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Address by Laurence K. Shields Chairman of the SMDF

Dear Members,

As I take over from Maurice Curran as Chairman of the SMDF, I have a clear vision. That is to maintain the SMDF as the number one provider of professional indemnity cover to solicitors in Ireland. I need the support of you, our members to do this and in return you can count on us to provide a supportive, timely and sympathetic service if you need us.

I would like to pay a warm tribute to my predecessor, Maurice R Curran, who has led the SMDF since its inception. He has worked hard and tirelessly to promote the interests of the SMDF. It is because of his leadership, energy, enthusiasm and ability that the SMDF succeeded and maintained its pre-eminent position in providing indemnity to solicitors. Thank you, Maurice.

Regards

Laurence K Shields

Chairman



Laurence K. Shields
Chairman

Address by JAMES MacGUILL President of the Law Society - 3rd April 2008

On the occasion of Maurice's retirement, I would like to pay tribute to the huge achievements of those visionary colleagues led by him in establishing the SMDF 21 years ago.

The establishment of the Fund in 1987 was welcomed by solicitors throughout the country, not only for providing an alternative service, but for achieving immediate and lasting reductions in the PI premiums which were so high at the time that they threatened the viability of some legal practices. The SMDF created a healthier, more honest and more competitive marketplace. The Fund is still the preferred method of protection for a preponderance of the profession. I believe the reasons for this are threefold.



James MacGuill
President Law Society of Ireland

Firstly, the Fund continues to provide excellent cover at reasonable prices, particularly to some more vulnerable sections of the market on reasonable terms and conditions.

Secondly, many firms have been targeted by very aggressive marketing from commercial insurers, offering cover at effectively bargain-basement prices, but, wisely prefer to stay with the Fund for continuity, and in the sure and certain knowledge that commercial insurers who target a particular year in an aggressive fashion, do not necessarily take a long-term view or have a long-term commitment to the Irish market.

Thirdly, the real difference membership of the Fund makes to an individual colleague is the manner in which claims are handled. I think it is fair to say that no colleague would wish their client to suffer as a result of any oversight on their part and, accordingly wishes claims to be dealt with speedily and fairly. Equally, however, colleagues are entitled to fair treatment and to have their point of view expertly evaluated by a solicitor colleague of their nomination before final decisions are made on settlement.

There is an immense difference between making a notification to a large commercial insurer, perhaps not even necessarily based in Ireland and, discussing the matter with an SMDF panel solicitor selected by you.

I trust that colleagues will continue to reflect on the great achievements of the Solicitors' Mutual Defence Fund in delivering a service with a qualitative difference to practitioners and, most importantly, to the public at large.

James MacGuill

James MacGuill - President Law Society of Ireland

edited version of the address





EVENTS AND NEWS UPDATES

FORTHCOMING EVENTS

SUCCEEDING IN A SLOWING ECONOMY

County Cavan Solicitors Association
 Thursday 22 May 2008
 7.00 – 9.15 pm
 (workshop format)
 Hotel Kilmore, Dublin Road

Wexford Bar Association
 Thursday 12 June 2008
 3.15 – 5.45 pm
 (workshop format)
 Riverside Hotel
 Enniscorthy, Co. Wexford

Advance Notice:
 The Fund is organizing a major seminar in Dublin and it has lined up an impressive list of speakers. Have a look at the enclosed brochure. We have a limited number of places so please book early.

Risk Management and Regulation For Solicitors
 Royal College of Physicians
 6 Kildare Street
 September 11 2008
 2.00 – 5.00 pm

If you would like a seminar run in your area, please contact either Margaret Weber SMDF or Anne Neary.

PIAB, Statute of Limitations and the Civil Liability Act 1961

We have received a number of cases which involve claims against the Estate of a deceased person which have caused serious problems for our Members.

One case involved a 14 year old boy who received serious injuries in a motor accident while a passenger in a car. This was a single vehicle collision in which the driver died as a result of the injuries sustained.

The accident occurred in June, 2004, and the Solicitor was instructed by the boy's parents in or around that time.

The young boy had been an in patient in hospital and the Solicitor experienced some difficulties in getting the various medical reports together. He eventually got a medical report in December 2007, and a claim was lodged with the PIAB.

The Board wrote to him in March, 2008, indicating that the claim was statute barred by virtue of the provisions of the Civil Liability Act 1961.

Section 48 of the Statute of Limitations Act, 1957 provides that a person is deemed to be under disability while he is an infant, and section 49 2(a) provides that an action for damages for negligence can be brought within three years from the date on which the person previously under a disability ceased to be so. It has been universally assumed, therefore, that the statutory period does not apply in cases where the injured party is underage.

However, section 9 of the Civil Liability Act 1961 provides that:

"(2) no proceedings shall be maintainable in respect of any cause of action whatsoever which has survived against the estate of a deceased person unless either:

We have noticed that our Members still have problems with PIAB, the Statute of Limitations and the Civil Liability Act.



Jim Graham
 Claims Consultant

a) Proceedings against him in respect of that cause of action were commenced within the relevant period and were pending at the date of his death or

b) Proceedings are commenced in respect of that cause of action within the relevant period or within the period of 2 years after his death whichever period first expires"

The "relevant period" means the period of limitation prescribed by the Statute of Limitations or any other limitation enactment. Despite the fact that the injured minor did not have the capacity to institute proceedings in his own name against the deceased's Estate claiming compensation for the injuries which he suffered, the Civil Liability Act is quite clear that by using the word "whatsoever", it bars all causes of action against the Estate of a deceased person unless those proceedings are commenced within two years of the death of the deceased tort-feasor.

In a similar case, an accident occurred in March, 2002 and the coroner's inquest did not determine the date, case and circumstances of the death until October, 2002. We queried whether the two year limitation period started running from the date of the coroner's inquest. Counsel has advised us that there is nothing in the 1961 Act, nor in any of the Statutes of Limitation that would support this argument. The functions of the coroner, pursuant to the Coroners Act, 1962, have no relevance to this issue.

We have noticed that our Members still have problems with PIAB, the Statute of Limitations and the Civil Liability Act.

PRACTICE ALERT

VAT on Property - The Fund wishes to draw the attention of members to the introduction of the new VAT regime which comes into effect on July 1 2008. If you are dealing with transactions which will not complete until after July 1, these transactions will attract the new VAT rules.

Changes in the Contract for Sale - A new sub-clause to the standard contract for sale should now be downloaded from the Law Society website and inserted into any contract where the transaction is due to close, or actually closes on July 1 2008 or later.

Raising and Maintaining Conveyancing Standards The Fund recommends its members to acquire and read a copy of the Guide, jointly published by the Southern Law Association and the Law Society





Succeeding in Changing Times – Part 2: Marketing your Practice



Anne Neary
Solicitor

I have noticed an increasing interest in marketing among solicitors this year. As the frenetic workload recedes and the back log of work is tackled, many solicitors are looking to 2009 and beyond and asking the question where is the work going to come from?

There was a large turn-out of solicitors in Cork to the first of the **Succeeding in a Slowing Economy** seminars, and the consensus was that although everyone noticed a downturn in their turnover this year, cash-flow is being maintained. But there was and is a serious concern about the future, not just among solicitors in Cork, but countrywide.

Solicitors are now looking at their client databases with more interest, and looking at opportunities to cross-market their services to existing clients. Client retention is key to succeeding, but hand in hand with client retention is getting your message out to new clients – and you need both to stay in business.

Here are my top 10 tips for getting started with marketing for 2009 and beyond:

- 1 **Get going right now** – marketing is a medium to long term strategy and succeeding in 2009 and subsequent years means planning in 2008.
- 2 **Look at the 80/20 balance in your practice** – identify the 20% of clients who generate 80% of your turnover – focus on their needs first.
- 3 Get your **client database** up to date – ensure that you have personal as well as professional details about your clients. This is the foundation of your marketing.
- 4 Create your personal and your professional **mission statement** – the first to work out what type of life you want to have and the second to deliver that life
- 5 Then, identify what **new client base** you want to target for 2009 – the more detailed your description of the clients you want, the better the focus for your marketing efforts.
- 6 List out the **services** you can offer them
- 7 Identify the **message** that is likely to attract those clients
- 8 Consider how you can **add value** to the services you provide your clients
- 9 **Carry your business card** at all times. In my experience only 3 out of 10 solicitors carry a business card. Most of them borrow the back of one of mine if they want to give me their details. That is ok for me, but not for a potential client or referral source.
- 10 **Develop a website** - geographic location is no longer a limiting factor.

Marketing is a way of life

Remember, marketing is a way of life – it is a life long commitment. You cannot just host one event, take out a few ads in the papers, send out some letters and hope to see a result. The office events have to be regular and identifiable, the letters have to keep flowing, the exposure in the newspapers has to be relatively frequent and the focus has to be unrelenting. You need to market your practice whether you feel like making the effort or not. Sometimes, you can get a rush of energy and wonder why you ever thought marketing was difficult and sometimes it will feel like too much trouble.

Marketing as a joint project

Running a small practice is difficult enough. Taking on a vigorous marketing plan in addition may seem like an impossible task. There is the option of finding others in the same situation as you, who are interested in growing their business and working in a joint effort on marketing and other projects to achieve maximum impact. With the slow down in the economy there has been an increase in the number of mergers, acquisitions and office sharing arrangements, as firms seek to share resources and increase profitability. But whether you are contemplating changing the way you do business or not, marketing is a key strategy to success in changing times.

Anne Neary is a solicitor and management consultant to the Legal Profession. She can be contacted at anne@anneneary.ie or by phone 01-4911866 or 086 1955919. She offers a **Practice Management Programme** to Law Firms who want to run their practices as a business.

NEWS ITEMS

New Risks Emerging in Conveyancing Practice. Patrick Dorgan Board Member SMDF



Patrick Dorgan
Board Member SMDF

Even as the property markets continue to slow down, the increasing complexity of conveyancing, coupled with increased client expectations, means that the practitioner has to be alert against new issues, and threats coming down the tracks.

Here are a few things that you should look out for, bearing in mind that since Roche -v- Peilow, the law has been, in effect, that just because everybody follows a practice does not mean that that practice is necessarily right or that a solicitor won't get sued if he follows that practice.

Redemption of loans. - there is a long standing practice recommendation that redemption figures should be sought and purchase monies split to provide for the immediately redemption of the seller's loan. With the increase over the last few years in the volume and speed of transactions, the difficulty in getting banks to give the figures and the pressure that is put on solicitors by their clients to transfer funds immediately, the practice has fallen into disuse, and buyer's solicitors are routinely accepting the seller's solicitors undertaking to discharge the loan from the sale proceeds. Practitioners should consider whether they are not better off agreeing with their colleagues to have redemption figures available in sufficient time to enable them to arrange the sale proceeds so that the seller's loan can be paid off immediately - there is a view that to do otherwise may be negligent.

While on the topic of redeeming loans, bear in mind that there have been difficulties with banks which issued redemption figures, but did not then give a release, as there were other loans open secured on the property, besides that in respect of which the figures had been given. This occurred frequently as a result of the surge in "top up" loans for all sorts of purposes other than house purchase. Practitioners should use the agreed form of request for redemption figures, which identifies that all accounts secured by the mortgage are in question, and the bank is then obliged to furnish details of all such accounts, or, at least, is in a much more difficult position if they discover a missing mortgage account afterwards!

VAT - practitioners will surely by now be aware that the new VAT regime for property will be coming into force on the 1st July (see Practice Alert on page 2). The changes are supposed to simplify the VAT regime, but the early indications are certainly not hopeful in this regard. Practitioners will need to look closely at each and

every transaction to ensure that any VAT consequences are fully dealt with.

Conflict of interest - the courts appear to be adopting an ever more unsympathetic approach to solicitors who find themselves involved in a conflict of interest position. The Law Society is looking at the matter closely at a number of levels, and the recent Lynn and Byrne controversies have given the matter added impetus. Leaving aside extreme cases which the SMDF has had to defend, such as acting for a buyer of a new house while also acting for the builder from (which is prohibited not just by professional etiquette, but also by law), the safest test may be: if you have to ask yourself the question, you are conflicted!

Building energy rating system compliance - the 30th June, 2008 is the last date by which the transitional BER exemption may apply - it's another one to watch out for.

Land Certificates and Undertakings - The introduction of Section 53 of the Registration of Deeds and Titles Act 2006, which has been in force since 1 January 2007, began the gradual abolition of Land Certificates in Ireland.

At the moment existing land certificates must be lodged with the Land Registry for the registration of a dealing, but all existing Land Certificates will cease to have effect on the 1st January, 2010.

Because of this change no undertakings should be given:

1. For the return of a land certificate once it is lodged in the Land Registry as it will be canceled and no replacement given.
2. To furnish a new Land Certificate because there are no new Land Certificates being issued by the Land Registry.

Don't assume anything

The foregoing is just a quick summary of some current issues in conveyancing practice. In light of the hugely changed environment over the last few months, the safest assumption is - don't assume anything. Clients won't automatically get loans, reputable builders may go bust - even the bank may go bust! As far as you can, plan each transaction on the basis that everything conceivable will go wrong and that the Law Society, the Financial Regulator, the judge, the CAB, and your former client's new solicitor will all want to review your file.



SET UP
BY SOLICITORS
FOR SOLICITORS

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