others who may have difficulties understanding or complying with bail conditions. It may also result in unnecessary criminalisation with the possibility of acquittal on the original charge but conviction for the breach. The Commission asks consultees to consider if it is appropriate for breach of bail conditions to be made a criminal offence in any new or revised bail legislation.

**Children and young persons**

In addition to the difficult balance which must be struck between liberty, justice and public protection, bail decisions in respect of children and young persons must also take account of the interests of the child. Bail decisions relating to children in Northern Ireland have been subject to significant statutory intervention in relatively recent years. A. 12 of the Criminal Justice (Children) (NI) Order 1998 lays down a distinct test for the remand of children and young persons by the courts, requiring their release unless the offence falls within a prescribed category and it is necessary to remand him or her to protect the public. The test for bail under A. 12 has been widely criticised, with suggestions being made that it is both too lenient and too strict.

Similar to the situation in respect of adults, the powers available to the courts to grant bail to children and young persons differ from those conferred upon the police. A. 12 provides that a court must release a child or young person on bail unless the offence is a sexual, violent or other serious offence or the offence is an indictable offence and the child was either on bail at the time of the commission of the offence or has been found guilty of an indictable offence within the previous two years. In addition to these requirements the court must deem it necessary to remand the child or young person to protect the public. By contrast, PACE (NI) provides that children or young persons charged with most offences must be released unless one of the grounds outlined for adults exists (eg there are reasonable grounds for believing that he or she will fail to surrender to custody, interfere with the administration of justice or commit offences while on bail) but also if there are reasonable grounds for believing that the child or young person ought to be detained in his or her own interests. The Commission invites views on whether there should be a single test for bail which both the police and the courts could apply to children and young persons charged with offences but not convicted.

If a single test is desirable, a further question arises as to whether children and young persons should be subject to the same test for bail applied to adults, with appropriate modification to reflect the age of the young person. This approach is common in other jurisdictions. Such modification might include consideration of CRC principles such as the ‘best interests’ principle and the principle that detention should be used as a last resort and for the shortest appropriate time. It has been suggested that the current system for the detention of young persons in Northern Ireland takes inadequate account of these principles.

**The bail consultation**

The consultation period ends on the 31 January 2011 and the views received will inform the Commission’s Final Report on bail which will be accompanied by draft legislation. The Consultation Paper can be downloaded on the Northern Ireland Law Commission website: www.nilawcommission.gov.uk

Responses to the consultation should be sent to:
Katie Quinn, Senior Principal Legal Officer, Northern Ireland Law Commission,
Linum Chambers,
2 Bedford Square, Bedford Street,
BELFAST, BT2 7ES.
katie.quinn@nilawcommission.gov.uk
E-nformer update

As members will be aware the e-nformer is sent to individual email addresses. The Society has identified that a number of members have recently changed their contact details and in particular their email addresses.

The resultant effect of this has been that members are not receiving important e-communications from the Society.

If you have recently changed your email address, it is important that you contact us so that we can issue e-communications to you.

You can update us by emailing records@lawsoc-ni.org

STEP Northern Ireland Conference 2010

An essential updating and planning conference for all private client advisers

Speakers
Emma Chamberlain TEP, Pump Court Tax Chambers
Chris Whitehouse TEP, 5 Stone Buildings

A review of all the 2010 legislative changes and a consideration of their implications.

• How to mitigate the 50% additional rate of income tax and plan for capital disposals in the light of the CGT rate changes.
• What scope still exists for lifetime tax planning and to what extent are trusts still a valuable planning tool.

These are some of the issues that will be considered along with a review of all the recent case law.

Accredited for 6 hours CPD
STEP / Solicitors Regulation Authority/Bar Council/ILEX

For further information contact Kerri Roffey on +44(0)20 7340 0522 conferences@step.org

STEP Diploma in Trusts and Estates (Northern Ireland) coming soon
To register your interest in this programme please email cltstep_registrar@centlaw.com
Recall of prisoners on licence

The Offender Recall Unit (ORU), which is part of the Department of Justice, is responsible for recalling offenders back to custody for breach of licence conditions.

The ORU was established following the introduction of the Criminal Justice (NI) Order 2008. As well as establishing release on licence to every prisoner who receives a sentence of twelve months or more, the Order provides the Department of Justice with a discretionary power to revoke a licence and recall an offender to custody to protect the public.

The recall provisions are contained in A.28 of the Order and are broadly similar to the revocation powers contained in the Life Sentence (NI) Order 2001 in that they require the Department of Justice to first receive a recommendation to recall from the Parole Commissioners in all but urgent cases, before revoking a licence.

The Order also places a duty on the Department of Justice to refer the recall decision to the Parole Commissioners for review, after an individual has returned to custody. It requires the Department of Justice to explain to the prisoner why they have been brought back and how they can challenge the decision.

The effect of these provisions is that the return to custody is immediate, and there is no opportunity for an individual to plead their case, before returning to prison. Once recalled, an offender is liable to serve the remainder of their sentence in prison.

The recall powers apply to prisoners serving either an indeterminate custodial sentence (ICS) or an extended custodial sentence (ECS), which are available for specified and serious sexual or violent offences committed on or after 15 May 2008. The provisions also apply to determinate custodial sentences (DCS), which are available for any offence committed on or after 1 April 2009 that attracts a sentence of twelve months or more. This sentence replaces the custody probation order, which is no longer available for offences committed on or after 1 April 2009.

The length of licences for both DCSs and ECSs is determined by the court at the point of sentencing. The combined length of custody and licence forms the overall sentence. However, in the case of a prisoner serving an indeterminate custodial sentence, the licence is effective for the rest of their life, unless an application has been considered by the Parole Commissioners to rescind the licence after 10 years.

Recall is the ultimate sanction that can be deployed in the event of non-compliance or deteriorating behaviour leading to increased risk, to protect the public and prevent further crime. The Probation Board has provided Probation Officers with guidance on the new recall process; interim standards on breach and initiating recall; and a template report to be completed with each application to recall.

The ORU will take decisions executively on the basis of a recommendation to recall from the Parole Commissioners. In urgent cases, for example where there is an imminent risk of harm to the public, the ORU can revoke a licence without a recommendation from the
Commissioners. Once revoked, the offender becomes a person unlawfully at large until detained by police or the Prison Service.

The ORU is responsible for managing the review process. Principally the ORU must refer the decision quickly to the Parole Commissioners. ORU’s role, however, extends to making sure that the prisoner is told why they have been recalled; of the right to appeal and how to do that; and that they can appoint their own legal adviser. The offender should be provided with a letter from the ORU giving reasons for recall, when they are arrested. Prison staff will tell the prisoner why they have been recalled and explain the referral process and how they can plead their case. ORU will refer recall decisions to the Parole Commissioners for review within five days of an offender’s return to custody.

The process for reviewing recall decisions is set down in The Parole Commissioners’ Rules (NI) 2009 (SR 2009 No. 82). On referral, Commissioners will set the timetable for reviewing the case. This will dictate the speed of the review and fix deadlines by which time the ORU and the prisoner should submit written reports to support their case.

ORU will make the case for recall through the co-ordination and provision of reports from probation about the offender’s behaviour in the community and where appropriate, reports from the police about the index offence. In some cases, the dossier of papers will include reports from the prison service detailing the offender’s behaviour since the recall. As part of the process, the recalled prisoner will see the recall dossier; have the opportunity to respond and to plead their case by challenging the material; appoint a legal representative and may have the option of an oral hearing where it is felt appropriate. Prison staff will pass to the prisoner a copy of all the papers, together with an additional set for the prisoner’s representative.

The test for release is set out in A. 28(6) of the Order. Commissioners must not direct immediate release of a recalled prisoner serving a public protection sentence, unless satisfied that imprisonment is no longer necessary for the protection of the public from serious harm. In any other case, the Commissioners must not release the prisoner on licence unless satisfied that imprisonment is no longer necessary for the protection of the public. In addition, in those cases, Commissioners must fix a date for future release or further review. The direction of the Parole Commissioners is final; there is no right of appeal.

ORU involvement with the case ends when the Commissioners’ direction is circulated to probation and prison service colleagues.

ORU can be contacted at offenderrecallunit@dojni.x.gov.uk or telephone 028 9052 7551.
Annual Council Dinner

The Annual Council Dinner took place at Belfast City Hall on Friday 24 September 2010.

From left: Brian Speers, Junior Vice President & Pat Convery, Lord Mayor of Belfast.

From left: Al Hutchinson, Police Ombudsman & Ian Paisley Junior, MP.

From left: John Comerton, Past President of the Law Society & Colin Haddick, Past President and Council Member.

From left: Comgall McNally & Conor Houston.

From back: Gerry Doherty, President of Law Society of Ireland; Nicholas Green QC, Chair of Bar Council England and Wales; Jamie Millar, President of Law Society of Scotland; His Honour Tom Burgess Recorder of Belfast; Lord Chief Justice Sir Declan Morgan; Councillor Pat Convery, Lord Mayor of Belfast; Adrian Colton QC, Bar Council of Northern Ireland; John Larkin QC, Attorney General; Alan Hunter, Chief Executive of the Law Society of Northern Ireland; Lord Morrow; David Ford MLA, Minister of Justice; Linda Lee, President of Law Society of England & Wales; Kamala Lakhdir, American Consul; Norville Connolly, President of the Law Society of Northern Ireland and Presiding District Judge Fiona Bagnall.

From left: Fiona Donnelly; Alan Hunter, Chief Executive of Law Society of Northern Ireland; Anne Fenton; Norville Connolly, President of the Law Society of Northern Ireland and Tony Caher.
From left: Her Honour Judge Patricia Smyth, Ian Wimpress, Elizabeth McCaffrey & Justice Minister, David Ford MLA.

From left: Lord Chief Justice, Sir Declan Morgan, District Judge Ruth Collins, Frank MacElhatton and His Honour Judge Tom Burgess.

From left: Alban Maginness MLA & Brian Stewart.

From left: Master Charles Redpath & Sarah Witchell.

From left: Barry Finlay, Senior Vice President, Marian Killen and District Judge Copeland.

From left: Linda Johnston, Gerry McManus, Moira Neeson and Gerry Daly.

From left: Brigid Napier, Patricia Smyth and Cathy McKay.

From left: Judge John Curran, Antoinette Curran & Andrew Carmson.
Land Registry – e-registration training

The Land & Property Service (LPS), Land Registration section has indicated to the Society that it has written to all firms advising that training on using the e-registration system is available.

Solicitors firms who would like to arrange training should contact the Landweb Direct and e-registration helpdesk to reserve a place in the training schedule.

Contact should be made through the following channels: enquiries.landregistration@dfpni.gov.uk and / or tel: 028 9025 1700 where members of the customer training team will be available to assist with your enquiry.

Training sessions take place on Tuesdays and Thursdays from 9.30am to 1.30pm and 12 people per session can be accommodated. Initial training is limited to two staff members per firm at each session in order to ensure as many firms as possible can be trained by December 2010. Additional and refresher training sessions can be provided for both legal and administration support staff on request, but this will be dependent on availability and only after the obligation to accommodate first time trainees has been satisfied.

Solicitors are asked to ensure that they select members of their staff for training who will be available on their allocated date and will be using the e-registration system. In the past some firms who have confirmed training sessions have failed to attend with the result that others are denied the opportunity and the LPS staff resource is not used to its optimum level.

For the convenience of e-registration users comprehensive notes are available on the website www.lrni.gov.uk (see library tab) on how to use the system.

Solicitors will remember that the Land Registry fees order, introduced on 1 June 2010, provides lower fees for certain matters provided they are processed using the e-registration system. In addition, many lenders are making continued panel membership dependent on the use of e-registration.

New website for buying your ACEmap®

It’s ironic to say but in the past it was easy to get lost when trying to buy an ACEmap® online. The website that was once hosted by Ordnance Survey of Northern Ireland® (now Land & Property Services) has been revamped and re-launched at http://maps.osni.gov.uk/

Having listened to feedback from customers, gone is the clunky and confusing navigation. The process is simple, intuitive and certainly worth another go if you were put off in the past!

ACEmaps are often needed to support planning applications, property conveyancing or land registration. If your area of expertise falls within these categories then it is worth exploring the new facility. For example if you need a map of a specific address for a conveyance then visit http://maps.osni.gov.uk/. Click on the link to create an ACEmap enter the address and after a few clicks a map will be generated for you on-screen.

Advantages to buying online

- Save time on travel – no need to wait for postal delivery or queue in traffic
- Instant Delivery – maps purchased online are downloaded straight on to your computer and can be stored for future reference
- Easier to use – the navigation has been simplified and buying your ACEmap® online has never been easier

• Flexible – you can control scale, size, orientation to tailor the map to your exact requirements

The website also gives access to a comprehensive range of OSNI® mapping products which cater for the requirements of both the professional and enthusiast.

For further information on using the OSNI Online Map Shop contact the Support Team.

Email: feedback@dfpni.gov.uk
Telephone: 028 9038 8488 or 028 9015 5775

* Ordnance Survey of Northern Ireland® (OSNI®) & ACEmap® are registered trade marks for mapping produced by Land & Property Services, Department of Finance & Personnel (NI)
We can help you move from a slow, estimated system of billing for calls to a fast, cost efficient system. Our solution combines Cisco IP phones with a call logging application called 'Calls Matter'. This solution was designed specifically for law firms and provides:

- Instant, accurate call reports
- Time savings due to automated administration
- Better client satisfaction with fewer bill queries
- Ability to search calls by Client or Matter

Leaf Consultancy is a Belfast based IT company with a long history of working with the Legal profession. We are also Cisco UC Express Specialists and can advise on how you can avail of zero percent financing from Cisco. So contact us for information on what this system could mean for your firm.

Leaf Consultancy Ltd, 4th Floor, The Warehouse, 7 James Street South, Belfast, Co. Antrim BT2 8DN
T: 028 9089 7650  F: 028 9089 7651  E: sales@leafconsultancy.com
www.leafconsultancy.com
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 17 January 2011
- Monday 31 January 2011
- Monday 14 February 2011
- Monday 28 February 2011
- Monday 14 March 2011

**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 hours (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:   Friday, 17 December 2010
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**

Name: ____________________________

Firm: ________________________________

Address: _____________________________

___________________________________

Email Address: ____________________________

Tel. No: ____________________________ I enclose remittance of £_______
Challenging a homeless decision

In determining whether an applicant has FDA status, the Housing Executive must consider the following four hurdles:

1. **Homelessness/Threatened with homelessness** - Under A. 3 of the 1988 Order, a person can be regarded as homeless if they are actually homeless, threatened with homelessness; or deemed homeless because of their living conditions.

2. **Eligibility for assistance** – A. 7A of the 1988 Order sets out that certain persons from abroad, subject to immigration control and persons guilty of unacceptable behaviour will be ineligible for assistance. The word ‘guilty’ in this sense does not mean that the person has been convicted of an offence.

3. **Priority Need** – According to A. 5 of the 1988 Order, an applicant will be in priority need if they are pregnant; have dependent children residing with them; are vulnerable; are threatened with homelessness because of a flood, fire or other disaster; there is a risk of violence; or they are a young person at risk of sexual or financial exploitation.

4. **Intentionality** – The intentionality test in A. 6 of the 1988 Order is intended to investigate the reasons why a person has become homeless.

### Reviewing a homeless decision

From 1 December 2010, the first step in challenging a homeless decision will be to request that the Housing Executive carry out a review in accordance with the new Arts. 11A and 11B of the 1988 Order. An applicant who is dissatisfied with their homeless decision will have the statutory right to request a review if the decision relates to:

- a) The applicant’s eligibility for assistance;
- b) The duty owed to the applicant under Arts. 10 and 11 of the 1988 Order.

A. 11B (4) goes on to say that where the review decision is against the interests of the applicant the Housing Executive shall notify the applicant of the reasons for their decision. The applicant will also be informed of their right to appeal to the county court on a point of law, (A. 11B (5)).

### Appealing to the county court

Where the applicant is dissatisfied with the review decision or has not been notified of the decision within the prescribed time period then they may appeal to the county court on a point of law arising either from the review decision or the original decision, (A. 11C (4)). Upon appeal, the court may decide to confirm, quash or vary the decision, (A. 11C (4)).

The time limit for lodging an appeal is 28 days from notification of the review decision or of the date on which notification should have been given. An appeal can be brought outside that time...
limit only if the court is satisfied that there is a good reason for doing so.

Under A. 11C (5) the applicant may be able to get temporary accommodation pending the outcome of the appeal; if the Housing Executive was under a duty to secure accommodation for the applicant under Arts. 8(1) or 10(3) of the 1988 Order, ie duty to provide temporary accommodation where the applicant may be homeless and in priority need or where there is a priority need but became homeless intentionally.

Where the applicant is dissatisfied with how the Housing Executive exercises its power under A. 11C(5) they may take a second appeal to the county court against that decision, (A. 11D(2)). In this instance, the court may confirm or quash the decision, (A. 11D (4)).

**Housing Rights Service** will be producing a detailed guide on the new review and appeal system prior to its implementation. If you would like to pre-order a copy of this guide at a special price of £7.50 (normal price £9.95) please contact Adele Pound on 028 9024 5640 or email adele@housingrights.org.uk quoting ‘The Writ’.

Housing Rights Service will also be providing specialist training to the legal profession on the new appeals procedure. This will be eligible for CPD hours.

A one day course on “Challenging Housing Decisions” will be held in Derry and Belfast on 23 and 25 November, respectively. For further information go to [http://www.housingrights.org.uk/learning-a-events/122-challenginghousingdecisions.html](http://www.housingrights.org.uk/learning-a-events/122-challenginghousingdecisions.html)

To register your interest contact Geraldine at Housing Rights Service on 028 9024 5640.
As an experienced Microsoft Partner specialising in SharePoint Technologies over the last 9 years we have gained considerable expertise and insight into where Microsoft SharePoint 2010 can be best used within professional practice. Previous examples of our work within legal services include:

- **Practice Extranet**: Deploy a custom working area for your clients to view and contribute information from anywhere securely.

- **Management Information**: Link existing information from other systems such as WIP, Accounts and Time Recording and present it to staff and clients alike in a format that is understandable.

- **Compliance**: Quickly comply with standards such as ISO27001 and Lexcel making your practice more attractive to potential clients who want to work to such standards.

- **Case/Document Management**: Automate standard documents, processes and forms and securely store them in a central repository that is fully audited and managed in line with your specific compliance rules.

- **Search**: Find related information in emails, documents and reference materials stored across the practice in seconds.

- **Hosted in the Cloud**: SharePoint doesn’t even need to be stored at your office and can be offered under a flexible monthly charge, saving money on servers, disaster recovery setup and on-going maintenance costs.

To see what Microsoft SharePoint 2010 could do for your practice, why not call us on **028 9092 3460** or email solutions@endeavour-is.com to arrange a free demonstration.
The Institute of Professional Legal Studies is offering a 6 week course in Private Tenancy Law & Practice.

Facilitators:  
Mr Charles O’Neill  
(Legal Adviser - NI Co-ownership Housing Association Ltd, author of the Law of Mortgages in Northern Ireland and Board Member of the Chartered Institute of Housing (NI)).  
Ruth Craig  
(Institute of Professional Legal Studies)

This course is aimed at landlords, tenants, their legal advisers, letting agents, statutory bodies – in short all who are in any way involved in the private rented sector in Northern Ireland.

<table>
<thead>
<tr>
<th>Date</th>
<th>Module</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday 14 March 2011</td>
<td>Module 1</td>
<td>The Private Tenancies Order and the Rent Order Part 1</td>
</tr>
<tr>
<td>Monday 21 March 2011</td>
<td>Module 2</td>
<td>The Private Tenancies Order and the Rent Order Part 2</td>
</tr>
<tr>
<td>Monday 11 April 2011</td>
<td>Module 3</td>
<td>Preparing to let a property</td>
</tr>
<tr>
<td>Monday 18 April 2011</td>
<td>Module 4</td>
<td>Negotiating and drafting a tenancy agreement</td>
</tr>
<tr>
<td>Monday 9 May 2011</td>
<td>Module 5</td>
<td>Standards in rented property – unfitness / disrepair / HMO</td>
</tr>
<tr>
<td>Monday 16 May 2011</td>
<td>Module 6</td>
<td>Matters arising during a tenancy and ending a tenancy</td>
</tr>
</tbody>
</table>

Time: 6.00pm – 8.00pm

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

Cost: £480 for the complete course (6 evenings) or £80 each evening (please tick which you wish to attend)

Successful completion of the entire course will lead to a Certificate in Private Tenancy Law & Practice from the Institute

12 CPD hours are awarded for attendance at the entirety of this course, including 2 hours Client Care/ Practice Management

Private Tenancy Law and Practice

Name: ____________________________________________

Firm/Organisation: ____________________________________________

Address: ____________________________________________

Email Address: ____________________________________________ I enclose remittance of £ ________

Tel. No: ____________________________________________
New online services go live

On 31 August the Northern Ireland Courts and Tribunals Service introduced two new online services, ICOS Case Tracking Online and ICOS Accounts Online.

ICOS Case Tracking online
This free online service provides solicitor firms with secure access to information relating to civil, criminal and family cases in which they are currently representing one of the parties to the proceeding.

The information available includes:

- case summary
- participants
- orders sought
- appeals
- court orders
- court appearances
- legal aid information
- court results
- court listings
- applications
- key events
- fee information

ICOS accounts online
This service will enable ICOS prepaid account holders to manage their ICOS account online. Users will be able to view account balances, print or download account statements or top up their account online using a debit or credit card.

Both services are available through the website www.courtsni.gov.uk seven days a week from 6am to midnight, together with detailed user guides.

To help users get the most out of these new services the NICTS are running training sessions during October and November. Attendance at these will qualify for 1 hr of CPD. If you are interested in attending a training session please contact John Black at Business Development Group on telephone number 028 9072 8830.

To access ICOS Case Tracking online and ICOS accounts online

- Go to www.courtsni.gov.uk
- Click on the Login/Register link
- Log in using your assigned username and password (these login details must be the login details previously assigned to you by NICTS. If you do not know these details please contact the Business Development Group on 028 9072 8830)
- Go to the online services page (under the Services section)
- Click the service you require
- Click on the launch button for the selected online service
- Enter PIN

Existing online services
These two new online services are in addition to our existing online services:

- Public Registers Online
- Small Claims Online
- Copy Orders Online
- Public Court Lists Online

If you require further information on the new services or any of our existing online services please contact Business Development Group on 028 9072 8830.
The Institute of Professional Legal Studies, in conjunction with the College of Law London, is offering a six session course in Business Law.

The course will use a number of interactive case studies and drafting exercises.

<table>
<thead>
<tr>
<th>Monday</th>
<th>E-Commerce</th>
<th>Monday</th>
<th>Commercial Contracts and Remedies</th>
<th>Monday</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.30 – 4.00pm</td>
<td>• Establishing a Web presence</td>
<td></td>
<td>• Form Capacity and Privity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Compliance Issues</td>
<td></td>
<td>• Misrepresentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Contracting On-Line</td>
<td></td>
<td>• Content of a Contract, Discharge and Remedies</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **E-Commerce**
  - Introduction and Overview
  - Establishing a Web presence
  - Compliance Issues
  - Contracting On-Line
  - Running a Website

- **Intellectual Property**
  - Relevance of Intellectual Property Rights to a Corporate Lawyer
  - Assigning Intellectual Property Rights
  - Licensing Intellectual Property Rights
  - Selling a business, including Intellectual Property Rights
  - EC and UK Competition Law Issues.

- **Commercial Contracts and Remedies**
  - Formation of a Contract
  - Form Capacity and Privity
  - Misrepresentation
  - Content of a Contract, Discharge and Remedies

- **Remedies**
  - Limitation Periods
  - Equitable remedies
  - Restitution
  - Self-help remedies – ADR
  - Action for Agreed sum, Liquidated damages Indemnities and default interest

- **Agency/Distribution/Franchising**
  - The choice of marketing agreement
  - Distribution Agreements and Competition Law
  - Franchising Agreements

- **Time:**
  - 9.30am – 4.00pm

- **Venue:**
  - Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY

- **Cost:**
  - £550 for the complete course or £100 for each half-day session where available.
  - (please tick which you wish to attend)

Successful completion of the course will lead to a Certificate in Business Law.

Applications will be taken on a first-come first-served basis
(Places are limited to 25 people)

---

**Certificate in Business Law**

**Name:**

**Firm:**

**Address:**

**Email Address:**

**Tel. No:** ____________ I enclose remittance of £ _______
Sponsor Kevin O’Higgins, Dublin solicitor, by helping the Benevolent Association and be in with a chance to see Ireland –V– the All Blacks in November

Dear Colleague:

The demands on our Association are rising in almost direct proportion to the carnage that has taken place in our profession of late and to cover the greater demands on the Association, additional fundraising events are necessary.

Kevin O’Higgins will be running the Dublin City Marathon on October 25 and has designated our Association as his charity for the event. I would urge upon you to make a contribution to assist Kevin in his efforts of raising funds for our Association. Every little helps and every donation received will be put to a good cause. Please give as generously as you can in aid of Kevin’s efforts.

I need hardly remind you that if you give €250 or more it is a perfectly legitimate tax deduction. There is, however, another reason why you should consider going to this level. All those who contribute €250 or more will go into a draw for two tickets for the rugby match, Ireland v New Zealand, on Saturday 20 November, kindly donated by one of our Directors, William B “Billy” Glynn of Galway, recently elected Junior Vice President of the IRFU. Thank you and congratulations Billy!

Cheques should be made payable to Solicitors’ Benevolent Association and sent to the Association, care of Law Society, Blackhall Place, Dublin 7, DX 79 Dublin, or care of The Law Society of Northern Ireland, 96 Victoria Street, Belfast BT1 3GN, Northern Ireland, DX 422 NR Belfast (marked ref: Kevin O’Higgins Dublin City Marathon).

If you can help the Association in any way - such as the way Kevin is helping - you will always have our utmost co-operation in this regard.

Yours truly
THOMAS A MENTON
CHAIRMAN
SOLICITORS’ BENEVOLENT ASSOCIATION

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 NI Chest Heart & Stroke, please phone Alison in confidence on: 028 90 266 706
Write to us at: 21 Dublin Road, Belfast, BT2 7HB
or email: legacy@nichsa.com
Alternatively ask your solicitor for our legacy leaflet.
Technostress

Life in today’s world has given rise to a whole range of new phenomena and our vocabulary has expanded as certain new maladies have been identified. We are familiar with the concepts of desk rage and road rage and now a new name has been added: that of “Technostress”, the term to describe what happens to us when we suffer from information overload, brought about by all the technical wizardry designed to make our lives easier.

In the average day, one might expect to receive information from the radio and/or television, fax machines, telephones, voicemail messages, e-mail and the internet. This obliges us to interact with a whole range of machines and process vast quantities of new data. Moreover, this data is conveyed at a pace which scarcely allows one thinking time.

Technostress, or as authors Dr Larry Rosen and Michelle Weil in their book “Technostress: Coping with Technology@Work@Home@Play” describe it, “Multitasking Madness”, results when we attempt to cope with several tasks at the one time. Although from the outside, we may appear to be dealing with one issue, our brains are performing a juggling act to keep those other issues which require our attention active in our consciousness. The harder this juggling act becomes, so our performance levels decline. The more we get interrupted in the execution of one task, the harder it can be to pick up where we left off. Multitasking can lead to people feeling as though they are no longer in control, which is a major symptom of stress.

Other signs of the effects of multi-tasking are difficulty in concentrating; inability to remember things and difficulty in getting to sleep or relax for the unwelcome presence of too many thoughts churning around in your head.

Email appears to be responsible for a specific group of problems. Some people are reporting that in the process of embracing e-mail and its undeniable advantage of speed and immediacy, they find themselves becoming increasingly impatient when delays are experienced or in their dealings with other people. The process of copying e-mail documents is so relatively simple, a trend has developed in some institutions of distributing vast quantities of information to all and sundry, whereas in the past the time involved in duplicating the same data on paper would have made this impracticable. Hence, people are bombarded with information, much of which is not necessary. Email seems to be developing its own language and there is scope for further difficulty. Without visual or audible cues such as are given to us when we communicate either face to face or by telephone, the immediacy which hallmarks email can lead us into misinterpretation of one sentiment for another – eg one person’s attempt at humour might be misconstrued as a criticism and prompt a reply totally at odds with the original message.

The symptoms described above are likely to be experienced by the technophiles amongst us – those people who embrace new technology and the opportunities it presents. There is however another category of person who may be suffering from technostress, identified as the technophobe, someone who is struggling to come to terms with the technological revolution. When changes are imposed upon people without consultation or adequate training to adapt to those new changes, this can contribute to feelings of stress. Thus it is vital that firms ensure that their staff ideally have an input in the decision-making process before any new technology is introduced, and certainly receive appropriate training for its operation.

There are also the obvious physical problems involved with working with technology – skeletal problems associated with poor posture when working at a computer screen, eye strain, general stiffness and repetitive strain injuries, many of which can be compounded by stress.

There are several simple measures that can be taken to minimise technostress. These are:

- Dedicate a set time in your day for the task of replying to e-mail, faxes and voicemail and resist the temptation to respond to each new message the instant it arrives.
- Allow yourself to concentrate on one task at a time by turning off the ringer on your phone and fax and not checking your e-mail.
- If you develop the habit of writing down those tasks which are lurking in the back of your mind, you will lighten the load on your brain and this should help you to focus on the task in hand, or, at night, this should help in getting off to sleep.
- Before you send an e-mail to the entire staff, ask yourself: “Who really needs to know this?”
- Ensure that you look after your physical well-being by getting enough sleep, eating healthily and taking some form of exercise.
- Take short breaks away from your desk during the day and perform some simple stretching exercises.
- Try to maintain a balance in your life and ensure that you can have some time totally free of interruptions to pursue a leisure interest. Leave your mobile phone at home or switched off, take advantage of an answering machine and keep your holiday destination a secret.

LawCare is a registered charity offering health support and advice to the legal profession across the British Isles. It operates a free confidential helpline on 0800 279 6869 and also offers free (except for expenses) CPD accredited presentations and seminars on subjects relating to workplace stress.

www.lawcare.org.uk.
New salary survey outlines future job opportunities in NI

A comprehensive salary guide by a specialist recruitment agency in Belfast has revealed the depth of impact the recession has had on Northern Ireland, but also offers optimism for the year ahead.

Across many sectors, salaries have dropped by typically 5-15% and benefits have been capped or withdrawn completely, while redundancies have spread across virtually each business sector in the region, including the more robust markets of Accountancy and Legal. However the publication by Abacus Professional Recruitment also reveals that positive signs are starting to reflect a more stable labour market with more companies calculating fresh staff appointments.

"Many local firms are certainly more confident and outward looking. Recruitment is returning to their radar, although with justifiable caution. They are smartly managing a blended recruitment strategy by taking on temporary staff and appointing people on interim contract of perhaps 3-6 months. Importantly, the volume of permanent recruitment is rising as well and decisions are being made faster; both positive indicators for the future”; according to Alan Braithwaite (Business Director) at Abacus Professional Recruitment.

Impacts on markets
The Abacus survey provides an overview on each market plus guidance for companies and job seekers to prepare for the future if economic recovery is sustained. The full report can be downloaded on www.abacus.jobs but the main findings for sectors include:

- Accountancy – some equilibrium gained after periods of pay cuts and redundancies;
- ICT – comparably strong with some skill shortages evident and growth forecast;
- Legal – salary cuts of 10-20% experienced and minimal opportunity for newly qualified solicitors however specialist roles are still in demand;
- Banking – significant job losses and many bonuses withdrawn but next 12 months more positive which follows recent trends in London;
- Insurance – salary cuts experienced in a highly competitive arena but strategic demand for experienced personnel ongoing;
- General office roles – volume of temporary roles increasing but salaries squeezed;
- HR and marketing – regarded as early casualties in an economic downturn however employment opportunities starting to return.

Future guidance
The specialist consultants at Abacus have also offered some guidance to all parties. Companies should develop or review their ‘employer brand’ and re-discover how their business is perceived by employees and potential staff of the future.

"Certainly employers are wise to take stock and review how they can improve their appeal to prospective employees. It shouldn’t start when someone hands in their notice. Our consultation revealed that companies were eager to know if their brand had been impacted by redundancies and that is a refreshing consideration”, said Justin Rush (Business Director) at Abacus.

Future outlook for jobseekers
"Candidates presently in employment are starting to shift from ‘passive’ to ‘active’ status reflecting a slightly more positive outlook. Obviously the level of competition for employment is considerable and this is likely to continue. While a continued economic challenge certainly remains with public sector pressures and austerity measures en route, the commercial market is lifting. Therefore jobseekers should start preparing CVs, gaining career advice and perhaps develop an appropriate social networking profile to increase their visibility.”

For more information contact Alan Braithwaite, Abacus Professional Recruitment on 028 9031 3157 or alan@abacus.jobs
Case of HN

An Application by JR30 (HN) (A Minor) by his mother and next friend (HP) for Judicial Review

Mr Justice Treacy sitting in the High Court on 3 September 2010 declared that the Western Health and Social Care Trust acted in breach of its duty to carry out assessments and to provide services to the carers of disabled children.

The factual background to the case was initially contentious - however many of the disputed areas of fact were agreed between the parties as follows. The child in the case (HN) had a confirmed diagnosis of Autism Spectrum Disorder and ADHD. He had psychotic tendencies and an intense dislike of women. This dislike manifested in an intense hatred of his younger sister. HN and his younger sister had been placed on the child protection register as a result of the dangers that HN posed to both himself and to his younger sister.

The parents of the child were separated and HN's mother was his primary carer throughout most of his life. In 2008 a carer's assessment was carried out by a social worker. This assessment recorded that the mother’s caring role had led to her having a complete breakdown and that all areas of her health were affected. The report further detailed the urgent need for respite. Despite this the child’s mother heard nothing more for a period of four months when she received a letter from the Trust in March 2009 informing her that that there was no budget available to meet her assessed needs.

By the time the Trust had sent a response to the original carer’s assessment the family’s circumstances had progressed significantly. During late 2008 HN had made a number of threats to his sister and on Christmas Day 2008 he tried to hang himself in the family home. This resulted in HN being hospitalised in a child and adolescent mental health facility for a period of time with HN returning to his mother’s care at weekends. She was having difficulty coping with HN’s needs at the weekends and was referred to the Children’s Law Centre by the National Autistic Society.

The Children’s Law Centre wrote to the Trust on 29 January 2009 requesting a reassessment of both the carer’s assessment and the UNOCINI (Understanding The Needs Of Children In Northern Ireland) assessments which had previously been carried out in relation to the family. Despite several reminder letters no response was received to these requests for reassessment. In April 2009 a formal complaint was lodged by the Children’s Law Centre in relation to the failure of the Trust to respond to correspondence.

Mr Justice Treacy stated that in the period from 29 January 2009 to 15 May 2009, when the Children’s Law Centre were informed that the Trust hoped to be in position to reply to their correspondence, it was clear that no service was provided to the family to assist the family
in dealing with the problems that HN’s autism generated for him and his family during his weekends at home.

In referring to Arts. 17 and 18 of the Children (NI) Order 1995 he stated that applying these provisions to the case, it was clear that HN was a child in need and as a consequence the Trust had a general duty to safeguard and promote his welfare by providing a range and level of social care appropriate to his needs. The judge also said that the legislation envisages making social provision targeted at the family of a child in need because that family is recognised to be the best vehicle for securing the child’s welfare. He made a declaration that the duty on the Western Health and Social Care Trust imposed by A. 18 of the Children (NI) Order 1995 includes a duty to provide a range and level of personal social services to the children in need within its area and to the families and carers of those children in order to safeguard and promote the welfare of the children and the upbringing of those children by their families.

Mr Justice Treacy then looked at the Trust’s assessment of the child’s needs. He stated that the duty to carry out such assessments is a mandatory statutory obligation (subject only to the condition that the Trust is first satisfied that the child’s family are persons for whom it may provide services for under the Children Order). The Judge therefore concluded that the Trust had an unconditional statutory obligation to carry out the assessments which were requested in January 2009.

The court was informed by way of affidavit evidence that the Head of Service for Children’s Mental Health for the Western Health and Social Care Trust had acknowledged the receipt of the 2008 carers assessment but had stated in correspondence that the Trust had “no dedicated budget...for Children’s Mental Health and Disability Service to provide a service relating to children with Autism.”

The accuracy of this statement was contested by the Assistant Director of the Trust. He asserted that there was some confusion or misunderstanding on the part of the applicant and that the Trust had a specific budget for autistic children services but that any carer’s needs which are identified in carer’s assessments do not come from within its dedicated children’s autism budget but are funded, where possible, from the general budget available.

Mr Justice Treacy stated that the budget that a service comes from is entirely irrelevant to children with autism and their carers. He stated that the important thing from their perspective is that a service where it is assessed as being both necessary and urgent should be delivered in a timely way when it is needed. He further stated that in this particular case the Western Health and Social Care Trust had failed to deliver any service from any budget to meet the assessed needs of HN’s mother.

Mr Justice Treacy further added that once HN’s mother had requested a fresh assessment following HN’s attempt to hang himself that despite the fact that the Trust had an unconditional statutory obligation to conduct the assessment they had failed to reply to her request or to a series of further letters. Mr Justice Treacy said that “Given the crisis situation this family faced the failure to respond...was simply shameful.” He further stated that “What the trust has done in this case has been to relegate the carer’s position as something inferior or secondary to that of the autistic child...this was an incorrect approach to carer assessments.” In taking this approach the Trust failed to recognise that the needs of the carer, the child and indeed the family are interlinked.” Mr Justice Treacy then made a further declaration that the Western Health and Social Care Trust was in breach of its duty under A. 18a of the Children (NI) Order 1995 by failing to carry out assessments within a reasonable time following her request to do so on 29 January 2009.

Mr Justice Treacy acknowledged that a considerable body of evidence was provided to show that the failure to respond to the request for the carer’s assessment and a UNOCINI report for the family in this case is only one example of the systematic failure of the Trust to conduct such assessments in its area. He commended the Children’s Law Centre for their diligence in bringing together such a comprehensive and compelling picture of the scope and intensity of the difficulties in this field.

Mr Justice Treacy in looking at the broader issues of this case referred to a letter of 23 July 2009 from the Trust which gave information about carer’s assessments. This letter stated that from 1 April 2007 until 23 July 2009 there had been 73 requests to carry out such assessments of which 32 had been dealt with and 41 had not. In respect of those 32 assessments, 54 unmet needs had been identified and 13 of those 54 had been addressed, leaving 42 outstanding. Reference was also made to a letter which had been sent to 41 families indicating “a lack of current capacity to carry out carer’s assessments.”

Mr Justice Treacy then made a declaration that the Western Health and Social Care Trust acted in breach of its duty under Article 18a of the Children (Northern Ireland) Order 1995 by failing to carry out assessments within a reasonable time of carers of disabled children who had requested such an assessment during the period 2007-2010.

Copies of the judgment (TRE7929) in full are available from www.courtsni.gov.uk

For further information please contact:

Eamonn McNally
Mental Health Solicitor
Children’s Law Centre
Philip House
123 -137 York Street
Belfast
BT15 1AB

Tel: 028 9024 5704
Email: eamonnmcnally@childrenslawcentre.org
Hepburn fans enjoy a girls’ day out at QFT to raise funds for Children’s Law Centre

1950s screen siren Audrey Hepburn brought a touch of old-school glamour to the Queen’s Film Theatre, Belfast, on Saturday 14 August 2010 for a unique VIP screening of Breakfast at Tiffany’s in aid of the Children’s Law Centre.

Glamorous ladies from across the province dusted off their best Audrey dress, pearl set and sunglasses and came along to the QFT to enjoy an afternoon of chocolate fountains, a drinks’ reception and a screening of the 1961 film classic.

The event in aid of the Children’s Law Centre, a charity organisation offering children and young people information on their rights and education on how the law relates to them, delighted the ladies and saw everyone in good spirits in what was a fantastic fundraising extravaganza.

Victoria Graham, Fundraiser, Children’s Law Centre commented: “We are delighted with the support for the girls’ day out event in aid of the Children’s Law Centre. The charity does such invaluable work in supporting the young people of Northern Ireland and educating them on important issues which will affect them throughout their life but we rely on the generosity of the public to help us fund this work. I would also like to take this opportunity to thank Charles Hurst Peugeot, the event sponsor, without whose financial assistance we would not have been able to host today’s event.”

Children’s Law Centre staff at the Children’s Law Centre ‘Breakfast at Tiffany’s’ Film fundraising event at the Queen’s Film Theatre.
Thoreau lamented that:

“Most men (and women) lead lives of quiet desperation and go to the grave with the Song still in them”.

And even Martin Luther opined:

“As long as we live, there is never enough singing”.

Our Law Society Choir, sponsored by Lawlink NI Law Searchers, will be hosting a unique Carol Service on the 14 December 2010 at St George’s Church, High Street, Belfast, with the proceeds going to the Make a Wish Foundation and we cordially wish to invite our colleagues, friends, family and supporters to join us on that evening.

The Choir was established earlier this year and there has been an overwhelming response from the profession, from colleagues who wished to become fully involved in the music, to those who contacted us to pass on messages of support.

Our members had different motivations for signing up, whether it was that they hadn’t sung for many years, or were relatively inexperienced but always wanted to sing, to those who are more experienced vocally but wanted to join up as a way to meet other colleagues away from work schedules, in a stress free zone.

The Choir’s foundations are now firm and we are indebted to the excellent accompaniment of Linda Aitcheson (SEELB Legal) and to the enthusiasm and passion of Michael Clendinning, our first Musical Director, who recently told us:

“Despite our short time together, our singing has become quite assured and I have no hesitation in predicting that our first public performance, our Carol Service, on December 14, will be an unqualified success.”

It has been a busy few months for the Pro Bonos and indeed 2011 already promises an exciting programme of events. It is a tremendous pleasure to have Lawlink NI as our sponsor for the coming year and its assistance has been invaluable.

More details of the Carol Service will be released at a later date. However, if anyone would like additional information please e mail Joe Rice or Susan Brennan at lhitchen@johnjricesolicitors.com or telephone 028 9031 3888.

New members are always welcome.
Working beyond the borders in Sierra Leone

In March 2010 I spent three weeks in the vibrant and chaotic city of Freetown, Sierra Leone. Located on the West coast of Africa, Sierra Leone is a nation that has been ravaged by ten years of civil war making it one of the poorest countries in the world. Eight years on the country is still facing immense challenges lacking many of the necessary resources to develop.

In Freetown I worked as a legal adviser for a charity called ‘The Inter-African Committee against Harmful Traditional Practices’ (IAC); a small, grass roots organisation founded in 1999 to help rebuild and improve Leonean society in the aftermath of the war. My role was to advise on one of the darker aspects of Leonean society: Female Genital Mutilation.

Leoneans traditionally consider this practice to be a rite of passage enabling teenage girls to become women and join the local ‘secret’ women’s society. Over time there has been an erosion of traditional principles so it is now not uncommon for a girl as young three to be circumcised. No anaesthetic is applied and the procedure is performed using crude instruments such as penknives. The result is excruciating pain and lifelong medical complications.

The Leonean government have recently introduced new legislation that aims to increase the protection afforded to women and children within Leonean society. Domestic violence, rape, child abuse and harmful traditional practices are just a few of the issues to be tackled. Local charities such as ‘IAC’ lack the funding and resources to obtain legal advice on these new reforms and therefore find that they are unable to make full use of these new legislative provisions. Some attempts by non-legal personnel to interpret the law have resulted in confusion and resentment towards the legislation. Lawyers are therefore essential to the progression of charitable work within Sierra Leone to ensure that the strategies employed by them align with the law.

Whilst the subject matter was harrowing and the work both physically and emotionally draining, it was a joy to see the positive impact lawyers can have beyond our own borders. I would like to thank the members of the County Antrim Grand Jury Bursary Committee for the generous financial support without which this project would not have been possible.

We are grateful to Adam Kirkpatrick of Berkeley White Solicitors for this contribution. Adam can be contacted at adam@bwslegal.com

www.interafricancommitteesl.com
Tripartite weekend

During the weekend of 18 June this year, a number of Committee members of the Belfast Solicitors’ Association were guests of the Dublin Bar Association at the Annual Tripartite Weekend which takes place between the Belfast Solicitors’ Association, the Liverpool Law Society and Dublin Bar Association.

This year’s event in Dublin commenced with a reception at the Mansion House organised by the Dublin Bar Association with the Lord Mayor Emer Costello. At the reception the BSA Chairman, Mr Simon Crawford, presented the Lord Mayor with a copy of the BSA’s 65th anniversary commemorative book. Following the visit to the Mansion House, a tour of the Dail was arranged including visits to both the Senate and the Dail Chamber and also particularly to the Visitors’ Bar!

Following this a dinner was organised at the University Club on St Stephen’s Green where the participants from Belfast, Liverpool as well as a number of members from the Dublin Bar Association, spent an excellent social evening.

The next day matters started off with a proposed tour of Farmley House in Phoenix Park. However, when we turned up it emerged that apparently Farmley House were awaiting more distinguished visitors from the American Embassy and although we did not have the benefit of a tour of the house, a very pleasant two hours were spent in the gardens attached to this Irish Government residence.

Lunch was provided at the Guinness factory which included a tour of the factory and as much Guinness as you could consume and the evening and weekend was rounded off by dinner and a show at the famous Johnny Fox’s bar in the Wicklow Hills where some superb Irish Dancing was on display, including a terrific piece of dancing by the Dublin Solicitors’ Bar Association Chairman, John O’Malley!

The participants from Belfast and Liverpool had the most wonderful weekend and were the beneficiaries of generous hospitality on the part of the Dublin Solicitors’ Bar Association and also the beneficiaries of the most wonderful summer weather.

Our thanks are extended to the Dublin Solicitors’ Bar Association for the weekend and preparations are now in hand for next year as it is Belfast’s turn to host both Liverpool and Dublin.
## Seminar list

<table>
<thead>
<tr>
<th>Date</th>
<th>CPD</th>
<th>Topic</th>
<th>Speaker</th>
<th>Time</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 October 2010</td>
<td>1</td>
<td>“Immigration Law and Procedure”</td>
<td>Fionnuala Connolly BL</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£40 Non-members</td>
</tr>
<tr>
<td>21 October 2010</td>
<td>1</td>
<td>“Commercial Leases”</td>
<td>Ian Huddleston, McGrigors, Solicitors</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£40 Non-members</td>
</tr>
<tr>
<td>4 November 2010</td>
<td>1</td>
<td>“Pre-Nuptial Agreements and Matrimonial Settlements in a Bankruptcy Situation”</td>
<td>Master Redpath</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£40 Non-members</td>
</tr>
<tr>
<td>18 November 2010</td>
<td>1</td>
<td>“Credit Hire”</td>
<td>Colin Mitchell</td>
<td>1.00 – 2.00pm</td>
<td>£20 members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>McCartan Turkington Breen, Solicitors</td>
<td></td>
<td>£40 Non-members</td>
</tr>
<tr>
<td>2 December 2010</td>
<td>1</td>
<td>“Conciliation Procedures Present and Future”</td>
<td>Penny Holloway, Labour Relations Agency</td>
<td>1.00 – 2.00pm</td>
<td>£20 Members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£40 Non-members</td>
</tr>
</tbody>
</table>

All lectures will be held at The Edge, May’s Meadow, Laganbank Road, Belfast.

Coffee and sandwiches will be available from 12.30pm and the lectures will start at 1pm unless otherwise indicated.

Cheques should be made payable to ‘BSA’, c/o The Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.

---

### BSA AUTUMN CHARITY FUNDRAISER

Take a bus journey through the heart of this rock and roll city. Sit back, relax and enjoy tunes and tales from Them and Van Morrison, by way of awesome guitar players, traditional and folk, to punk rock and Hollywood soundtracks. Start with a tour of the iconic Ulster Hall, then hop on the bus and immerse yourself in the landscape that inspired classic Van Morrison songs. Discover Belfast’s diverse musical giants from Ruby Murray to Gary Moore and Stiff Little Fingers. Finish up at the Oh Yeah Music Centre, Cathedral Quarter - an exciting music hub where today’s talent thrives.

**Saturday 6 November 2010 @ 11 am from Ulster Hall finishing at Oh Yeah, 12.30pm.**

**Tickets - £20.00 per person to include musical tour and light lunch afterwards with a glass of wine in Belfast’s Cathedral Quarter**

Availability is limited and early booking would be preferable to secure your place.

Please contact the BSA administrator to reserve your place - briege@belfast-solicitors-association.org

Cheques should be made payable to ‘BSA’, c/o The Administrator, Suite 7, Merrion Business Centre, 58 Howard Street, Belfast BT1 6PJ.
“Hole in one”

The BSA Annual Golf Outing took place at Malone Golf Club in May.

The weather conditions were horrendous and it really was a case of four seasons in one day!

However, it was not the weather that made the day memorable but the fact that there was a hole in one.

John McCavanagh who was playing with John Gordon of Napiers secured a hole in one on the 12th hole with a magnificent 7 iron tee shot.

It was a remarkable achievement given the very hostile weather conditions and it is believed to be the first hole in one at the BSA Golf Day since Stephen Andress secured one in 1986.

The overall competition was won by Peter Lynch of Reid, Black & Company and second prize went to Johnny Black, also of Reid, Black & Company. Johnny also achieved the longest drive at the 18th hole.

The visitors’ prize went to the Consulting Engineer, Robert Hamilton.

The BSA would like to thank everyone who supported the Golf Day and particularly our sponsors who generously donated prizes, namely Malmaison Hotel and TM Lewin which has just opened its new store in Victoria Square, Belfast.

We look forward to seeing everyone again in May 2011.

More details will follow in the January/February edition of ‘The Writ’.

If you would like to know more or have any queries please contact Briege on info@belfast-solicitors-association.org or phone 028 9058 5974.
NIYSA CHARITY QUIZ
in association with RB HUNTER

PROCEEDS IN AID OF
THE NORTHERN IRELAND CANCER FUND
FOR CHILDREN
www.nicfc.com

WHERE?  McHUGH'S BAR, BELFAST
WHEN?  THURSDAY 11 NOVEMBER 2010
TIME?  Registration from 7.00pm
(Drinks and nibbles provided)
Quiz commencing at 7.30pm

ENTRANCE FEE
£5.00 per head with a maximum of five members per team

HOW DO I BOOK?
Individuals or Team Captains* should send their completed Entry Forms together with the appropriate entry fee no later than Thursday 4 November 2010 to:
NIYSA, c/o Caithriona Flanagan, Cleaver Fulton Rankin Solicitors, 50 Bedford Street, Belfast, BT2 7FW.

*Team Captains submitting an entry form on behalf of a team can send a cheque/postal order made payable to the NIYSA and should name all team members. Individual entries should pay by cash and should also state proposed team members.

NIYSA Charity Quiz Booking Form:

NAME:  
COMPANY:  
ADDRESS:  

TELEPHONE (WORK):  (MOBILE):  

TEAM:
(1) CAPTAIN  
(2)  
(3)  
(4)  
(5)  

CONTACT NO:  

KEEP UP TO DATE WITH NIYSA EVENTS AT
OUR WEBSITE www.niysa.com
JOIN US ON FACEBOOK

AGM 2010-2011
The NIYSA AGM was held on the 18th June 2010 at Law Society House, Belfast and the new Committee elected for 2010-2011 are as follows:

Chair
Ciaran Fegan  GRAHAM NI
Vice-Chair
Conor Houston  John J Rice & Co.
Treasurer
Maria McCloskey  Napiers
Secretary
Michael Graham  Cleaver Fulton Rankin
CPD Co-ordinator
Lorraine Keown  McCullion Keown
Membership Secretary
Catriona Flanagan  Cleaver Fulton Rankin
Committee Member
Laura Baker  Forde Campbell LLP
Committee Member
Charlene Dempsey  Trevor Smyth & Co.
Committee Member
Glenn Watterson  Mills Selig
IPLS Representative
Leonora Rice  Boyd Rice & Co.
Mage Representative
Colin O’Kane  John McCaffrey & Co.
Immediate Past-Chair
John Greer  Bank of Ireland

Save the date!
UPCOMING EVENTS
• Practice Management Seminar 12.30 – 4pm, 19 November 2010, Law Society
• Criminal Law Lectures 4-6pm, 9 November 2010, Law Society
• European Young Bar Association Spring Conference Belfast, March 2011

Journal of the LSNI
September/October 2010

Keep up to date with NIYSA events at
our website www.niysa.com
Join us on Facebook
In March 2010 I had the honour of representing the European Young Bar Association (EYBA) at the European Parliament, Brussels at a meeting organised in co-operation with the Associazione Italiana Giovani Avvocati (AIGA) and hosted by Italian MEP, Erminia Mazzoni, entitled “Young Lawyers exchange views on the creation of a European Judicial Culture”.

The meeting brought together young lawyer representatives from across Europe and was chaired by Jonathan Ames, Editor of the European Lawyer Magazine.

The Stockholm Programme was established by the EU Commission and it has set out a vision for creating a ‘European Judicial Culture.’ As the EU has expanded and developed, cooperation between legal systems and cultures has been one of the few areas of life in Europe that has not been fully utilised.

I was privileged to formally address the meeting on behalf of the EYBA of which the Northern Ireland Young Solicitors (NIYSA) are keen and active members. I outlined to the delegates the role and work of the EYBA. Central to my submissions was that the EYBA is an established and well regarded network of young lawyers who are willing and able to advance these discussions through our organisation and in collaboration with others.

Discussion centred round the actual meaning of a ‘Judicial Culture’ and it is fair to say, that it is very difficult to define. There is obviously a political argument surrounding whether this relates to creating a single European legal system with a ‘European lawyer’ or whether it is about greater co-operation between EU states on legal affairs. In essence, the very definition of a ‘judicial culture’ goes to the heart of what we want the EU to be.

It was agreed by all present, that the meeting was a first step, in bringing together young lawyers to discuss ideas and to create a network of young lawyers across Europe. Our host, Ms Mazzoni MEP, stated that the first step will be to create a network of young lawyers to begin dialogue as to how we better share the common European legal space.

A representative from the European Commission developed this concept of an EU legal area by linking it to the principle of EU freedom of movement rights and gave examples of common rights for EU citizens across Europe e.g. gender equality, right to translator, etc.

This is an interesting perspective from which to examine the purpose of a European Judicial Culture – as an EU citizen, with freedom of movement within the EU, surely it is a right to know your legal rights and the process within other EU countries. A common “European code of practice & procedure” could be agreed to cover areas such as arrest and charge within each EU country. This will provide for real freedom of movement within the EU and development of greater liberty, security and dignity of citizens. It is a harmonisation process and will be delivered from the “bottom up,” driven by the future of the profession.

Indeed, looking at the area of criminal law, this is of course an area of huge development within the EU. There are many “transborder” crimes requiring co-operation between various legal jurisdictions within the EU and there will continue to be growth in areas such as extradition, cross-border evidence, etc.

The representatives of various Bar associations then shared their views and experiences on the difficulties of establishing this culture. The Swedish representative gave an illustration of the difficulty facing lawyers on a “European stage.” He pointed out that if you leave Sweden without being called to the bar, you lose your right to practise there. This raises the issue of mutual recognition of qualifications and the requisite standard that should be applied across Europe, perhaps with the formation of an actual “European lawyer” qualification as the ideal.

Of course, there are many obstacles in the way of forming a European judicial culture. One of the delegates summed up the problem eloquently when he compared the issues
facing the EU with that of a football game, in which you have “one field with too many balls.”

The first issue is therefore to identify the motivation of this culture – is it a single legal EU state or is it one which encourages greater co-operation between member states? There is then the real presence of a language barrier, which is a real and practical difficulty in forming a network of any kind and it takes resources to be able to deliver interpretative resources (such as the translators that were present at our meeting).

Finally, the issue of resource is key to developing any network or organisation. I pointed out to the meeting that in order to create and sustain a network, it takes resources. This is not just financial, but also administrative. For a network to work and develop it must have access to a secretariat and also in communicating with members. In conclusion, what came out of the meeting for me, was the fundamental importance for the national lawyer to know European law. This will involve an essential development of EU law education, common across the EU and with the potential of a future European Lawyer qualification.

In order to progress – we need to set out a document of agreed aspirations in relation to creating this EU judicial culture. This will assist in defining what a European Judicial culture is.

We then need to put this document of agreed aspirations out for discussion amongst young lawyers across Europe to try and create mechanisms to deliver upon these aspirations. The EYBA is committed to be at the heart of this project and are proud to have been at the inaugural meeting. We stand ready to help in the development of a stronger, young lawyer network to the mutual benefit of all young lawyers across Europe. The vision - One field, great team players.

We are grateful to Conor Houston for this article.

**Arts & Business - transforming the way you work**

New angles or fresh approaches can inspire creative thinking and transform the way you work!

The Arts & Business professional development programmes ‘Board Bank’ and “Young Professionals on Arts’ Boards” help participants see things differently. Funded by the Arts Council of Northern Ireland they get top talent from the private sector involved at the sharp end of the arts by joining the board of a cultural organisation, where they contribute business skills, energy and expertise – and get a lot in return.

Working with other high flying professionals in arts leadership can rapidly advance personal and career development, and is a highly rewarding way to engage with Northern Ireland’s fantastic cultural sector and to put something back into the community by delivering on personal and CSR goals.

Gaining experience as a non-executive director or trustee further develops key skills including: strategic management, leadership, influence, problem solving, creative thinking, confidence building, sense of citizenship, networks and relationships.

To date over 5,000 business people have been placed as advisors and board members throughout the UK, all seizing the opportunity to influence the cultural life of their community, connect with creative people, and enhance their leadership and governance experience.

Both ‘Board Bank’ and ‘Young Professionals on Arts’ Boards’ include an interview and consultation session, governance training, a matching service, networking events, and on-going support from a dedicated manager at Arts & Business. The ‘Young Professionals on Arts’ Boards’ programme is aimed at the UK's brightest corporate prodigies (aged 18-30), and in addition they also benefit from guidance by experienced mentors and a Board Buddy scheme.

For more information from a National Training Award Winning organisation on how you can become a non-executive Director, expand your horizons and develop your networks go to www. artsandbusiness.org.uk/northernireland or call the A&B office for a creative conversation on 028 9073 5150.

“The Professional Development opportunities made available to our staff at McKinly and Wright through A&B’s Professional Development Programme has created a new way of learning which has enriched our working lives. McKinly and Wright are proud to be associated with Arts & Business.”

Paul Johnston, Senior Partner, McKinly and Wright.

“My place on the Lagan Legacy board has given me the opportunity to contribute significantly to the business whilst polishing my own existing skills and even learning some new ones.”

Damian McParland, Partner, Millar McCall Wylie

Choose a **FREE TIE***
Worth £59. When you buy 2 or more shirts

Plus
A CHANCE TO WIN A T.M.LEWIN SUIT

Fill in your details below and present in our Howard Street or Victoria Square stores by 31st December 2010

First Name: ____________________________
Last Name: ____________________________
Company: ______________________________
Email Address: __________________________
Telephone Number: ______________________

Tick this box to join our mailing list and enjoy further privilege customer offers.

Terms and conditions
1. No purchase is necessary and entry into the prize draw is free.
2. To be entered into the draw, entrants must complete their details for contact purposes on this card.
3. The closing date for entry is 31st December 2010 and the winner will be notified by 21st January 2011 using the contact details provided.
4. The draw will take place at T.M. Lewin 6-7 St Cross Street Courtyard, London, EC1N 8AU.
5. Prize must be claimed following notification, by 31st March 2011. If the prize is unclaimed after reasonable efforts have been made to contact the winner, we will be entitled to dispose of the prize as we see fit without any liability to the winner.
6. There is no cash alternative available.
7. The draw is only open to residents of the UK, except employees (or members of their families) of T.M. Lewin & Sons Ltd.
8. The promoter is T.M. Lewin 106 Jermyn Street, London, SW1Y 6EQ

Exclusive offer for Law Society Members’
- Choose a free tie when you buy 2 or more men's shirts
- Save £10 when you spend £45 or more on womenswear

Present this voucher to claim the offers. Cannot be redeemed against previous purchases. Only one free tie per customer (excludes wedding ties and John Francome range)
The Institute of Professional Legal Studies is offering a Seminar on Mediation and Client Care facilitated by Mr Case Ellis. Mr Ellis, a mediator in the United States, has conducted hundreds of mediations and is on the Board of Directors, International Academy of Dispute Resolution. Mr Ellis has delivered many lectures throughout the United States and is coming to Northern Ireland in advance of speaking at a conference in Scotland.

When: Monday, 22 November 2010
Time: 6.00pm – 8.00pm
Venue: Institute of Professional Legal Studies,
10 Lennoxvale,
Belfast, BT9 5BY
Cost: £40

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: MONDAY, 15 NOVEMBER 2010

2 Client Care CPD hours are awarded for attendance at this Seminar.

Mediation and Client Care Seminar

Name: 
Firm: 
Address: 

Email Address: 
Tel. No:
I enclose remittance of £
CONSUMER CREDIT

HELEN DOLOUGHAN V TERENCE MULVANNA AND NORTHERN HEALTH AND CARE SOCIAL TRUST

Appeal by defendants against the decree made by the District Judge whereby it was adjudged that the plaintiff recover damages on repair charges, credit vehicle hire charges and diminution in value of plaintiff's vehicle. - whether agreement between the plaintiff and Crash Services and Agnew Repair Centre is a debtor/creditor agreement. - definitions of debt, debtor, financing, refinancing and existing indebtedness. - HELD that when the plaintiff made her agreement with Crash Services there was no pre-existing indebtedness on her part and that the Crash Services Agreement is not a restricted use credit agreement and is not a debtor/creditor agreement and defendant's submissions are rejected

HIGH COURT
31 AUGUST 2010
MCCLOSKEY J

CRIMINAL LAW

R V DS

Appeal against conviction on retrial. - whether the Judge directed the jury to consider the counts separately. - whether the Judge wrongly directed the jury that it could take the applicant's previous convictions for violence into account. - whether the Judge failed to give a direction on delay to the jury. - direction on delay in historic sexual abuse cases. - HELD that none of the grounds render the conviction unsafe and appeal dismissed

COURT OF APPEAL
20 MAY 2010
MORGAN LCJ, COGLIN LJ, GILLEN J

SCOTT FOOT V DENISE QUINN; MALACHY CUNNINGHAM T/A AV TAXIS V HOMECARE (NI) LIMITED; ANDREW MCMENAMIN V LINDSAY CHILLINGWORTH AND MOIRA CANNING V ARCHIBALD CANNING

Conjoined credit hire appeals which are a mixture of interlocutory appeals from orders of district judges and original interlocutory applications. - whether it is fair, reasonable and proportionate to subject the plaintiff to the burden of answering on oath interrogatories and/or making discovery of particular documents. - factors the court should take into account when adjudicating the propriety of interrogatories. - over-riding objective. - discovery of documents

HIGH COURT
6 SEPTEMBER 2010
MCCLOSKEY J

CRIMINAL INJURIES

AN APPLICATION BY YVONNE WILCOX FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE CRIMINAL INJURIES COMPENSATION APPEAL PANEL MADE ON 11 NOVEMBER 2009

Application for judicial review to challenge the decision of a Criminal Injuries Compensation Appeal Panel dismissing the appellant’s appeal against the refusal of criminal injuries compensation. - applicant had applied for compensation in relation to an injury she received when she was bitten by a neighbour’s dog. - whether the Panel was irrational and erred in law in defining recklessness. - HELD that none of the grounds for judicial review have been made out and the application must be dismissed

HIGH COURT
17 MAY 2010
TREACY J

CONTRACT

TITANIC QUARTER LIMITED V NEIL ROWE

Plaintiff was proposing to build an apartment block in Belfast. - defendant had entered into an agreement for a lease to purchase an apartment and paid a contractual deposit but did not complete. - plaintiffs issued proceedings on specific performance of the agreement. - whether the order for specific performance would be in vain due to the defendant’s exceptional hardship. - whether the impecuniosity of the defendant constituted a defence to a claim for an order of specific performance. - unconditional contract not subject to finance. - HELD that impossibility of performance is a ground in law for refusing the remedy of specific performance and that the defendant has a clearly arguable case that it is impossible for him to perform this contract to purchase. - vendor’s decree of specific performance refused

HIGH COURT
26 AUGUST 2010
DEENY J

R V TURLOUGH ROBERT MCALLISTER

Sentencing. - defendant pleaded guilty to counts relating to the seizure of various explosive substances and possession of a handbook containing information on improvised munitions. - aggravating and mitigating factors. - HELD that the defendant be sentenced to 12 years’ imprisonment

CROWN COURT
2 FEBRUARY 2010
HART J

R V JOHN MICHAEL MCDERMOTT, JAMES FRANCIS MCDERMOTT AND OWEN ROE MCDERMOTT

Sexual offences committed against children. - defendants found unfit to plead. - Court order made to protect the public from harm. - aggravating and mitigating factors. - Custody Probation Order, Probation, Order, Supervision and Treatment Order, Disqualification Orders made and defendants prohibited from being in prescribed areas

CROWN COURT
18 JUNE 2010
MCFARLAND HHJ

R V JUSTIN JOHN MARTIN

Application for leave to appeal sentence. - applicant pleaded guilty to burglary and criminal damage. - whether sentence manifestly excessive. - HELD that the sentence was not manifestly excessive and application refused
Selected High Court and Court of Appeal Decisions

COURT OF APPEAL
11 JUNE 2010
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

R V SG
Appeal against sentence of 4 years imprisonment. - unlawful carnal knowledge, indecent assault, gross indecency. - whether sentence manifestly excessive. - culpability of offender. - aggravating and mitigating factors. - HELD that on one of the counts the defendant should not be sentenced consecutively, but that the total length of sentence remains the same
COURT OF APPEAL
17 SEPTEMBER
MORGAN LCJ, GIRVAN LJ, COGHLIN LJ

R V CHRISTOPHER PATRICK STOKES,
MARTIN STOKES AND EDWARD GABRIEL
STOKES
Application on the mendacity of the principal witness and of the alleged worthlessness of her identification evidence against the accused. - Counsel for all the accused made submissions of No Case to Answer at the conclusion of the prosecution. - HELD that the identification evidence reached the quality threshold and applications of No Case to Answer dismissed
CROWN COURT
3 SEPTEMBER
TREACY J

DAMAGES

STEPHEN HYNDMAN V WILLIAM BROWN
AND COLIN BRADLEY LIMITED
Damages. - plaintiff sustained leg and ankle injuries whilst employed as a seasonal worker with an agricultural contractor (the first defendant) harvesting potatoes. - fields in which the potatoes were being harvested were rented by the second defendant. - negligence and breach of statutory duty. - whether the second defendant failed to provide the plaintiff with proper safety instructions and failed to ensure that he was instructed how to take proper safety precautions. - whether there was sufficient proximity between the parties to establish negligence. - whether it was fair, just and reasonable to impose a duty of care to the plaintiff upon the defendant. - whether the injury was reasonably foreseeable. - HELD that judgment be awarded against the first defendant for £71,124.70
HIGH COURT
6 SEPTEMBER 2010
HART J

DISCOVERY

IN THE MATTER OF AN APPLICATION BY
ENGLAV (IRELAND) LIMITED FOR JUDICIAL
REVIEW
Application for relief against the Department of Rural Development (DRD) seeking an Order pursuant to s.22(2) (b) (i) of the Local Government Act (NI) 1934 quashing a Vesting Order made in respect of the applicant’s leasehold interests in lands identified. - whether the DRD misdirected itself, acted irrationally, was contrary to the applicant’s legitimate expectation and was in breach of ECHR. - whether the DRD failed to provide proper reasons, and the decision was unnecessary and disproportionate. - notice of application also served on Warrenpoint Harbour Authority (WHA). - whether the WHA is a party to the proceedings and was liable to make discovery even though no relief was sought against it. - HELD that by joining the WHA to the proceedings the applicant was seeking to obtain discovery which would not be an appropriate course, and applications dismissed
HIGH COURT
3 SEPTEMBER 2010
TREACY J

FAMILY LAW

AN APPLICATION BY JR30 (HN) (A MINOR)
BY HIS MOTHER AND NEXT FRIEND (HP)
FOR JUDICIAL REVIEW
Application for declaratory relief against the Department of Health for Children and Youth Affairs (DHCCA) to hold that the Western Health and Social Care Trust and the Trust electrician failed to ensure that he was instructed how to take proper safety precautions. - whether there was sufficient proximity between the parties to establish negligence. - whether it was fair, just and reasonable to impose a duty of care to the plaintiff upon the defendant. - whether the injury was reasonably foreseeable. - HELD that judgment be awarded against the first defendant for £71,124.70
HIGH COURT
6 SEPTEMBER 2010
HART J

IMMIGRATION

IN THE MATTER OF AN APPLICATION BY
EMEN BASSEY FOR JUDICIAL REVIEW
Application for judicial review to challenge the decision of the Immigration Service to detain the applicant as an illegal entrant. - whether the applicant was entitled to enter the UK as of right as the family member of an EEA national by virtue of Directive 2004/39/EC and the Chen case. - whether the respondent had failed to demonstrate as a precedent fact that the applicant was an illegal entrant. - definition of illegal entrant. - HELD - application dismissed
HIGH COURT
21 JULY 2010
WEIR J

IN THE MATTER OF AN APPLICATION BY
AMANDA MENZIES PRETORIUS FOR
JUDICIAL REVIEW
Applicant seeks judicial review of a decision of the Immigration Service to detain her. - whether the applicant was unlawfully detained until she was released on temporary admission. - protocol on
the Management of Foreign National Detainees held in Prison Custody. - Prison Service initially refused to accept the applicant on the basis she was facing criminal charges and applicant was transferred to a police station. - applicant alleges she was pregnant. - whether the respondent failed to follow its own policy on Enforcement Instructions and Guidance in relation to the detention of pregnant women. - whether assertion of pregnancy is sufficient to entitle the applicant to the benefit of the policy without the production of credible evidence to support the assertion. - whether the applicant had a reasonable opportunity to provide evidence by way of pregnancy testing in order to benefit from the policy. - whether breach of a. 3 and 8 ECHR. - HELD - application dismissed

HIGH COURT
2 SEPTEMBER 2010
MORGAN LCJ

INSOLVENCY

CUSP LIMITED V TONI AND GUY (IRELAND) LIMITED

Claim for payment of rent arrears and service charges. - whether the plaintiff is precluded from bringing a claim in respect of the said sums by virtue of a High Court Order to which the plaintiff did not object and, as a consequence of which, a Scheme of Arrangement was entered into between the defendant, its members and creditors. - majority of defendant's business was carried on in the Republic of Ireland and defendant relies on Council Regulation 1346/2000 on insolvency proceedings. - legal effects of insolvency proceedings opened in a Member State in which the debtor has its centre of main interests. - whether exception to usual position in respect of contracts for the lease of property in Member States other than that in which the insolvency proceedings have been opened. - whether the effects of the defendant's insolvency should be dealt with solely in accordance with domestic proceedings of an equivalent nature within Northern Ireland. - HELD that the appropriate jurisdiction for this claim, if it is to be pursued, is that of the Dublin Court and the proceedings in this jurisdiction currently disclose no reasonable cause or action or are vexation or otherwise an abuse of the process of the court

HIGH COURT
6 SEPTEMBER 2010
COGHLIN LJ

WILLIAM JAMES YOUNG AND 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 THOMPSON'S SOLICITORS)

Damages for negligence, breach of contract and misrepresentation, wrongful interference with the plaintiff's rights of way, trespass and harassment. - at date on which the action commenced the first plaintiff was an undischarged bankrupt. - defendants sought an Order dismissing the first plaintiff's claim in these proceedings and for judgment against him on the ground that any cause of action which the first plaintiff may have had against the defendants had become vested in his trustee in bankruptcy and that thereupon and at all times thereafter the first plaintiff had no interest in any such cause of action and therefore no standing to bring these proceedings. - effect of bankruptcy. - whether the proceedings were hybrid. - HELD that the first plaintiff's claim against the defendants in this action is a “thing in action” and that his right to bring and continue this litigation passed to his trustee in bankruptcy as did his interest in the property, and that the first defendant therefore has no locus standi to have commenced or to continue the proceedings

HIGH COURT
11 JUNE 2010
TREACY J

PRISONS

IN THE MATTER OF AN APPLICATION BY TONDERAI CHAKWANA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF A DECISION OF THE NORTHERN IRELAND PRISON SERVICE REFUSING TO ALLOW

HIM TO PROGRESS TO THE ENHANCED SCHEME

Applicant is a sentenced prisoner serving a determinate sentence who seeks an order quashing the decision of the Northern Ireland Prison Service refusing him to progress to the enhanced regime. - applicant charged with rape and whilst in prison was not suitable to attend the Sex Offender Treatment Programme since he did not accept responsibility for his offence, was appealing his conviction and therefore cannot progress to enhanced scheme. - whether it was unreasonable of NIPS to make his progression to enhanced level dependent on attendance at the SOPT course. - whether the NIPS had fettered its discretion in allegedly failing to take into account the individual circumstances of the applicant. - HELD that the application be dismissed

HIGH COURT
9 JUNE 2010
TREACY J

SOLICITORS

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY PAUL MARTIN CAMPBELL

Applicant is a pupil solicitor seeking declaratory relief in respect of the respondent's decision to exclude him, in the company of his Master, from attending police interviews. - whether the decision to exclude the applicant, having admitted him to the earlier four interviews, in accordance with well established custom and practice, was unreasonable or irrational. - whether the refusal to admit him to further interviews along with his Master was contrary to law on the basis that he had a legitimate expectation to be able to accompany his Master in the course of his training and in the discharge of the Master's duties as a solicitor. - HELD that it was irrational for the custody sergeant in this instance to exclude the pupil solicitor from interviews solely on the basis that he was a pupil solicitor and application for judicial review is allowed

HIGH COURT
22 MARCH 2010
TREACY J
Developments in Holiday Compensation

Articles

EU set to extend holiday travel protection
Travellers with combinations of flights, hotels, car rentals on the internet or in the high-street look set to receive tougher financial protection if things go wrong
2010 EU Focus 267, 17-19

Eyjafjallajökull**!!
Discuss compensation when holidays are disrupted, especially following recent ash cloud. Also discusses the Milner case and the quantification of damages when the couple’s three month holiday onboard a ship liner was spoiled
Willis: 2010 NLJ 160(7417), 669*

How much for a ruined holiday?
Considers Milner v Carnival Plc (t/a Cunard) which offered guidance on the appropriate measure of damages for the diminution, distress and disappointment caused to a couple on board a ship liner
Smith: 2010 LSG 107(24), 25

Adams v Thomson Holidays Ltd: civil procedure - cruise ships - holiday claims
Comments on Adams v Thomson Holidays Ltd (unreported) on whether the court had power to allow a new defendant to be substituted in a claim by a cruise ship passenger, under the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974
Harvey: 2010 1 J.P.I.Law CS3-56

Holiday claims and proving local safety standards: a difference in approach between the Irish and English courts?
Compares the approach of the Irish and English courts in respect of whether there has been a breach of the Package Holidays and Travel Trade Act 1995 or the Package Travel, Package Holidays and Package Tour Regulations 1992.
McNicholas: 2008/09 3(3) QRTL , 12-16

Personal injury: left to sink or swim on the piste.
Discusses the appropriate approach to personal injury claims related to trips overseas
McDonald: 2010 N.L.J.160 (7422), 859-860*

Caselaw

Milner v Carnival Plc (t/a Cunard)
Appellant (C) ruled against the level of damages awarded to the respondent couple as a result of their ruined holiday. – couple booked and paid £59,052 for a 106 day trip on board a liner in a preferred cabin. – cabin was damaged during stormy weather and couple were moved to a lesser cabin. – couple moved back to their original cabin but noise caused them much distress and they disembarked in Hawaii where they stayed for six weeks before returning home. – couple accepted a refund of £48,270. – , H and W were also awarded a total of £22,000; £2,500 each for the diminution in the value of their cruise, £7,500 each for their distress and disappointment when the cruise did not match their expectations, and £2,000 for W’s wasted expenditure on her wardrobe of formal gowns. – HELD: appeal allowed. - measure of damages was such compensation as would place the claimants, in the same position as they would have been in had the contract been properly performed. - the total award of £12,000 was fair and just compensation for C’s failure

New Books in the Library

- Rogers, W.V.H. Winfield and Jolowicz on tort. 18th ed. Sweet & Maxwell. 2010
- Watts, P. Bowstead and Reynolds on agency. 19th ed. Sweet & Maxwell. 2010
- Arnott, H. Parole board hearings law and practice. 2nd ed. Legal Action Group. 2010
Classifieds

Missing Wills

Re: **Patrick Joseph Austin** (deceased)

Late of: 34 Victoria Parade, Belfast BT15 2EN

Date of Death: 29 December 2009

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:

Robert Murtagh & Co

Solicitors

458 Oldpark Road

BELFAST BT14 6QU

Tel: 028 9074 4594

Fax: 028 9075 3214

Re: **Bertha Falloon Nelson**

Late of: 25b Bannview Heights, Bannbridge, County Down BT32 4LZ

Date of Death: 4 July 2010

Would any person having knowledge of the whereabouts of any Will made by the above named deceased please contact:

Conor Downey & Co

Solicitors

Unit 8

First Floor

Legahory Centre

Craighavon BT65 5BE

Tel: 028 3834 9911

Email: craigavon@conordowney.co.uk

Re: **Samuel Taylor Dinsmore** (deceased)

Late of: 23 Main Road, Glynn, Larne, County Antrim BT40 3HE

Would any person having knowledge of the Will for the above named deceased please contact:

Stuart Horner

Horner Solicitors

41 Arthur Street

BELFAST BT14 4GB

Tel: 028 9044 6239

Fax: 028 9044 7110

Email: stuart@hornersolicitors.co.uk

Re: **Florence Anna McKee** (deceased)

Late of: 89 Knockchree Avenue, Kilkeel

Date of Death: 11 February 2010

Would any person having knowledge of the whereabouts of any Will executed by the above named deceased kindly contact:

M Diane M Coulter

Solicitors

127a Harbour Road

Kilkeel

County Down BT34 4AU

Tel: 028 4176 9772

Fax: 028 4176 9773

Re: **William Stewart** (deceased)

Late of: 8 Glenview Wood, Belfast BT5 7SY

Date of Death: 28 August 2010

Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:

Susan Brennan

John J Rice & Co

Solicitors

Third Floor

Pearl Assurance House

2 Donegall Square East

BELFAST BT1 5HB

Tel: 028 9031 3888

Fax: 028 9031 4999

Email: SBrennan@johnjricesolicitors.com

Re: **Martha McKay** (deceased)

Late of: Tennent Street Care Centre, 1 Tennent Street, Belfast BT13 3GD

Date of Death: 19 January 2010

Would any person having knowledge of the whereabouts of a Will made by the above named deceased please contact:

Johns Elliot

Solicitors

40 Linenhall Street

BELFAST BT2 8BA

Tel: 028 9032 8881

Fax: 028 9024 8236

Re: **Robert Stewart Parke** (deceased)

Late of: 28B Carnbrae Park, Belfast BT78 4TP

Date of Death: 2 September 2010

Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact:

McConnell & Fyffe

Solicitors

The Old Rectory

21 Church Street

Omagh

County Tyrone BT78 1DG

Tel: 028 8224 2099

Fax: 028 8224 9217

Email: law@mcconnellfyffe.co.uk

- Bamford, K. Amending a commercial lease. 4th ed. Bloomsbury. 2010
- The red and green books 2010-11. CCH. 2010.
Re: Derek Campbell
Late of: Rehaghey House, 49 Rehaghey Road, Aughnacloy, County Tyrone BT69 6ET
Date of Death: 4 July 2010
Would any person having any knowledge of the whereabouts of a Will made by the above named deceased please contact
Cooper Wilkinson
Solicitors
Imperial Buildings
38/40 Queen Elizabeth Road
Enniskillen
County Fermanagh BT74 7BY
Tel: 028 6632 2615
Fax: 028 6632 4033
Email: geoffrey.wilkinson@cwssolicitors.co.uk

Re: Mary Hearty (deceased)
Late of: 184 Concession Road, Clonalig, Crossmaglen, Newry, County Down
Any person having knowledge of the whereabouts of a Will for the above named deceased please contact
Mary Doherty
McShane & Co
Solicitors
34 Hill Street
Newry
County Down BT34 1AR
Tel: 028 3026 6611
Fax: 028 3025 6434
Email: mary.d@mcshaneandco.com

Land Certificate may be applied for.
John P Hagan
Solicitors
Montrose House
17/21 Church Street
Portadown
County Armagh BT62 3LN
Tel: 028 3833 3333
Fax: 028 3835 0011
Email: david@jphagan.com

Property at: 4 Hillhead Park, Belfast
Registered owner: Mary Patricia Tully
Would any Solicitor knowing the whereabouts of the documents of title in respect of the above premises please produce such deeds and communicate such information to:
Kieran Barrett
Haugheys Solicitors
Montrose House
138 Upper Lisburn Road
Finaghy Crossroads
BELFAST BT10 0BE
Tel: 028 9043 1222
Fax: 028 9061 2511
Email: kieran.barrett@haugheys.com

Folio: 210
County: Antrim
Registered Owner: David Green
Lands at: Oldpark Road, Lisburn
Take 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 the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
W G Maginess & Son
Solicitors
68 Bow Street
Lisburn
County Antrim BT28 1AL
Tel: 028 9267 2161
Fax: 028 9267 0997

Folio: LY1228
County: Londonderry
Registered Owner: Paul Donnelly
Lands of: 16 Duncastle Park, Newbuildings, County Londonderry BT47 2QL
Take 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 the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Patrick Fahy & Co
Solicitors
4 John Street
Omagh
County Tyrone BT78 1DW
Tel: 028 8224 3447
Fax: 028 8224 4028

Classifieds

Missing Title Deeds

Folio: 5606
County: Armagh
Lands at: Main Street, Hamiltonsbawn, County Armagh
Registered Owner: Anne Elizabeth McParland
Take 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 the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Gillen & Co
Solicitors
3 Old Kenlis Street
Banbridge
County Down BT32 4QO
Tel: 028 4062 6639
Fax: 028 4066 9564

Folio: AR 89017L
County: Armagh
Registered Owner: Martin Tierney and Cecilia Tierney
Lands of: 3 Furlong Avenue, Lurgan, Armagh
Take 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 the under mentioned solicitors and take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is communicated within three weeks of publication of this notice, a duplicate Land Certificate may be applied for.
Patterson Law
Solicitors
3 Old Kenlis Street
Banbridge
County Down BT32 4QO
Tel: 028 4062 6639
Fax: 028 4066 9564

Folio: 42596 & 6427
County: Antrim
Registered Owners: Helen Kirkpatrick, Brian Kirkpatrick and Patricia Kirkpatrick
Property: 70 Long Rig Road, Nutts Corner, Crumlin BT29 4YX
Take notice that any person having custody of or any information as to the whereabouts of the Land Certificate may be applied for.
Patterson Law
Solicitors
3 Old Kenlis Street
Banbridge
County Down BT32 4QO
Tel: 028 4062 6639
Fax: 028 4066 9564
**Classifieds**

**Practice for Sale**

Small, general practice in North Down in central location. Sole practitioner wishes to retire. Replies in strictest confidence to:

PO Box 201
c/o dcp strategic communication ltd
Bamford House
91-93 Saintfield Road
BELFAST BT8 7HN

**Office to Let**

Having now retired, Rosemary Chesney, formerly of Chesney & Company, wishes to let out her offices at 479 Upper Newtownards Road, Belfast BT4 3LJ. Excellent position and accommodation.

Email: rechesney@btinternet.com
Tel: 028 4488 1704
Mobile: 07801 815551

**Drawing Services**

for Lease maps, Land Registry and Compulsory First Registration. Provided by self-employed Architectural Technician with extensive experience in the production of Lease Maps and Maps for Land Registry and Compulsory First Registration. For further information please contact

Simon Little
Little Designs
07976 134388
simon.little@live.co.uk

**Solicitor Required**

Toal and Heron Solicitors require an assistant solicitor with experience in Matrimonial and Family Law to cover maternity leave commencing October/November 2010. Two to three years’ PQE required. Apply in writing, enclosing your CV to:

Kieran Toal
Toal & Heron
10 Loy Street
Cookstown
BT80 8PE
Email: kieran@toalandheron.com

** Placement Required**

Gerard Kelly is currently on a Legal Practice Course at Chester College of Law and requires a two year placement from June 2011.

He graduated with a 2.1 LLB Honours from Liverpool John Moores University in 2007.

Gerard Kelly can be contacted at Gerard-sean-kelly@hotmail.com

---

**Bookkeeping Services**

Republic of Ireland Agents

We are willing to act as agents in most legal matters.
Our offices are close to Courts, Government Buildings and Commercial Centre.
Fee splitting by arrangement.

Hughes & Liddy Solicitors

2 Upper Fitzwilliam Street
Dublin 2
Tel: (00 3531) 6766763
or (00 3531) 6789701
Fax: (00 3531) 6766702

NORTHERN IRELAND’S LEADING LAW SEARCH COMPANY

Do you want to know:
- how to avoid unnecessary legal costs?
- the registered owners of a property or piece of land?
- a Debtors’/Clients’ Title?
- the charges registered against a property or piece of land?
- if a debtor has any outstanding registered debts or has been declared Bankrupt?

If YES, then Lawlink NI can help:
We provide Debt, Title and Property searches to a number of leading Financial Institutions, Solicitors and Accountants offices and we can do the same for you!!

Our searches can save you money in unnecessary legal costs (by obtaining these searches prior to commencing legal action you will have details of the debtors assets and a better idea of their ability to repay)

The information provided can be tailored to suit your needs.
Fixed Price Packages available on request

Lawlink NI operates on a same day service basis via email or fax.

For further information on any of services or prices please call Lisa on 02890 230095 or email lisa.mcettridge@lawlink.co.uk

Lavelle Coleman Solicitors

51/52 Fitzwilliam Square,
Dublin 2, Ireland
DX 109010 Fitzwilliam.

Tel: 00 (3531) 6445800
Fax: 00 (3531) 6619912
E-Mail: law@lavellecoleman.ie

Willing to undertake agency work on behalf of Solicitors in Northern Ireland

Contact
Marc Fitzgibbon (Partner)

Thinking of Selling, Merging or Valuing your Practice?

Then call Ray Fox on 01494 483728 for free information and guidance.

Email: ray.fox@virgin.net
www.bottomlineconsultancy.com

Stephen Donaghy
I.Eng. M.Inst. AEA. F.I.M. M.SOE.

Automotive Consulting Engineer

Tel & Fax: 028 9022 3357
Mobile: 0780 895 2608
Email: stephen.donaghy@glasmail.net
Web: www.sdonaigh.co.uk

Ideally qualified and suitably experienced to undertake Appropriate Accident Investigation and Reconstruction of cases where, private cars, light & heavy commercial vehicles, farm machinery, industrial site machines & their associated equipments are the subject.

Experienced in Forensic Examination, the collection & recording of evidence, compiling material facts leading to detailed reporting for the purposes of Litigation.

6 Knockvale Grove, Knock,
Belfast BT5 6HL
Gillian McClenahan ATT TEP tax, trust and estate specialist established Willplantax in 2003 to provide a confidential consultancy service for solicitors accountants and financial advisers throughout the province where help or a second opinion is required with:

- Inheritance Tax, Capital Gains Tax & personal tax planning and compliance
- Drafting tax efficient Wills, Trust Deeds and Deeds of Variation
- Estate administration & related tax compliance
- Self Assessment Tax Returns for individuals, Trusts and Estates
- Inheritance Tax & probate forms and calculations
- Controllership applications
- Funding for care

Tel: 028 9127 4634
Mobile: 07967 581702
Web: www.willplantax.co.uk
Email: gillian@willplantax.co.uk
Practice opportunity - City Centre

Are you:
Either a sole practitioner or small firm struggling to make a decent profit due to expensive overheads?
OR
A partner or small established team, with a following?

What we offer:
• Convenient city centre office space near the courts.
• Under-utilised support staff.
• Quality IT and bookkeeping.

You can have self contained offices and share our reception and common areas and staff, in a chambers style arrangement. At the same time maintain your independence, but slash your overheads and help us with ours. In due course, a merger opportunity may develop.

Enquiries in strictest confidence to:
PO Box 202
c/o dcp strategic communication ltd
Bamford House
91-93 Saintfield Road
BELFAST BT8 7HN

Law numbers
Costs Draftsmen

304 Dernawilt Road
Lisnaskea
Co. Fermanagh BT92 5DJ
DX 3563 NR ENNISKILLEN

Tel: 028 6772 3193
Tel: 028 6772 2836

We draw all types of Bill of Costs for taxation or Legal Aid Assessment

Service includes administration of provisional taxation and guidance

We also represent solicitors on contested taxations and taxation appeals

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

dcp strategic communication ltd
Barnford House
91-93 Saintfield Road
Belfast
BT8 7HN

Tel: 028 9040 2296
Fax: 028 9040 2291
Email: karen@dcppr.co.uk
Title Insurance Risks
Experts for Experts

First Title

Please find below a list of standard title insurance risks which are covered by First Title:

- Absent Landlord
- Adverse Possession
- Bankruptcy / Insolvency – Gratuitous Alienations
- Building Over a Sewer
- Contaminated Land / Environmental Policies
- Contingent Buildings (covering defective insurance provisions)
- Defective Lease
- Exceptions and Reservations - Know and Unknown
- Flying Creeping / Freehold
- Forced Removal / Obstruction of a Right of Way
- Good Leasehold
- Judicial Review
- Lack of Building Regulations Consent
- Lack of Listed Building Consent
- Lack of Planning Permission
- Limited / No Title Guarantee
- Local Authority Search
- Missing Deeds / Leases
- Missing Matrimonial Homes Consent
- Outstanding Charges Entry
- Possessory / Qualified Title
- Pre-Emption Rights
- Profits à Prendre
- Rent Charge
- Restrictive Covenants - Known and Unknown
- Rights of Light
- Title Subject to a Lease

Supplemental cover is also available for loss of profits, consequential loss, rental liability, inflation and portfolio risks.

To discuss one of the above listed risks or for a general enquiry please contact your DEDICATED UNDERWRITING TEAM – NORTHERN IRELAND

Direct Dial Number: +44 (0) 141 248 9090
Email: scotinfo@firsttitle.eu
Contact: Reema Mannah
Address: FIRST TITLE INSURANCE plc, Suite 5. 1, Turnberry House, 175 West George Street, Glasgow, G2 2LB
Website: www.firsttitleinsurance.eu

For further information about First Title or access to our services please contact the appointed NORTHERN IRELAND representatives:

Gary Mills
Mobile No: +44 (0) 7793814300
Email: gm@bluechiptitle.eu
Derek Young
Mobile No: +44 (0) 7763924935
Email: dy@bluechiptitle.eu
Website: www.bluechiptitle.eu

First Title Insurance plc. is authorised and regulated by the Financial Services Authority, registration number 202103.
FREE TRIAL

Free Product Trial 2010
15th October - 25th November

Try our Digital Dictation products for 14 days:
Free-of-charge!

Following its success in 2009, the Philips Free Product Trial has returned, offering customers the opportunity to trial our professional digital dictation products for 14 days at no cost.

These products will be delivered and installed at your site. Full training will be given to ensure that you are using the solution to the best of its capability. You will see how our digital solutions increase your productivity and save time. Contact us on 02892 675 114 for more information.

PHILIPS
sense and simplicity

Asdon Group
Systems House
Enterprise Crescent
Lisburn
BT28 2BH
T: 028 92 675 114
E: sales@asdongroup.com
W: www.asdongroup.com