

The Brief

The official journal of the Irish Institute of Legal Executives
2010 Issue



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IILEX

OFFICIAL JOURNAL

President's Address



Dear Members,

I am delighted to write again to update you on the progress of the Institute.

We have been making significant inroads in many areas and I am very confident going forward in 2010 with such a wonderful team on Council who are imaginative enthusiastic and innovative.

The new Criminal Courts of Justice opened in late 2009 at Parkgate Street, Dublin 7. I met with Geraldine Hurley of the Courts Service in order to obtain security access cards for our members. Application forms for access to The Criminal Courts of Justice is now on the Courts Service Website <http://www.courts.ie/courts.ie/library3.nsf/16c93c36d3635d518025be3f003a4580/3126e865a96cf33802576a4003d7a?c?OpenDocument>. Legal Executives will be given access to the Solicitors area which is accessed through the ground floor. It will also enable Legal Executives to go through the card holder's security route at the front entrance. If you work in the area of criminal law and need regular access to the Criminal Courts, please avail of these access cards. There is no charge for same but there is a replacement charge if same is lost. The Institute holds the security of the Courts Service most seriously and any breach of security by any member will be dealt with very seriously.

I have been in touch with the Financial Regulator with regard to the recognition of a member or fellow of the Institute for the purposes of the minimum competency requirements. This is a work in progress and we are in two way communication to secure this recognition.

Work is in progress with regard to setting up a Bursary/Scholarship for Legal Executives through Griffith College. The Institute is most honoured that President Mary McAlleese has agreed to lend her name and support to this project. The intention is to provide legal education to a legal executive who might not otherwise have the funds to attend Griffith College. Further meetings and the appointment of a Board of Trustees has yet to be agreed, however this is a very worthwhile project.

The Directory of Members for 2010 went out to members in January. The feedback on same is very encouraging and my thanks to our Administrator and to all on Council for their contributions and corrections. Our web designer Lóis-Courtney Jones from Lukas Works is also much appreciated in making this Directory a very professional publication. She is also responsible for designing The Brief each year and updating our website which I am sure you find useful. Any changes in your work address, e-mail etc., please convey to our Administrator so that all information on our database is accurate.

You might have heard of a new company Brief Counsel Limited. I met with two of the founding members Hugh Kennedy and John Cronin who have set up this company to help Solicitors and Legal Executives access the best possible legal counsel for their particular case or legal difficulty. Visit www.BriefCounsel.ie for further information. We wish them well with this worthwhile venture.

Representations on behalf of the Institute were made to the Courts Services with regard to proposed

changes to the work undertaken in the Central Office in the Four Courts. The Statutory Instrument making changes has been deferred for the moment.

I attended a conference in Griffith College on the Innocence Project in the US and proposals to create the same here in Ireland. This very worthwhile project takes cases where it is believed that the inmate is innocent and re-opens their case and reviews the evidence. Advances in DNA and other evidential material are crucial to the success of this project. I was delighted to be invited to this Board in Ireland.

The economic situation has affected all of us with many of our members on short time work or having lost their jobs. If you have lost your job and if you think the Institute may be of assistance, please do not hesitate to contact us and tell us what might be helpful to your situation. We have a network of contacts and will assist where we can.

Finally, one of our Fellows Mr. Frank Crummey launched his book 'Crummey -v- Ireland' on 9th March 2010. He has campaigned for justice and truth and has been a thorn in the side of the establishment for many decades. All proceeds from his book will go to the Women's Refuge and can be purchased at the usual retail outlets. The Institute is very proud of him and congratulate him on the successful launch of his book and thank him for all the work he has done for the Institute over the past twenty two years. He has been a true inspiration to us all.

Thank you all for your renewed membership to the Institute. It is your membership and your membership fees which allow us continue the work to progress the legal executive in Ireland. It is appreciated. Please feel free to make contact with us with any ideas you may have or if you would like to apply to join us on Council.



Veronica Duffy, President, IILEX

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HOW TO BECOME A COMMISSIONER FOR OATHS

This honour is bestowed by the Supreme Court and is open to Legal Executives by application.

The requirements being:-

- 1. Choose a locality to practice from eg., the area in which you live and make a case that there are insufficient Commissioners for Oaths/Practising Solicitors to meet the needs of business in that area.**
- 2. Obtain the written support of six Solicitors in the same area.**
- 3. Obtain the written support of six local businesses.**

When you have the necessary written requirements, an Application is made to The Supreme Court and a date for hearing is set. It is advised that the Applicant have legal representation at the hearing before the Chief Justice.

This is not just a wonderful honour to have but is very useful in connecting with local business and furthering your legal career. Each swearing commands a fee of €10.00.

The Institute would be happy to assist you in any way towards achieving this honour.

Application forms can be downloaded from www.courts.ie or telephone the Supreme Court at 01-8725555 for the Commissioner for Oaths pack.



CLASS OF SERVICE
This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

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MOUNT ST, DUBLIN=
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1944 FEB 10 PM 12 32

ATTN: ASSOCIATE/STUDENT MEMBERS -
YOU MAY BE ELIGIBLE FOR AN UPGRADE IN YOUR MEMBERSHIP STATUS
PLEASE CONTACT US ON 01-8904278 FOR FURTHER INFORMATION.

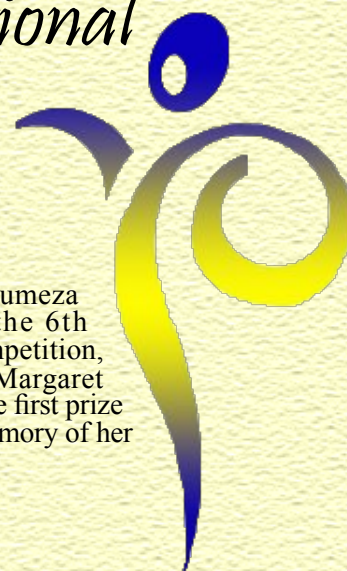
JULY 2010
IILEX COUNCIL

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

The 6th Veronica Dunne International Singing Competition 2010



LEFT: Veronica Dunne, Pumeza Matshikiza Winner of the 6th International Singing Competition, 2010 with Sponsor, Mrs Margaret Quigley, who presented the first prize of €10,000.00 in memory of her husband Tony Quigley.



This January saw the final of Ireland's most famous and acclaimed singing competition, the 6th Veronica Dunne International Singing Competition, take place in Dublin. This year, the €10,000 first prize went, for the first time, to a South African singer, 30-year-old soprano Pumeza Matshikiza.

Competitors from as far a field as Korea and Australia sang in three highly competitive heats in front of the world's top opera music experts over the course of an action packed week of rounds to win the prestigious prize named after Ireland's Grand Dame of Opera, Veronica Dunne, with Matshikiza being the fourth of six finalists to be heard on the night of the grand final. The six finalists were all supported by the RTÉ National Symphony Orchestra under the baton of Laurent Wagner.

The evening was a very prestigious occasion boasting performers from all over the world and audience members such as President Mary McAleese and members of the IILEX Council including Director of Education; Maria Kielty and President Veronica Duffy.

RIGHT: Maria Kielty, Fellow and Founding Member of IILEX - Director of Education Margaret McCarthy meeting Patron McAleese, President of Ireland at the 6th Dunne International Singing Competition 2010.



NOTICE

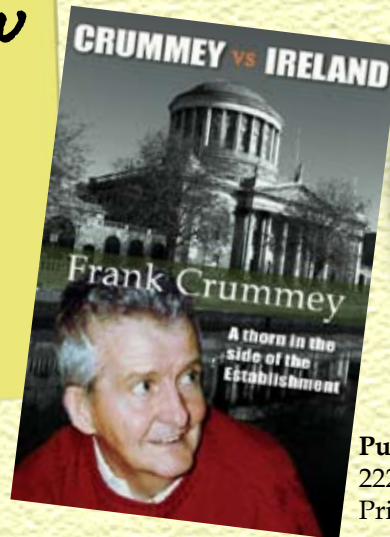
IILEX - The Irish Institute of Legal Executives is pleased to advise its many loyal members that it has negotiated with certain companies who have agreed to offer a number of special discounts/concessions on various products and services that members may wish to avail of. You will find more information and the discounts throughout this issue of The Brief...



Book Review

Crummey V Ireland
by Frank Crummey

Review by Ivana Bacik
Courtesy of The Irish Times



Published by: Londubh Books
222pp.
Priced: €14.99

WE NEED MORE Frank Crummeyes; independent thinkers and courageous fighters, men and women willing to challenge the status quo. Born in 1936 and reared on Kilfenora Road in Kimmage, Dublin, Frank Crummey has always been decades ahead of his time. He may have held down a succession of diverse and unlikely occupational posts – soldier, bus driver, postman, social worker, builder and private investigator – before becoming a legal executive, but his active campaigning life has been his real career.

He has challenged the status quo on a range of issues, beginning in the 1960s with the Language Freedom Movement, which contested the orthodoxy that the Irish language should be imposed upon an unwilling people. He rose to particular prominence in the mid-1960s as a founder of the Reform movement, which campaigned against corporal punishment in schools, making a famous appearance on *The Late Late Show* in 1967. As the show ended, he called out to the cameras the immortal words:

“As I sit here tonight, the Irish Christian Brothers are abusing our children.”

Spoken more than 40 years before the publication of the Ryan and Murphy reports, those words accurately portrayed the brutally abusive regimes operating in schools run by the Christian Brothers and other religious orders – long before the abuse had been acknowledged by anyone in authority.

Crummey’s appearance on the show symbolised his willingness to state the unstatable in so many ways. His bravery shines through this text, and he often plays down the personal risks he took. He bravely marched into schools in the 1960s and 1970s to confront principals and teachers who were responsible for inflicting cruel beatings upon defenceless children. Even more bravely, he later took up the cause of prostitutes who were being beaten by their pimps, as a result of which he and his family became victims of intimidation. He also provided protection to women suffering domestic violence through his work with the women’s refuge in Rathmines.

Meanwhile, through all the campaigns, he sustained a long and happy marriage with Evelyn, and raised five children. There is one point in this fascinating memoir, however, where the pressure became too much for him. He describes with raw honesty how his years as a social worker led to a nervous breakdown. Understandably, he could not detach himself emotionally from the horrific abuse of women and children that he

encountered regularly during this work. But he came through that low point, and threw himself into a new career as a legal executive, enabling access to justice for many needy litigants.

Although I was familiar with Crummey's legal career, and his pioneering work in the family planning and anti-censorship campaigns, this book reveals just how much influence he has had on changing Irish society more generally. Yet he makes light of his own achievements, using gentle humour and a talent for lively storytelling. He describes how, for his 70th birthday party, his family passed around After Eight chocolate wrappers, each containing a condom labelled "Crummey Condoms – going strong for 70 years".

He also provides a string of amusing recollections about his Kilfenora neighbours, friends and family. They are truly privileged, as are we, to have had the benefit of his tireless campaigning energy for so long. If only there had been more like him, perhaps Irish society would not have turned a blind eye to the terrible abuse of children in institutions, or of women in violent relationships.

This is a stimulating and entertaining account of a period in Irish history during which great progressive changes have taken place, generally following pressure from a radical campaign group. And that group seems invariably to have included Frank Crummey. His activism cannot have been easy for Evelyn, but it has been very good for all the rest of us.

Ivana Bacik is a Labour Senator for Dublin University, a barrister, and Reid Professor of Criminal Law at Trinity College Dublin. She is the author of Kicking and Screaming: Dragging Ireland into the 21st Century (O'Brien Press, 2004).



ABOVE: Frank Crummey, Fellow & Founder Member of The Irish Institute of Legal Executives with President Veronica Duffy at his Book Launch in Griffith College Dublin. Frank was totally overwhelmed at the amount of friends and colleagues who attended the evening.



ABOVE R-L: Frank and his wife Evelyn, lovingly accepting a beautiful bouquet on Frank's big night.



ABOVE L-R: Deirdre Duffy and Mary Foley, both Directors of IILEX enjoying the evening!

Photographs contributed by Maria Kielty & Fiona

The Down Survey of Ireland

or "Before the Google Map Camera Land Cruiser Came to Ireland"

by Mary Foley



Sir William Petty

Ever wondered who drew up the old map in a packet of title deeds, or wanted to do further research on an owner, dwelling, parish or townland?

In the year 1654 despite the extremely difficult terrain which 17th century Ireland presented and in the wake of the turmoil following the 1641 rebellion, the so called Down Survey mapped down or put down for the first time the complete survey of Ireland and was completed in a remarkable thirteen months and was the legal basis for the identification of Irish lands. It is important for determining land ownership for the period.

The 1642 Adventurers Act of the Long Parliament provided that the Parliaments creditors could reclaim their debts by receiving confiscated land in Ireland. The Act of the Settlement of Ireland 1652 provided for the confiscation and re-distribution of the lands. Before the Cromwellian soldiers and Adventurers could be allocated land, Ireland had to be mapped and the landowners of 1640 named, together with their religion.

To facilitate the re-distribution an accurate survey of the lands was required. Twenty seven counties were surveyed and a measured map survey produced for each. This new survey was undertaken by the then William Petty (Economist, Scientist, Philosopher, Statistician, and Physician-General of the Irish Armies, on leave of absence from his position as Professor of Anatomy at Oxford) and Thomas Tylour Deputy Surveyor. Thomas was the grandfather of Reverend Robert Tylour, who built Prospect House in the townland of Ardgillan, now named Ardgillan, Balbriggan, Co. Dublin in 1738. William Petty met Thomas Tylour at Oxford.

The survey employed a thousand men - unemployed soldiers. To enable the men to complete the task properly Petty designed and built some simple instruments. They were required to note the position of natural features and use the chain provided to measure distances. Skilled Cartographers then laid the information collected onto gridded paper at the central office in Dublin. The method used was to survey the boundaries of parishes, and the townlands inside these boundaries. The scale used was 40 Irish perches to an inch, sometimes 80 perches, one perch equalling 21 feet. This land survey method was used widely in Ireland up to the nineteenth century and sorting out the precise detail was usually left to the legal profession. The survey is considered to be 87% accurate.

The survey captions profitable & unprofitable land with the abbreviated captions, arable, meadow, bog, woodland, mountain, and several kinds of pasture, with area figures for each category. In the parish maps, dwelling houses with the owners name are entered in each townland.

Generally speaking it was a survey of confiscated land. Parts of Galway, Roscommon, Clare & Mayo were not surveyed as they had been covered in the Stafford Survey of Connaught 1636-1640 and were anyway not to be confiscated.

Petty was paid £18,532 for conducting the survey, to include payment for his assistants and general expenses. In payment of a further debt owed to him, 9,665 acres of land was allotted to him (39km²). Petty also took a prominent share of the Commissioners work of evaluating and allotting the land among the claimants.

Petty gained fame for his survey of Ireland. It was the first British imperial survey of an entire conquered nation. He undertook the first complete mapping of Ireland in 1673 and the first census in 1659. He published the first printed Atlas of Ireland *Hibernica Delineatio* 1685 now in UCC. It was said the map of Ireland made by Sir William Petty, is believed to be the most exact that ever yet was made of any country.

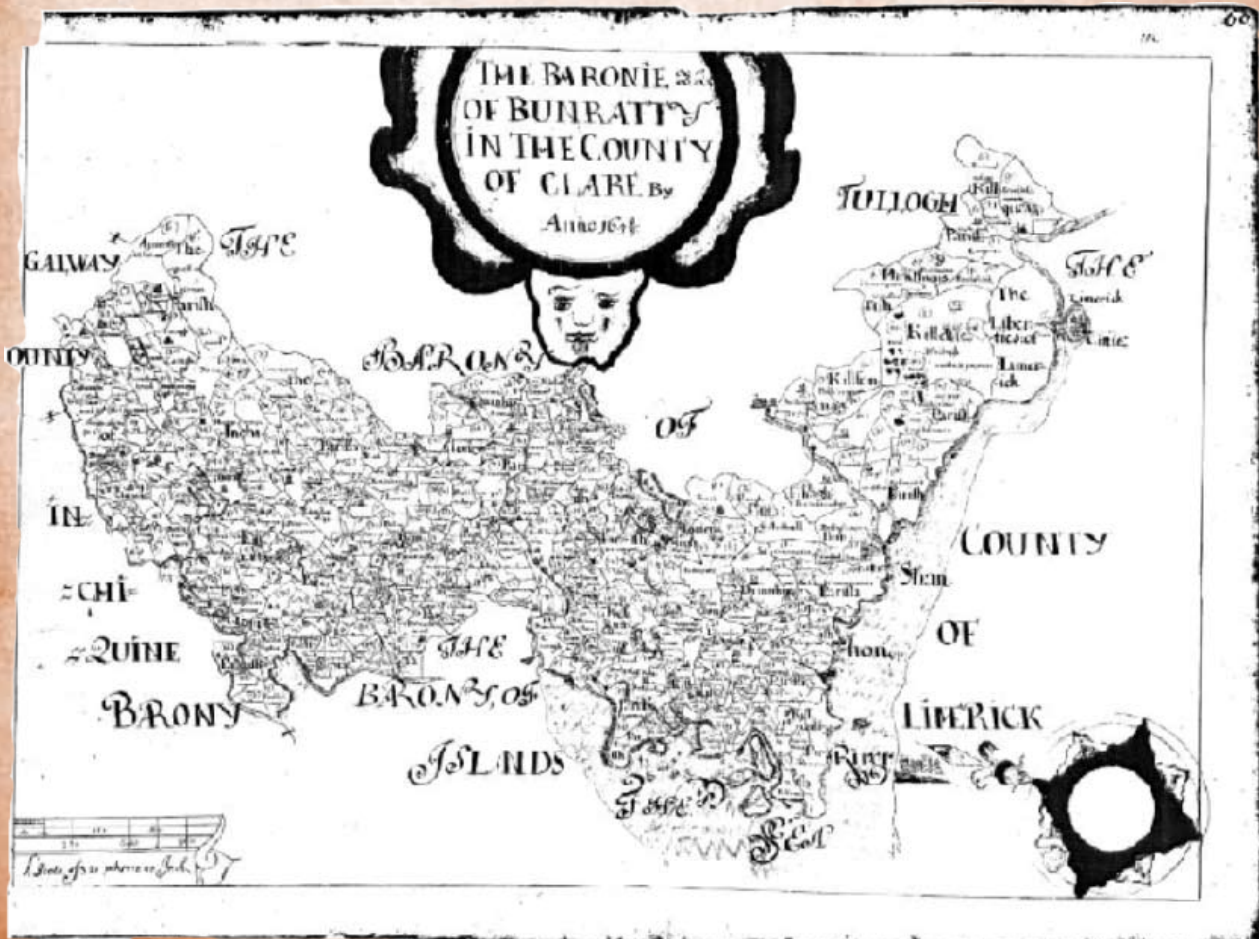
The maps of the parishes all drawn by Petty himself were preserved in the Surveyor Generals office and the Public Records Office in Dublin. The original Down Survey maps were lost in a fire in the Surveyor Generals office in 1711, and the copies of the parish maps were lost in the fire in the Public Records Office in the Four Courts in 1922.



Petty also edited the parish maps into barony maps. The details listed the names of previous owners of the lands, religious affiliation, land valuation, and area. The maps themselves include townland boundaries, houses, castles, roads and fields, owners of the land in 1640 and new owners. Considering the time in which they were executed and their surprising accuracy, they continue to be referred to as trustworthy evidence in courts of law even to the present day.

Copies of the parish maps survive in a number of places. The National Library of Ireland has a set of the Down Survey Parish Maps copied in the 1780's and purchased in the 60's from a firm of Dublin Solicitors S. S. & E. Reeves, copies relating to the northern counties of the Down Survey barony maps were sent to the Public Records of Northern Ireland and the British Library. The best set however is preserved in the Bibliotheque Nationale de France Paris a personal set of Sir William Petty's, they were on route by ship to London but captured by a French vessel in 1707 and ended up there. The Ordnance Survey Office Dublin had a facsimile set published in 1908. Surviving maps were published by the Manuscripts Commission.

The Down Survey is of considerable importance to the legal profession and others alike. Genealogists, researchers, lawyers, conveyancers and anyone with an interest in local history will find these maps a valuable source of information. We have valuable public resources available to us not always widely know. The National Library is open to the public for research purposes, as are the record offices, and university library collections and manuscripts. A hidden treasure, a permanent and unique exhibition at Ardgillan Demesne, Balbriggan Co. Dublin, (one of Fingal's Architectural Masterpieces) features a set of the Down Survey maps from the collection at the French National Library which consists of 224 barony maps. Ardgillan (pictured above) is open to the public, has magnificent views over the Irish Sea, guided tours and tea rooms.



ABOVE: The Barony of Bunratty

The Legal News

MATHESON ORMSBY PRENTICE

District Court Small Claims Procedures

New District Court Rules amend the Small Claims procedures to include certain business claims. The new Rules facilitate claims from a business against another business in respect of goods or services not exceeding €2,000.

The Rules substitute Order 53A to include provision for a business small claim by a business purchaser against a business vendor in relation to a contract in respect of any goods or services purchased in the ordinary course of a business.

The consumer or business must have purchased goods or services from someone selling them in the course of business. Claims cannot be made in respect of debts, personal injuries or breach of leasing or hire purchase agreements. District Court (Small Claims) Rules 2009 (SI 519/2009)

PRAI and E-Stamping

The Property Registration Authority (PRAI) has published a note clarifying the manner in which they will deal with registration of documents under the new electronic stamping system which came into effect on 30 December 2009.

A document will not be accepted for registration unless:

- The stamp certificate is attached to the relevant deed or document.
- The stamp certificate security number must correspond with any security number entered on the Land Registry system.
- The date of execution of the deed on the stamp certificate must correspond with the date on the relevant deed.
- The folio number if any quoted on the stamp certificate must correspond with the folio number in the relevant deed.

Legislation on Biofuel Obligation

The Minister for Communications, Energy and Natural Resources has published the Energy (Bio-Fuel Obligation and Miscellaneous Provisions) Bill 2010 to establish a biofuel obligation and to give effect to provisions contained in the Renewable Energy Directive (2009/28/EC).

Under the Directive there is a requirement for 10 per cent of energy used in transport in each Member State to be renewable by the year 2020 and bio fuels will be used to deliver this target as well as providing a means of reducing emissions from transport sources.

Biofuel means means liquid or gaseous fuel for transport produced from biodegradable or biological sources.

The Bill provides for:

- The increased supply of biofuel in the State by means of a biofuel obligation requiring that a specified amount of road transport fuel is biofuel
- Imposition of a levy on relevant disposals of biofuel
- Additional functions for the National Oil Reserves Agency to administer the biofuel obligation amendment of the National Oil Reserves Agency Act 2007, the Fuels (Control of Supplies) Act 1971, the Electricity Regulation Act 1999 and the Energy (Miscellaneous Provisions) Act 2006



Case Progression in the Circuit Court

New Circuit Court Rules introduce a requirement for case management or case progression into specified Circuit Court proceedings similar to that which operates in the Commercial Court.

The Rules introduce a new Order 19A into the existing Circuit Court Rules. The requirement will apply where directed by the Circuit Court Judge or Registrar.

The Rules came into effect on 1 January 2010. Circuit Court Rules (Case Progression (General)) 2009 (SI 539/2009)

Land Registration Rules

The Property Registration Authority has published an unofficial consolidation of the Land Registration Rules 1972-2009.

The resource provides access to a marked up copy of the Land Registration Rules 1972 containing all amendments made to the Rules up to and including the Land Registration (No. 2) Rules 2009 (SI 456/2009).

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The Material is not intended to provide, and does not constitute, legal or any other advice on any particular matter, and is provided for general information purposes only.

Matheson Ormsby Prentice, Solicitors,
70 Sir John Rogerson's Quay,
Dublin 2,
Ireland.

Tel. (+353) 1 232 2000
Fax. (+353) 1 232 3333

MORE NEWS TO FOLLOW...

MATHESON ORMSBY PRENTICE

Availability of Plain Copies of Supreme & High Court Orders by E-Mail

Attested copy orders of the Supreme Court and of the High Court are required by practitioners for various purposes. However, if a copy order is required for purposes such as the taxation of costs, lodging papers in court for a hearing or simply for record purposes, a plain copy will usually suffice.

The Central Office will supply a plain copy of any Supreme or High Court orders perfected on or after 11th January 2008 in electronic, read-only format to any solicitor who is on record for any party in the case in which the order was made. Plain copies will be supplied as email attachments and can be printed or saved to an electronic file management system. Practitioners should, in the first instance, check the "High Court Search" facility on the Courts Service website (www.courts.ie) to ensure that the order sought has been perfected. If so, a plain copy of an order will be supplied by the Central Office on receipt of an email containing the following four pieces of information:

- 1.- The name of the firm requesting the order
- 2.- The party for whom the firm requesting the order is on record
- 3.- The record number of the case
- 4.- The date on which the order was made and perfected

Information about certain cases, such as in camera cases or cases in the Asylum List, is not available on the website. applications for copy orders in those cases will be dealt with without requiring the date of perfection to be recited. Orders which are available will be sent by return e-mail or, if not perfected, will be referred by Central Office staff to the relevant registrar.



E-mail requests that do not contain all of the above information can neither be acted on nor responded to. E-mail requests should be sent to: HighCourtBespeaks@courts.ie

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MEMBERS DISCOUNT

Fields Retail Ltd. has agreed to offer to members a discount of 10% on its merchandise. In turn, members will be also invited by Field's Jewellers to join their Privilege Card Scheme which will entitle members to a further 5% discount on future jewellery purchases.

No documentation is required to be presented at point of purchase. In this regard, it is sufficient for a member to advise retail staff of their involvement and membership of the Irish Institute of Legal Executives (IILEX) in order to obtain the discount.

fields



*Griffith College
Cork Conferring
2009*



Frank Crummey & Mary Foley attended the Griffith College Cork Conferring Ceremonies on Friday 6th November 2009 at City Hall Cork with Lord Mayor of Cork Cllr. Dara Hegarty (President Griffith College), Ms Tara Ryan Head of Provider Registration HETAC, Tomas Mac Eochagain & Ronan Fenelon Directors/Management Griffith College Cork, Cliodhna Dineen, Niall Meehan & Ors.

18 Students were conferred with Certificate in Professional Legal Studies (IILEX/ Griffith College).

14 Students were conferred with Diploma in Professional Legal Studies (IILEX/ Griffith College).

27 Students were conferred with LL. B (Hons) in Irish Law (NTU/HETAC) as well as the following conferrings;

Higher Certificate in Business (HETAC), BA in Marketing (HETAC), BA in Journalism (HETAC), Diploma in Administration & Office Skills (Griffith College), Diploma in Human Resources Management (ICM), Certificate in Business Studies (ICM), Diploma in Business Studies (ICM), Diploma in Management Studies (ICM), Diploma in Psychology (ICM), Diploma in Interior Design & Decoration (Limpert's Academy), Certified Accounting Technician (ACCA).

Student Prize Winning Categories for Best Academic Achievements were presented.

Aleksandra Krupa (pictured top right) was presented with the IILEX Frank Crummey Perpetual Prize/IILEX Griffith College Diploma.



NOTICE

FURTHER INFORMATION ON SPECIAL DISCOUNTS EXCLUSIVE

TO MEMBERS OF THE IRISH INSTITUTE OF LEGAL EXECUTIVES
(IILEX)



In light of the current downturn in the Irish economy, it is proposed that details on any new offers that become available will be sourced and brought to the attention of and for the benefit of members as they arise.

In this regard, please ensure that you log on to the IILEX website regularly so you don't miss out on any exciting offers :

www.irishinstituteoflegalexecutives.com

Among the following pages and articles are details of more of the current discounts negotiated by the Irish Institute of Legal Executives on your behalf...

In 2009, IILEX - The Irish Institute of Legal Executives, in conjunction with Griffith College, Dublin were the first outside body to secure the services of the Irish Revenue's e-stamping team in setting up a seminar offering an introduction on the imminent progress towards the electronic registration of deeds.

Seminar & Demonstration of E-Stamping



This covered a talk and a demonstration on the new e-stamping system which rolled out in December, 2009.

In association with the Irish Institute of Legal Executives, Griffith College Dublin was the first Law School to have a seminar to present to our students a demonstration and talk regarding this new strategic information and technological development A process that would change the way duty is paid and processed for ever more.

The demonstration was held on Tuesday 20th October, 2009 and was attended by a large mix of Legal Executives, Legal Accountants and those who wanted an insight into how the process of e-stamping would work.

It was complimentary to Griffith College students and their work colleagues and was most beneficial to those who work or who hoped to begin an apprenticeship in a Solicitor's office. The evening was a great success and to date the Revenue Team are still travelling around the country demonstrating the system. We really were ahead on this!

Would you like to see more seminars within the Legal System? Maybe in a particular area? If so, why not write to us and let us have your ideas and comments. Maybe even something for our next Brief or setting up your own regional Office. Write to us, e-mail us or comment through our website comment box.

We look forward to hearing from you!

Maria T KIELTY
F.I.I.LEX. - Dir. Education




Irish - A Treaty Language For All Key EU Legislation

The Gaelscoileanna movement - one of the goals of Irish Independence - was the revival of the Gaelic language in Ireland and for a non-state movement to take up the fight and give to our children a unique and priceless alternative to globalised culture is one of the most remarkable features of modern Ireland.

Dublin now boasts 28 Gaelscoileanna and 8 Gaelcholóistí and thousands of Irish-speaking children.

In 2007 Irish became the 23rd Official Language of the EU. It is accorded the status of a Treaty Language, which means it is regarded as an authentic text for Treaties. As from 1 Jan 2009, however, all key EU Legislation are translated into Irish, with provisions put in place so that Irish can be spoken at Council Meetings. The move means the creation of 29 new posts in translation, revision and publication.



The Extent and Value of Pro Bono Work Provided by Legal Executives

Pro bono legal work is legal advice or representation provided to individuals or community groups who cannot afford to pay for that advice or representation and where public funding is not available.

It is work that is provided free to the client and provided voluntarily. Are you a legal executive with IILEX who works on a voluntary basis or do you know of a legal executive with IILEX who does?

I am doing some research in this area at the moment, and I would love to hear from you...

Maria Kielty, F.I.I.L.E., Dir. Education

E-mail: kieltymaria@hotmail.com

*Griffith College
Dublin Conferring
2009*



by Rose P. Buggle,
Director IILEX

The 2009 Conferring Ceremony took place on the 11th November 2009 at Griffith College, South Circular Road in Dublin.

Veronica Duffy, Maria Kieltly and myself, Rose Buggle from our Institute attended the Conferring Ceremony of graduates in the Certificate in Professional Legal Studies and in the Diploma in Professional Legal Studies. These courses are provided by Griffith

College's Professional Law School and are run in conjunction with the Irish Institute of Legal Executives (IILEX).

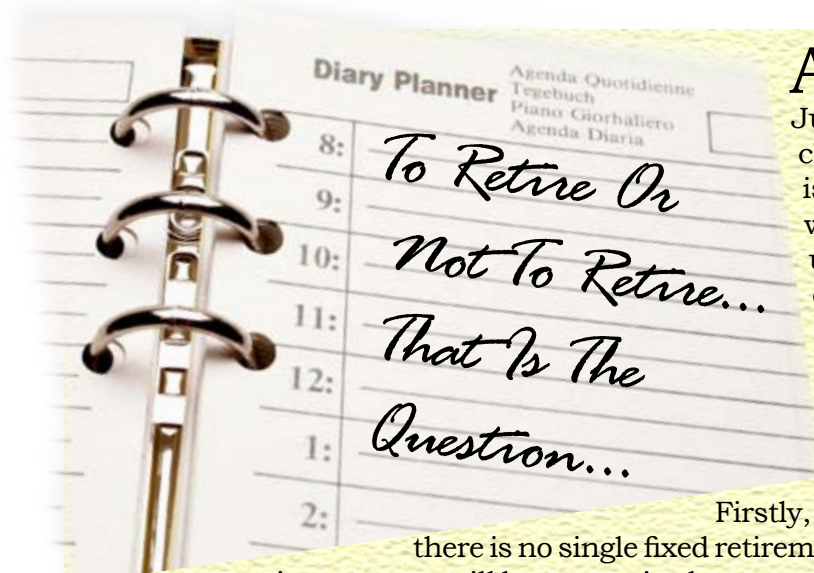
We met with Dermot Hegarty, President of Griffith College, David Langwallner, Dean of the Law School along with course directors and lecturers from the College's Law Faculty and distinguished guests including, His Honour Judge Peter Smithwick, His Honour Judge Frank Clark and Eamonn MacAodha, CEO of the Irish Human Rights Commission. Veronica Duffy delivered an address on behalf of the Institute congratulating the graduates on their achievements and invited them to join IILEX as student or associate members whilst, pointing out that, as registered members of the Institute we have Rights of Audience in the Irish Courts and some of us have been appointed by the Supreme Court as Commissioners for Oaths. Forty-six students graduated with a Certificate and Forty-six students graduated with a Diploma in Professional Legal Studies and their parchments were formally presented by the College's President, Mr. Diarmuid Hegarty.

Student Prizes of engraved crystal for Winning Categories for Best Academic Achievements in LLB (Hons) in Irish Law, BA (Hons) in Business and Law, and BA (Hons) in Legal Studies with Business were sponsored by Bloomsbury Professional, Clarus Press, Gill & MacMillan Publishers and Oxford University Press.

Photographs of graduates were taken with family and friends to remember their special day and after the graduation a reception was held in the College's Restaurant.

Please see photographs of the graduates in this Brief and also on the IILEX Website at: www.irishinstituteoflegalexecutives.com





A recent decision of the European Court of Justice, which it was hoped would provide clarity on the question of whether or not it is legally permissible to force an employee, who has reached a certain age to retire, unfortunately failed to do so and has caused some confusion over the law in the area. It is hoped that this article will go some way to explaining the rules which currently apply to retirement ages in Ireland.

Firstly, it is important to expel the myth that exists; that there is no single fixed retirement age for employees in Ireland. Generally, the retirement age will be set out in the contract of employment. This will be known as your mandatory retirement age, the age when you must retire. However, many contracts of employment go further and contain provisions for early retirement and more specifically retirement on the grounds of ill health.

Unfortunately, many employers fail to address the issue of retirement ages whether in their contracts of employment or otherwise. In our experience the usual retirement age set out in contracts of employment is 65 years.

This generally reflects the age at which employees can avail of their pension entitlements, be it state or otherwise. However, recently the Irish Government in the new National Pensions Framework, has proposed to alter the age at which people qualify for the State pension. The age will increase over time; to 66 years of age in 2014, 67 in 2021 and 68 in 2028. This now means that everyone now under the age of 49 will have to work until they are 68 before they can avail of the State pension.

There exists in Ireland a statutory retirement age, that is where the retirement age is set out by law; these statutory retirement ages exist for certain positions, for example, the Gardai, Defence Forces and members of the emergency services.

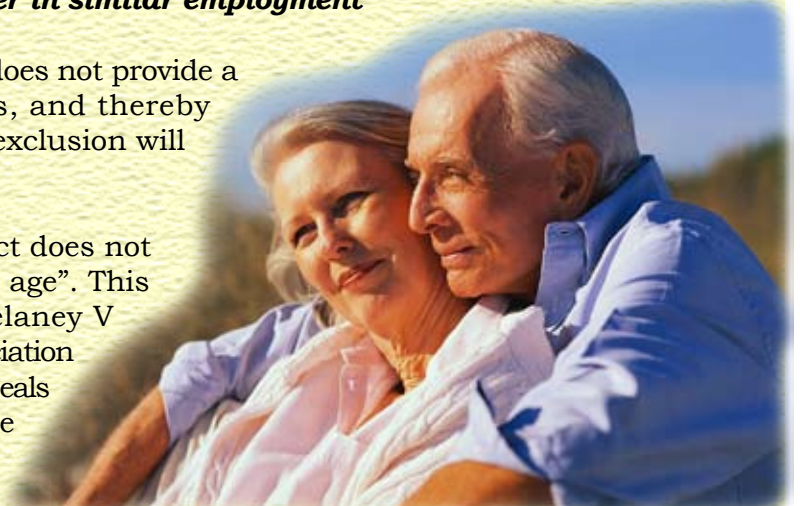
Self employed persons have no set retirement age. A company's articles of association may set a maximum age beyond which a company director cannot serve.

The Unfair Dismissal Act 1977 at Section 2 (1)(b) uses the phrase "normal retirement age" and provides that the Act will not apply to:-

"An employee who is dismissed and who, on or before the date of his dismissal, had reached the normal retiring age for employees of the same employer in similar employment"

It is important to note that if an employer does not provide a normal retirement age for its employees, and thereby allows them to work on indefinitely, this exclusion will not apply.

In addition, it should be noted that the Act does not provide a definition of "normal retirement age". This phrase was considered in the case of Delaney V Electrical Contractors Safety Standards Association Limited UD 1322/2003. The Employment Appeals Tribunal relying on the meaning of the phrase which appeared in the UK Act; the



Employment Protection (Consolidation) Act 1978 and which was considered by the House of Lords in *Waite -V- Government Communications Headquarters* 1983. The Employment Appeals Tribunal determined that the term normal retiring age means “a definite or particular retiring age in the relevant employment”.

The Employment Equality Act 1998 as amended by the Equality Act 2004 which inter alia prohibits discrimination on the grounds of age, did not alter the right of employers to set retirement ages in contracts of employment.

Specifically, Section 34(4) of the Employment Equality Act 1998 states that “it shall not constitute discrimination on the age ground to fix different ages for the retirement (whether voluntarily or compulsorily) of employees or any class or description of employees”. Employers have retained their discretion to fix compulsory retirement ages.

Therefore, a retirement age can be set for employees in a contract of employment, this is known as an express retirement age clause. However, an employer must be mindful of employees who are nearing this express retirement age.

If an employee is permitted to work beyond this contractual retirement age; that is the retirement age set out in the contract of employment, and an employer attempts to force an employee to retire, then this could lead to a claim under the Unfair Dismissal Acts and/or provide grounds for a claim under the Equality Act on the age discrimination ground.



It is equally important to note that a complete failure to set out a retirement age will give rise to difficulties when persons reach “normal retirement age” as there may be an expectation that persons can continue in employment in excess of what is understood to be the “normal retirement age” in the particular sector.

We will now turn to the issue of whether the imposition of a compulsory or mandatory retirement age is permitted under EU Law.

Recent litigation appeared to strengthen the rights of employees to work beyond the normal retirement age. This could lead to a challenge to the legality of the existing Irish retirement rules.

In the 2007 case of *Palacios de la Villa -v- Cortefiel Servicios SA*, the European Court of Justice (“the ECJ”) held that compulsory retirement clauses set by law were discriminatory on the grounds of age and could only be objectively justified in certain circumstances.

The matter returned to the European Court of Justice (“the ECJ”) in a case brought by Age Concern in the UK the “Heyday Case” Case C-388/07 where the UK High Court sought a preliminary ruling from the ECJ as to whether or not it was legal for UK employers to force workers to retire at the age of 65 years.

The European Judges stated that the compulsory retirement ages could remain if they had a “legitimate aim” linked to social or employment policy.

The ECJ held that mandatory retirement provisions do not, per se, infringe the Directive; but the Court did emphasise that the provisions had to be justified on the basis of the high standard of proof. The matter will now return to the UK High Court to determine whether the UK Government’s retirement age of 65 was a legitimate aim related to employment or social policy. Ultimately, regardless of the decision of the UK High Court, this will be a matter which will arouse much debate and will ultimately land before the legislature, who no doubt will be faced with mounting

(continued from previous pages)

pressure to abolish mandatory retirement ages.

It is anticipated that should such an abolition take place, the focus will turn to the question of retirement ages, whether set out in legislation or applied by means of a contract of employment. However, for the time being the Department of Justice, Equality and Law Reform have taken the view that Irish Law is fully in compliance with the Directive.

In the *Calor Teoranta -V- Michael McCarthy* case which arose at first instance in the Equality Tribunal, Mr. McCarthy challenged a decision by the Company to compulsorily retire him at the retirement age of 60 years which was fixed by the Company. The Equality Tribunal found that Mr. McCarthy was required to retire on reaching that age and that the fixing of a retirement age was saved by Section 343(4) of the Employment Equality Act 1998. However it is important to point out that the original retirement age fixed by the Company was 65 years but following negotiation with the Employee Representatives, this was changed to 60 years in 2002.

In addition, the Equality Tribunal made its decision prior to the European Court of Justice handing down its judgement in the *Palacios de la Villa* case. However, that case was distinguished from the instant case, as it concerned the imposition by law of a national retirement age. There is no national retirement age in Irish law. The instant case concerned a contractually agreed retirement age.

Although the European Court of Justice in the *Palacios de la Villa* case appears to have held that a Member State cannot introduce a mandatory retirement age unless there is objective and reasonable justification for so doing, the Labour Court commented that it would appear that an individual employer would be similarly required to have objective and reasonable justification for applying a contractual retirement age. The Labour Court went on to state that if that is the law of the Community ***“it is difficult to see how it can be reconciled with the apparent intent of Section 34(4), at least in so far as it is to be interpreted as placing retirement ages outside the purview of the Act altogether”***. The Labour Court went further and stated that their determination in the case of *Mount Temple Comprehensive School and Eileen McEvoy* that Section 34(4) ***“comports fully with the relevant Community Law would have to be reconsidered”***. However, the Labour Court went on to look at the matter on the basis that the issue in question in the instant case was whether Mr. McCarthy’s contractual retirement age was 65 years and not 60 years as submitted by the Company.

Ultimately, the Labour Court decided that Mr. McCarthy’s contractual retirement age was altered as part of an agreement in 1994 and was set at 65 years.

In conclusion, the Labour Court pointed out that they had not reached any concluded view on the submissions made to it in relation to the compatibility of Section 34(4) of the Act with the provisions of the Equal Treatment in employment and occupation; Council Directive 2000/78/EC. They expressly reserved their position on that question to another case in which it is a determinative issue.

In addition, it is important to mention the High Court case of *Reilly -v- Drogheda Borough Council* of Laffoy J, 19th November 2008. This case concerned a firefighter who challenged a change to his compulsory retirement age which was set out in his contract of employment. He was successful in overturning the decision to amend his retirement age. However, this was decided on pure contract law, where in essence the terms of an employment contract can only be changed with the consent of the employee.



Finally, it is worth mentioning the case of Martin Donnellan –v- The Minister for Justice, Equality and Law Reform, High Court, McKechnie J. 25th July 2008. This case concerned a challenge by the Assistant Garda Commissioner when he contested the statutory retirement age for members of An Garda Síochána which is set at 60 years. Mr. Donnellan was unsuccessful in his challenge and the Court following application of the *Palacios de la Villa* test, found that the Statutory Instrument, SI 16 of 1996 did not fall foul of the Directive.

In summary, the law in this area is in a state of flux and ultimately rules outlined above continue to apply, for the time being, that is mandatory retirement ages set by legislation are in compliance with EU Law, however, a definitive statement on the law has yet to be pronounced upon by the Courts in Ireland.

**Aidan McGrath Nat. Cert.LS, Dip LS, MIILEX,
Legal Advisor, Assistant Manager Claim Services,
DAS Legal Expense Insurance Company Limited,
12 Duke Lane, Dublin 2, Ireland.**

Tel: 00353 1 6707470

Fax: 00353 1 6707473

E-mail: a_mcgrath@das.ie

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The management of the Voluntary Health Insurance (VHI) has agreed to offer members of the Irish Institute of Legal Executives a 10% discount on their annual health insurance plans.

In order to avail of this discount there are two options open to participants which details are outlined in the following:-

The first option provides members with an opportunity to be affiliated to the Incorporated Law Society's current Group Scheme and thereby, obtain the 10% discount.

The second option provides members with an alternative opportunity for inclusion in the Customer Care Scheme also arranged by the Voluntary Health Insurance

Finally, in order to avail of the 10% discount, suffice to state that all that is required is to make contact with the Voluntary Health Insurance stating that you are a registered Legal Executive. Arrangements will then be put in place for your inclusion in whichever of the two schemes you may wish to join.

The following are the relevant contact details of the Voluntary Health Insurance (VHI):

Ms Karen Riall, Business Relations Team. VHI Healthcare, VHI House, Abbey Street, Dublin 1, Ireland. Tel. No: 01 799 4080 Email: karen.riall@vhi.ie



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Mary O'Dwyer
Director: IILEX

Proposals on Pensions Reform

The Ministers for Finance and for Social and Family Affairs have announced proposals for significant amendments to the National Pensions Framework including:

- A change to the age at which persons will qualify for State pension to 66 years of age in 2014; 67 in 2021 and 68 in 2028.
- A revised a more secure defined benefit model.
- A new pension scheme for new entrants to the public service with effect from 2010.
- Revisions to the structure of State pension payments.
- A new supplementary pension scheme to provide additional retirement income for employees who are not already in a pension scheme. Employees earning above a certain income threshold will be automatically enrolled in the new scheme which the State and employers would support it by providing matching contributions.

Mutual Assistance in Criminal Matters

The Minister for Foreign Affairs has designated the United States of America for the purpose of mutual assistance under the Criminal Justice (Mutual Assistance) Act 2008. Assistance will be provided in respect of the provisions of the Act listed in the Order.

The Order also designates the UK Territories of the Isle of Man, Guernsey and Jersey for the purpose of mutual assistance under the Act. Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2010 (SI 42/2010).

New Rules effective from 23 March 2010 substitute Rule 1 of Order 68(a) of the Circuit Court Rules and set out rules and procedures in relation to the Criminal Justice (Mutual Assistance) Act 2008. Circuit Court Rules (Criminal Justice (Mutual Assistance) Act 2008) 2010 (SI 82/2010).

All of the provisions of the 2008 Act are in effect from 1 September 2008 with the exception of Part 3 of the Act. Part 3 contains the provisions dealing with the interception of telecommunications messages.

The Act gives effect to 7 mutual legal assistance instruments primarily concerning international cooperation in the fight against terrorism and organised crime.

The Act enables Ireland to provide financial information to other states for criminal investigation with regards to transactions and bank accounts and the monitoring of such accounts.

The Act also provides for the hearing of witnesses and experts in other countries by video conference or by telephone conference and for the mutual recognition and enforcement of freezing, confiscation and forfeiture orders.

The Act contains provisions for the service of documents outside of the State in criminal proceedings. Its provisions also improve arrangements for the obtaining of identification evidence for criminal investigations.

MEMBERS DISCOUNT



The management of the Irish Court Hotels have kindly agreed to extend a 10% concession off of any promotional; offers during 2010 in the following hotels of their hotel chain:

- Auburn Lodge Hotel&Leisure Centre, Galway Road, Ennis, Co. Clare;
- Kenmare Bay Hotel&Resort, Kenmare, Co. Kerry;
- Killarney Court Hotel, Tralee Road, Killarney, Co. Kerry;
- Riverside Hotel, Killarney, Muckcross Road, Killarney, Co. Kerry.

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Irish Court Hotels

RESTORATIVE JUSTICE PROGRAMME SOUTH AFRICA

The Restorative Justice Programme in Pollsmoor Prison, Capetown was set up, organised and is currently run by Jonathon Clayton. Jonathon spent some eighteen years in prison, including Pollsmoor, and through his own experiences as an inmate knows the stresses and difficulties in returning to society after such a lengthy incarceration. I met Jonathon at the Irish South African Association dinner, which is held in Capetown on the 17th March every year. During the night we had an opportunity to discuss many topics ranging from work projects in the townships, my association with the South African Red Cross, and he was particularly interested to learn of my involvement with a Visiting Committee in a prison in Ireland. Jonathon invited me to attend as his guest at the next meeting of the Restorative Justice Programme, which would take place two weeks later at Pollsmoor Prison.

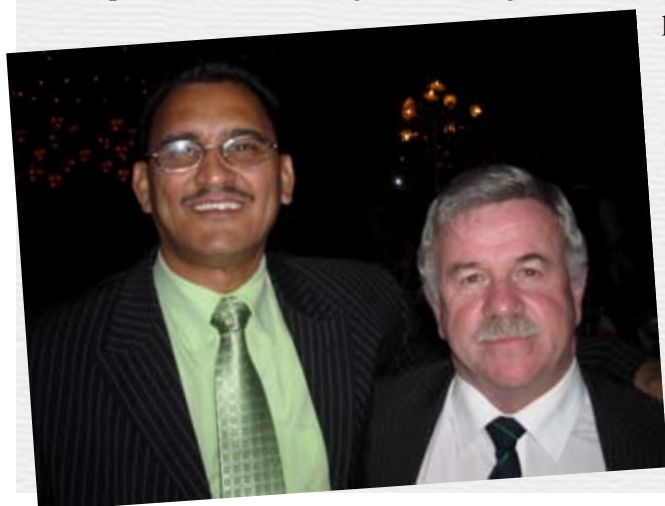


Pollsmoor is one of the oldest and largest prisons in South Africa, and the maximum security jail houses some seven thousand prisoners on any given day. The prison actually comprises of five separate units (or five prisons in one), each unit housing inmates from juveniles, a women's separate unit to the maximum security units. The prison is certainly among the most legendary because it is the central station of the Western Capes criminal underworld. Located less than twenty kilometres from the Capetown ghettos, everybody who is anybody in the city's criminal underworld passes through there, as it is the nerve centre of the Capes illicit economy. It is extraordinary in its location and setting, as this prison is enormous and very visible from the M3 motorway (which runs south to Cape Point) and actually encompasses a large area of Capetown's most beautiful and valued real estate, sitting under the towering eastern flank of Table Mountain. It is also legendary as the great Nelson (Madiba) Mandela spent six of his twenty seven years in jail there. He lived in an isolated cell on the roof of the prison, "His penthouse" as he referred to it in his autobiography. In his prison diary he recorded, the natural beauty was invisible to us from behind the high concrete walls of Pollsmoor and again in his autobiography he wrote: "At Pollsmoor I first understood the truth of Oscar Wilde's haunting line about the tent of blue that prisoners call the sky. The prison is also notorious for the gangs which operate within its confines as portrayed in Ross Kemp's television series on gangs around the world.

On the day of my visit, I was accompanied by my daughter, Rebecca, a graduate of journalism from Griffith College in Dublin and we were also in the company of two persons from a Christian group based in the UK. After the usual security checks at the reception area, we were accompanied by a prison officer as far as the wing which houses the room for the meetings conducted by Jonathon Clayton. Once in this wing, and after the doors had been closed tightly behind us, we had to make our own way to the room, having been given directions by the prison officer. We walked along a very lengthy corridor towards a door which seemed a distance away. We were in the presence of a large number of prisoners holding metal plates and cups, dressed in their regulation orange boiler suits which seemed very heavy considering the weather conditions that

prevail in the Cape. As we continued our journey to the room in question we were passed by several prisoners pushing trolleys laden with food for the other eagerly awaiting prisoners. The kitchen must have been close by as we were hit with the smell of hot air carrying the acrid smell of overcooked vegetables and boiled meat. At last we opened the door to the room where the meeting was taken place and we were warmly greeted by Jonathon and shown to seats which were at the top of the room, in front of a blackboard. When we were seated, we were now facing some seventy prisoners, armed with notebooks and pencils.

***Pictured on left (L-R):
Jonathon Clayton & Fintan Hudson***



Jonathon announced our arrival to the prisoners and advised them of our background and that we were visitors from Ireland and the UK, who had come to see them and the programme of restorative justice, in which they were involved. This announcement was greeted with a loud applause from the prisoners and some-cheers. Jonathon proceed on with his class, as if we were not in the room, and continually invited prisoners from the audience to come up to the blackboard and relate the reason for their detention, the nature of their crimes, the hurt which has been caused and whether true remorse and reconciliation with the families of their victims was needed and would help. The severity of the crimes and stories that were related in front of us were horrific and shocking, murders, multiple rapes and armed robberies, but each prisoner seemed at ease in unloading their respected stories to us. Jonathon spoke at length about the need for them to face up to their crimes and accept the responsibility for the same and the resulting hurt and misery to others by their actions. On the day of our visit there were no relatives of victims present. Jonathon set them exercises or homework (to be precise) and requested that they work on these pre-printed questionnaires and have them completed for the next meeting. Jonathon then asked me to address the prisoners, which I did, advising them briefly of my experience of the prison situation in Ireland and the roll which I had as a member of a visiting committee. The meeting was brought to a close and the prisoners were treated to refreshments and extra buns, which is one of the rewards for engaging in this programme.

Jonathon then took us on quick but very informative visit of the high security wing where we entered cells and spoke to the prisoners. Some of the cells were of a dormitory type with as many as forty or fifty prisoners sharing a cell and where toilet facilities were limited to two showers and two WC bowls. Unfortunately due to lack of manpower, the time allocated for the exercise yard is only forty minutes a day and the prisoners spend most of the hot days confined to the cells. In addition the restorative justice programme is run on a shoe string budget and is helped by voluntary contributions from outside the prison. Jonathon accepts that the funds are just not there, especially when you take into consideration the size of the prison population at Pollsmoor, which is reflected at the many detention centres in South Africa. He would love to see more education and training programmes in the prison and is constantly knocking on the doors of politicians and whoever else can help push the matter forward. He is happy with the progress that he has and is making with his restorative justice programme, small and all as it is, and as he says himself: 'It is the ice cube on the top of the iceberg'. It was a very interesting, sometimes disturbing, but rewarding day for us and with grateful thanks on our part to Jonathon Clayton and the greatly challenging and selfless work he does for prisoners.

Fintan Hudson BA. Law MIILEX

Director Irish Institute of Legal Executives

Council Member of the Irish South African Association (Capetown)

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Hickey Pharmacies Group has agreed to extend their 10% store discount scheme to members of the Irish Institute of Legal Executives.

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There are many branches of the Hickey Pharmacies Group located in Dublin city and suburbs. A few such outlets may also be located in other surrounding areas.

With a view to locating such pharmacies you should make reference to the relevant Telephone directory.

 **HICKEY'S PHARMACY**

LAW REFORM COMMISSION CONSIDERS LEGAL ASPECTS OF FAMILY RELATIONSHIPS

The Law Reform Commission has long been engaged in a project to reform family law. To date several matters have come under the spotlight including the rights and duties of cohabitants, family law courts and the implementation in Ireland of a number of Hague Conventions in the family law area. The Commission's most recent contribution is a consultation paper examining the rights and duties of fathers in relation to guardianship, custody and access to their children and the rights and duties (if any) of grandparents.

Among the interesting provisional recommendations in the paper is one that instead of the current legal terms 'guardianship', 'custody' and 'access', the law should use the terms 'parental responsibility', 'day-to-day care' and 'contact' to give a clearer indication of what is actually involved in this part of family law. The idea is to remove any misunderstanding that parents might have rights involving their children without corresponding responsibilities. The Commission proposes a statutory presumption that a non-marital father be granted an order for guardianship (parental responsibility) unless to do so would be contrary to the best interests of the child or would jeopardise the welfare of the child. Submissions are invited on whether automatic guardianship for all fathers should be introduced. The distinction between birth registration and the allocation of guardianship should remain. This would be accompanied by provisions to encourage greater joint registration of births.

In respect of access the Commission recommends the removal of the current two stage application procedure by members of the extended family. Submissions are invited on whether the categories of persons who can apply for access should be expanded to include persons with a genuine (bona fide) interest. As in all matters concerning children, the Commission regards the welfare and the best interests of the child as the primary consideration in the context of its Consultation Paper. It suggests that persons other than parents should be able to apply for custody of a child where the parents are unwilling or unable to exercise their responsibilities. Submissions are invited as to whether the wishes of the child should be considered in making a decision on an application for access by a member of the child's extended family. The Commission also invites submissions on whether it would be appropriate to develop a procedure to extend guardianship to a step-parent. The Consultation Paper Legal Aspects of Family Relationships is available on www.lawreform.ie

"The Commission recognises that children have rights and that these rights must be respected and protected in so far as is possible. However, the Commission is also aware that the Constitution and other legal instruments accord rights and responsibilities to parents as well. Therefore any discussion on the legal aspects of family relationships requires a balancing of those rights" Law Reform Commission

ADDITIONAL REPORTS ON FAMILY LAW CASES TO BE MADE AVAILABLE

As part of the Courts Service project to report on family law over 150 reports were published in Family Law Matters. They covered all court jurisdictions and included matters across the entire family law spectrum including divorce, judicial separation, nullity, guardianship, custody, access, maintenance and partition.

Additional reports collected during the project will be available on the Courts Service website (www.courts.ie) in the coming weeks. As with Family Law Matters these cases cover a variety of issues across all court jurisdictions. The Courts Service took advantage of the relaxation of the 'in camera' rule following the enactment of the Civil Liability and Courts Act, 2004 to make information available for legal practitioners, the media, researchers and the public on the workings of our family law courts. For the first time, reports of the many issues of concern to litigants and the attempts by judges to resolve them were made available.

The project was conducted without identifying the parties in the cases thus protecting the privacy of the families involved. The reports assisted in dispelling some of the misapprehensions surrounding the application family law. All issues of Family Law Matters are available on www.courts.ie

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IILEX Ltd.
22/24 Lower Mount Street
Dublin 2
Ireland.

DX NUMBER 15

Tel: 00353 1 890 4278
iilex07@gmail.com
www.irishinstituteoflegalexecutives.com

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