Keeping In Touch – Spring 2016 Newsletter

Introduction *

The first two months of 2016 have been an exciting and challenging time for those involved in employment and general litigation.

It has also been an exciting time for this office. Richard Grogan of this firm will be presenting a presentation to the Law Society Skillnet group on 13th May on the Workplace Relations Act. The presentation is a Skillnet course organised by the Law Society for the Leitrim Bar Association, Longford Bar Association, Roscommon Bar Association and Sligo Bar Association which takes place at the Landmark Hotel, Carrick-On-Shannon. It is a great honour to be requested to speak at this event. In addition, in the Spring Edition of The Parchment there will be an article by Richard Grogan on the new procedures relating to Unfair Dismissal cases.

The Workplace Relations Commission is starting to hear the first cases in employment disputes under the new system. There have been significant changes in the way employment rights cases are being dealt with. This is a challenge for all representatives and for the WRC itself in applying the new procedures. The Labour Court has been giving decisions under such matters as the Terms of Employment (Information) Act and a number of Unfair Dismissal cases are going through the system. The new case management procedures being applied by the Labour Court appear, from our experience, to be working very well. The case management hearings, in the Labour Court, are ensuring that all issues are identified and that where possible unnecessary witnesses can be disposed of where matters can be agreed. The Labour Court is also ensuring that where submissions on legal issues are required that the Court is obtaining same and ensuring that they are exchanged in advance. This has the great potential of reducing costs for everyone. There are difficulties with the WRC. There are none with the Labour Court. In the WRC there is a bedding down time that is needed as there is a complete change in the procedures. Allowances must be made for the WRC itself and by the WRC to practitioners. This is happening and there are positive

communications between the WRC and representatives to help resolve issues.

Cases which have been lodged under the new system are coming on for hearing quickly. This is to be welcomed.

There are challenges ahead for everyone. Employment Law in particular is one which is becoming more complex. In addition, because of the new system which is in operation a lot of work now has to be front loaded. This means that there are effectively up-front costs which both employers and employees must consider. The days of simply putting in a claim saying that a party was unfairly dismissed and a response that the employee was not unfairly dismissed are long gone. Employees are going to have to seriously consider the costs of bringing claims. In the case of employers they are now going to have to consider the cost of defending claims which cannot be put on the long finger. We are seeing claims being settled very quickly now because of the strict time limits which are being applied. We are also seeing employees not being prepared to bring claims on the off chance that the employer will put up some monies before a case goes to the EAT. Parties now are having to seriously consider whether they wish to bring claims or to defend claims. The new system is resulting in claims being settled a lot earlier. This is good news for everyone. It means that the ongoing accumulation of costs over years is being done away with. A possible downside is however that because cases are coming on quickly and because a lot of work has to be done at the very start the number of law firms who are prepared to take on employment cases seems to be falling. This is putting added pressure on those firms which do undertake employment law work. Employment law is a specialist area of law and it is probably going to become an even more specialist area of law in the coming years.

Payments to Employees

In the UK case of HMRC-v- Smith & Williamson 2015 UK UTT 666 is a case which held that goodwill payments made by an Accountancy firm to a group of its employees in respect of their relationship with potential clients is Taxable Employment Income and not a capital payment.

It is very important, when employers are making payments to an employee that it is properly categorised.

At times many schemes are put in place to try to create a situation where certain payments are treated as capital payments rather than income. Because of the interaction of the Capital Acquisitions Tax certain payments, even to strangers such as employees, are exempt.

The vast majority of these schemes fall foul of the tax legislation. That is not to say that legitimate gifts to employees which are totally unrelated to their employment may be in the category of a gift. If it is a gift it is a capital payment not a taxable emolument.

Employees right to privacy in the workplace on employer equipment.

The case of Barbulescu –v- Romania being application number 61496/08 which is a decision of the European Court of Human Rights issued on 12th January 2016.

The case has been interpreted in a lot of the commentaries in the newspapers that an employee does not have a right to privacy in respect of communications which take place during working hours on company equipment or social media sites which the employee has been requested to set up by the employer.

The European Court of Human Rights in their assessment pointed out that the employer, in accessing the Yahoo account had acted in the context of the disciplinary powers provided by the Labour Code. We do not have such powers in any Labour Code. It would therefore be necessary for an employer for the purposes of accessing accounts that the issue in relation to the non-use of company computers / email / social sites during working hours is clearly specified in company's policies and procedures. It would also be necessary for the employer to be in a position to show that these accounts were accessed during working hours. In the particular case the European Court of Human Rights pointed out that the domestic Courts found that the employer had access to the Yahoo messenger account on the assumption that the information in question had been related to professional activities

and that such access had therefore been legitimate. This was on the basis that the employee had advised that he had been using the Yahoo messenger to advise clients.

The Court did find that it is reasonable for an employer to want to verify that employees are completing their professional tasks during working hours.

It follows from the decision that it is important that employers have a detailed policy in place in relation to the use of social media and emails during working hours and that these are fully communicated to staff.

It would further follow from the decision that if an employee can convincingly explain why a Yahoo messenger or other social media was used for personal circumstances this is an issue which may need to have been taking into account by the employer.

The particular case did deal with the issue as to whether a fair balance had been struck between the employees' rights for respect for his private life and the employer's interest.

This case is not a blanket authority for employers to access employees' social media accounts or activities and to dismiss employees who use social media during working hours. It is very clear that clear and definitive policies must be in place and these will need to be communicated to employees in advance before an employer can act on any improper use of social media or employers computers during working hours.

Collective Redundancies

The termination of an employment contract following a worker's refusal to accept a significant unilateral change to essential elements of the contract which operates to his/her detriment constitutes a redundancy for the purposes of Council Directive 95/59/EC of 20 July 1998.

The European Court of Justice in case C-422-14 have held that a significant change to essential elements of the employment contract for reasons not related to the individual employee concerned falls within the definition of "redundancy" for the purposes of Article 1 (1) (a) of the Directive.

In that case it was held that for the purposes of determining whether there is a collective redundancy under the EU Directive that when calculating the number of redundancies, terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned are to be equated to redundancies provided that there are at least 5 redundancies.

In the case in question there was a 25% reduction in the salary.

What is interesting is that the Court stated that to establish whether there is a collective redundancy with the meaning of the Directive the conditions that there must be at least 5 redundancies relates not to terminations of employment contracts that may be assimilated to redundancies but only to redundancies in the strict sense of the term.

The Court found that the fact that an employer unilaterally and to the detriment of the employee make significant changes to essential elements of the employment contract for reasons not related to the individual employee concerned falls within the definition of redundancy for the purposes of the Directive. The Court observed that redundancies are characterised by the lack of the workers consent. In the case before them the termination of the employment relationship of the worker who agreed to enter into a contract terminating that relationship arises from the changes made unilaterally by the employer to an essential element of the employment contract for reasons not related to the individual worker. That termination therefore constitutes a redundancy. The Court held that one of the objectives of the Directive is to afford greater protection to workers in the event of collective redundancies a narrow definition cannot be given to the concept of redundancy.

This is quite an important case for collective redundancies going forward.

Employers need to be extremely careful in relation to unilaterally changing employee's contracts of employment.

Atypical Work Permits for Non EU Fishermen

On 15th February a new work permit for those working in the fishing industry who are non EU nationals commenced. For the first three months applications will be accepted from those already working in Ireland.

After that three month period of time applications for a work permit will only be accepted from individuals who are non EEA / EU nationals who are not in Ireland at the time that the application is made.

There is therefore a very small window of opportunity for those working in the fishing industry who do not have work permits and are not EEA / EU nationals to apply.

Should Courts differentiate between lay litigants and those with legal representation?

In the case of Walter John Harvey –v- The Court Service & Others 2015 IHC680 Mr. Justice O Connor stated;

"As per the Plaintiff's submission about being a lay litigant, the Court cannot differentiate between those who have professional legal representation and those who represent themselves".

The Court had criticised the Plaintiff over the contents of his amended statement of claim pointing out that he did not have any proper regard to the rules of the superior Courts which state that it should be "in summary form, a statement of the material facts".

This case may well have importance for cases before the Labour Court or before Adjudicators in the WRC as regards compliance with their rules

KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

Forced Retirement at 65

In the case of Sheamus Maguire –v- Neville's Bakery DEC/E/2015/124 the employee was awarded €10,000 after the Equality Tribunal accepted his contention he should not have been forced by his employer to retire on his 65th birthday.

In the case the respondent submitted that it was entitled under Section 34 (4) of the Employment Equality Acts to fix a retirement age. However, it acknowledged that as a result of the Placio De Le Villa Judgement of the European Court of Justice Section 34 (4) appeared to be no longer compatible with the Directive. In that case the respondent also cited objective justifications.

The Tribunal stated that it was clear from the decision in the High Court case of Donnellan –v- Minister for Justice, Equality and Law Reform that where an employee is forced to retire at a particular age there is prima facie discrimination within the meaning of Article 2 of Directive 2000/78 EC. The Tribunal referred to the very detailed consideration given in July 2015 in the case of Earaigaill Eisc Teo –v- Richard Lett EDA1513. In that case the Labour Court held that Section 34 (4) prima facie allowed the respondent to fix a retirement age without contravening the prohibition of discrimination on the grounds of age. In the case in question however, the Tribunal added that it seemed clear that there must be a positive decision to fix the retirement age in respect of the specific employee to whom the case refers and a clear understanding on the part of the employee that it had been. It would not suffice to rely on a generalised power under Section 34 (4) to justify termination retrospectively.

In that case there were issues relating to custom and practice which were not accepted by the Tribunal.

The issue of section 34 (4) of the Act has been clarified by the new legislation and this is covered separately in this newsletter. The issue is however, in relation to existing cases prior to the new legislation being introduced that if an employee loses a claim will they have a

claim against the State. We will be interested to see how matters might develop in relation to some of the historical cases which are now currently going through the system.

Retirement Ages and Employment Law

There has been a significant development in employment law. The Equality (Miscellaneous Provisions) Act 2015 commenced from 1 January 2016.

This legislation significantly changes our existing Employment Equality Legislation from an employer's perspective. It clarifies that an employer may continue to set a compulsory retirement age provided, and this is the big proviso, that the employer can show that tis objectively and reasonably justified by a legitimate aim and that achieving that aim is proportionate and necessary.

What does this mean in practice?

In practice it means that an employer cannot simply set a retirement date of age 60 or 65 or 66. The employer must be in apposition to show why such a retirement age is necessary and must be able to objectively and justify same as a legitimate means of achieving that aim.

What does it mean to employees?

It means that employees now have a legal right to work regardless of their age. The discretion is there for employers to fix compulsory hour retirement age.

Employers in the past have set the retirement age by reference to the State pension age. This is an entirely separate issue.

The European Legal position.

There have a number of cases over the recent years relating to setting retirement ages. At EU level the case law has established that an employer must be able to objectively justify the imposition of a compulsory retirement age.

Section 34 (4) of the Employment Equality Act, 1998 appeared to allow mandatory retirement of employees who reached the established retirement age within the employment to be lawful and to constitute a discrimination. Issues arose as to whether a blanket fixing of mandatory retirement ages by individual employers was inconformity with the European Framework Directive.

Section 34 (4) did not require an objectively justified mandatory retirement age.

As a result of the commencement of the new Act the issue has been resolved in Irish Legislation as to whether mandatory retirement ages can be set by employers and must be capable of objective justification.

What is objective Justification?

There are a number of European and Irish cases which has established that there are three stage tests for justifying direct age discrimination by way of compulsory retirement.

1. Are the measures there to achieve a legitimate aim?

   Intergenerational fairness being the interchange by younger and older workers, dignity being avoiding the need for costly and diverse disputes about capacity and underperformance or legitimate aims but reasons particular to the employer such as cost reduction or improving competitiveness or not.

2. Is it legitimate in the circumstances of the particular business?

   A policy of increasing the recruitment of young people to achieve balance and diverse workforce would appear to be in principle a legitimate aim but not of the business is easily able to recruit young people but has a problem in retaining older workers. It is clear that it is the particular circumstances of the business rather than the individual that should be considered.

3. Are the means proportionate?

   This means are both the means appropriate to the aim and necessary to achieve it.

It would be our view going forward that it is going to be more difficult for employers to objectively justify a compulsory retirement age unless there is evidence in place, at the time that the retirement age was set, that those objective justifications were considered and that the setting of the retirement age was on the basis of legitimate aims applicable at that stage that could be backed up with appropriate relevant contempanerous documentation. Now when it comes to the actual retirement of the worker it may well be that the relevance of those aims at that stage may no longer be there and it may be difficult for an employer to justify same on new grounds. It is therefore going to be very important that employers keep their retirement age under review and ensure that employees are made aware of same and the reasons for the particular age having been set. We would anticipate that there will be a significant number of age related discrimination claims relating to forced retirement in the coming years.

Government to examine the legal protection for workers in cases where operations have assets which may be moved to separate legal entities as part of corporate restructuring.

The Government has announced that two law experts will examine the legal protection for workers in cases where operations and assets are moved to separate legal entities as part of a corporate restructuring. This is commonly now known as the Cleary's case which recently came to light.

Because of the fact that assets were moved from one entity to another where the operating company for €1 was sold to a UK insolvency specialist who proceeded to close the shop and liquidate the assets resulted in the staff being left with nothing more than their entitlement to Statutory Redundancy Payments from the State.

Concession holders at the store and other creditors were also left out of pocket.

The Government has appointed Mr. Keven Duffy, the Chairman of the Labour Court and Ms. Nessa Cahill, a company law specialist. They have been given eight weeks to examine existing legislation and to consider ways to best protect the interest of workers in such cases.

Separately, the Company Law Review Group has been asked to examine legislation with a view to recommending ways that company law could be amended to better safeguard employees and creditors.

They have been asked to explore instances where the corporate veil should be lifted to strengthen the Directors duty to employees, checks and balances to strengthen obligations to employees for better protection in company restructuring and circumstances in Liquidation of insolvent companies where liabilities can be met from solvent companies in the same group or in related companies.

The problem of entities having employees in one company and the assets in another company both within the same group is not new to anybody who deals with employment law cases. It has taken the Cleary's debacle to force the Government to start looking at this issue seriously.

The Government have requested that the reports would be submitted to them by March 11.

The reality is that whatever the recommendations are they will have to be dealt with by the next Government.

Payment of Wages Act, 1991 Appeals

The case of Mater Misericordiae University Hospital and Doctor Jacqueline Malouf is an interesting decision. It deals with the issue of the appeal procedures under the Payment of Wages Act.

Prior to the Workplace Relations Act coming into operation all appeals under the Payment of Wages Act had to be done by way of an Appeal Notice to the Employment Appeals Tribunal and a copy had to be sent

to the other side. Now Appeals go to the Labour Court. The Labour Court had confirmed in this decision under PWD162 that because of the operation of Section 55 of the Workplace Relations Act 2015 as amended by Section 20 of the National Minimum Wage (Low Pay Commission) Act 2015 that the provisions of Section 7 (2) of the Act of 1991 has no application and therefor an appeal sent to the Labour Court is sufficient.

This is a very important decision for the purposes of confirming the Appeal procedures that now apply under the Payment of Wages Act. The previous rules were extremely harsh on those appealing who were not fully conversant with all of the nuances of the Payment of Wages Act Legislation.

This is a most welcome decision from the Court.

Jury Duty – Employees must be paid

An employee who attends for Jury Service must be paid for that day by their employer.

On 19th January this issue came up where a Juror told the Court that she was concerned that if she undertook Jury Service that she could lose her job or that she would not be paid. The Court pointed out that the Court can fine the employer, and here is the real concern for employers, an unlimited sum if they do not pay an employee while they are on Jury Service.

In the case in question, the Juror was given the option to be excused but she said she wished to serve. The Court stated that they would get the Clerk of the Court to contact the employer about this issue.

The Court made it very clear that if an employer impedes an employee serving on a Jury that the Courts in Ireland will take a very serious view of same.

Where an employer to dismiss an employee for not coming to work because they attended at Jury Service it would be probably a 100%

guaranteed Unfair Dismissal claim for the employee against the employer with reinstatement and back pay being the likely outcome.

This would be in addition to any penalty which would be imposed by the Courts themselves. Employers should be very aware that the Courts take service on a Jury as a very important Social function of a citizen and that any impeding of that right would most likely result in a significant fine against the employer.

Independent Evidence

The case of Michael O' Driscoll, (Minors), suing by his next friend, Breada O' Driscoll –and- Michael Hurley and Health Service Executive, being a judgement of Ms. Justice Irvine delivered on 8th July 2015 is interesting in relation to the issue of independent witnesses.

In Paragraph 68 of the Judgement it is stated;

"that is not to say that the independence of a witness may never be challenged unless the party mounting that challenge intends to call expect evidence.

The role of the expert witness is well understood. They must be seen to be independent and their opinion should be unbiased and uninfluenced by external matters such as fees. That being so, they cannot be considered independent if they have a financial interest in the outcome of the litigation or if it can be shown that they have an improved prospect of recovering their fees depending on the persuasiveness of their evidence".

This case is also interesting in dealing with how far cross examination of an expert witness may go. The reference to the case is appeal number 2014/777.

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Aggravated Damages in Accident Cases – When Should the Injured Party get Extra Compensation.

The case of Saleh –v- Moyvalley Meats (Ireland) limited [2015] IEHC762 which issued on 3rd December 2015 is interesting.

Since the introduction of the 2004 Act which on its face impacts on plaintiffs more than on defendants the issue of aggravated / exemplary damages must always be in the mind of a Court. This is where it is alleged a Plaintiff deliberately exaggerated his / her claim and / or being guilty of fraud or otherwise invoking the provisions of Section 26 of the 2004 Act. The Defendant in the above case had not invoked the provisions of the 2004 Act. Rather, they called upon the Judge to dismiss the Plaintiffs claim on the basis of alleged deliberate falsehoods. The Judge in that case held that it is not really relevant and that the same principles should apply. In this case the defendants view, according to the Court, was probably inspired or confirmed by what is referred to as enthusiastic medical reports from two consultants.

The Judge in the case stated that he had no doubt that the Plaintiff under observation over an extensive periods of time that the Defendant knew that the Plaintiff was at all times acting in a matter consistent with the evidence the plaintiff gave. Other than the medical reports the Defendant had no other evidence to maintain their allegations of malingering and untruths. The Defendant did not call one witness who could have directly contradicted the Plaintiff.

It was held that the 2004 Act cannot be invoked against the Plaintiff unless the Plaintiff knows the evidence to be false or misleading and it is probably in practice that the section would be rarely successfully invoked. The Defendant in this case relied heavily on the medical reports from their specialists.

It was held that notwithstanding these opinions from Doctors which were not corroborated by any other evidence and notwithstanding the Defendant maintained allegations of falsehood in relation to the current circumstances of the accident itself. The Judge held that he believed that the defendant's submissions and cross examination in this regard did not fall within the category of irresponsible or over

enthusiastic and accordingly the Defendant's attitude was not necessarily unreasonable.

However, the Court went on to state that it was not for one of the reports and the express professional opinion the Court would have considered that the Plaintiff was entitled to an element of aggravated or exemplary damages.

This case highlights the importance of Defendants being careful when cross examining a plaintiff in relation to injuries sustained.

Dormant Cases

The Court of Appeal recently has in a case overruled a High Court Decision where the Judge had concluded that the Solicitor was not liable for losses arising from delay in proceedings. This was overturned by the Court of Appeal. The Court of Appeal confirmed that a Solicitors obligation is to address the situation and to give clear advice to his clients as to what the options were and where the risks were. They disagreed with the High Court decision that what the Solicitor cannot do is simply to say that the client would not have paid attention to any warning and therefore he is not liable.

The case in question involved one where there was a delay in proceedings which issued in 1994. A Forensic Accountant prepared a report in 2002. Between 2002 and 2007 the company could not agree with the Forensic Accountant about what value to put on their claim. As far as the insurance company were concerned they heard nothing for 6.5 years until a Notice of Intention to proceed issued in 2009. The case does highlight the issue that if a client is not moving a file on it is now important to write to the client and advise them of the options and what will happen to their cases if matters are not proceeded with.

Proving Causation in Cancer

In the UK case of Heneghan –v- Manchester Dry Docks and Others there was a multi defendant asbestos lung cancer case in which no single defendant was responsible for more than half the total exposure to asbestos.

The Court of Appeal approved a new approach to proof of causation and held that damages should be apportioned in line with the individual defendant's share of exposure.

Lord Dyson MR Accepted as Jay J found that there must be a two stage approach to causation here namely;

1. The first step was "what" caused the lung cancer and
2. The second stage was "who" caused the lung cancer.

The answer to the "what" question here was asbestos.
The "who" question arises in multi-defendant cases. Medical science cannot determine which defendant's asbestos caused the cancer. It could not be proved that any individual defendant had doubled the risk that the deceased would develop lung cancer.

Lord Dyson MR explained the three methods of proving causation in disease cases namely;

1. "But for" test – but for the defendant's negligence the claimant would not have suffered the disease
2. The "material contribution" test – per Bonnington Castings –v- Wardlaw [1956] AC613 where the disease is caused by the cumulative exposure. The defendant's liability is based on the making of material contribution to the disease and
3. The Fairchild exception that causation is proved on the basis of the defendant having materially increased the risk of disease.

The claimant could not satisfy the "but for" test. For example, even if the deceased had not been employed by the defendant responsible for 2.5% of the asbestos exposure he would still probably have developed lung cancer. There was no specific evidence of individual causation as against the defendants. The claimant's medical expert accepted that the current understanding of the mechanisms did not form the basis for attribution and apportionment of the causation of particular cancers. The process is random. It cannot be said that a particular employer contributed to this fibre which had the effect on the cell. Lord Dyson MR approved Swift J's rejection of the material contribution Bonnington test in relation to lung cancer in the case of Phurnacite [2012] EWHC2936. In that case Swift J had stated in

respect of the claimant's cancer the occupational exposure to a carcinogenic agent might or might not have contributed to it. This was very different from Bonnington where the defendant's exposure had a cumulative effect. Lord Dyson MR held that there was no material contribution applying here.

Lord Dyson MR explained that the claimants relied on the material contribution test ignored the fundamental difference between making a material contribution to an injury and materially increasing the risk of an injury.

Causation could not be established against any of the defendants under the "but for" test. It was not possible to infer from the evidence that any of the defendants made a material contribution to the defendants lung cancer but all of the defendants had materially contributed to the risk that he would develop lung cancer.

Lord Dyson MR considered that the material contribution test applies where the Court is satisfied on the scientific evidence that the defendants exposure has in fact contributed to the injury. Where the scientific evidence does not permit a finding that the exposure attributable to a particular defendant contributed to the injury the laws response is to apply the Fairchild exception.

This is quite a significant development of the law.

Hague Convention on Choice of Court Agreements

Ireland has enacted the Choice of Court (Hague) Convention Act 2015 which gives effect to the Hague convention on Choice of Court Agreements.

The Convention is dealing with exclusive choice of Court Agreements. These are Agreements which are normally referred to as Exclusive Jurisdiction Clauses. They can frequently be used in business contracts. They allow the parties to agree a jurisdiction which Courts will, to the exclusion of other Courts, determine any dispute in respect of a particular contract between the parties. Under the Convention a choice of Court Agreement is deemed exclusive unless the parties expressly provide otherwise.

The aim of the Convention is the promote international trade and investments through enhanced judicial cooperation by providing a basis for exclusive choice of Court Agreements to be enforced and recognised and as it relates to parties involved in international commercial transactions.

In Ireland an application for recognition or enforcement of a Judgement in Ireland is to be made before the Master of the High Court who can then issue an Enforcement Order. If an Enforcement Order is made then it will have the force and effect as if the judgement was made in the Irish High Court.

Accidents Happen – What To Do

The Institute of Advanced Motoring researched 700,000 road traffic accidents over a 4 year period to find out what happened.

65% of fatal accidents was driver error or reaction. In this figure 20.5% admitted they didn't look properly.

Speed accounted for 31% of accidents. This included going to fast, ignoring the speed limit or disobeying a road sign telling them to stop or give way.

Pedestrian casualties and injuries amounted for more than 18% collisions. Of these 10% occurred because the pedestrian failed to look properly.

Unfortunately accidents do happen. Examples of these are;

1. You are stationary at a set of traffic lights and are hit from behind
2. You have the green light with you and a car comes out of a side road breaking a red light and colliding with you.
3. You are crossing the road and are hit by a car.
4. You are a passenger in a car which is involved in an accident.

Working out who to blame can sometimes be complex. It can be contentious.

If you have an accident you need a personal Injury Solicitor to assist you. To make a personal injury claim your Solicitor must prove causation. It is not simply a matter of proving that you were injured. You have to be able to show who caused the accident. What should you do if you are involved in an accident.

1. If you are involved in a traffic accident you should call the Gardaí to attend.
2. If you have a mobile phone it is useful to take photographs of the collision. This is not just photographs of the damage to your car. You should take photographs from both sides of the road showing where the cars are situated.
3. You should take photographs from all sides and from various distances. Be careful when you are doing this. You have been involved in an accident. The last thing you want to do is be struck by another vehicle while crossing a road.
4. You should take the name and address of the driver.
5. You should take particulars of their insurance and car registration number and the make and model of the vehicle. You will find the insurance details on the window of the car.
6. You should as soon as possible after the accident write out a statement.
7. If you have been injured in the accident of course a lot of the matters above are issues which you may not be able to do. However, if you have been involved in an accident where you have suffered a serious injury which requires an ambulance being called then of course the Gardaí will normally arrive and they will get a lot of the information.
8. You should consult a Solicitor who specialises in Person Injury work and accident claims as soon as possible. You should bring to your Solicitor:

(a) All particulars relating to your vehicle and the other vehicle
(b) Any particulars relating to the other driver
(c) A written out statement as to how the accident occurred.
(d) A written statement of the injuries you suffered.
(e) Any receipts for medical expenses which you have incurred.

You might ask why you should write out a list of the injuries that you suffered and your recollection of the accident. The reason for this is simple. It is important that your Solicitor gets all facts. Coming to a Solicitors office is something which people do not usually do. It can therefore be stressful. Having a written statement made soon after the accident is a valuable document should issues arise in the future as to how the accident occurred. The sooner it is written out the great is its strength as a document which can be relied upon. Equally it is very important that your Solicitor has all relevant information relating to your injuries.

By having written statements it means that yoru Solicitor can deal with the important aspects far quicker and can identify issues which may need further investigation quickly. It also means that nothing will be missed. The added advantage is that your Solicitor will know they way that you describe the accident. Solicitors can at times use very legal language. By having your statement written out in your words it makes it much easier for your Solicitor to use your way of describing matters in discussing issues with you.

This is not intended to be a definitive Guide. It is simply a short note as to what you might consider doing if you are unfortunate enough to be in an accident. Legal advice from a Solicitor must always be obtained.

Nobody wants you to be involved in an accident. Very often accidents can be avoided. On the road speed is the singular biggest killer and cause of serious injuries. If driving obey the speed limits. Keep a safe distance from the car in front of you. Make sure that your tyres are in good order and are at the proper pressure. When driving if you get tired pull in and take a rest. Never drink and drive. Even following these rules it does not mean that you will not be involved in an accident but it significantly reduced potential for an accident.

Enduring Powers of Attorney

The issue of an Enduring Power of Attorney is something which everybody should consider. This is not only for clients of Solicitors but also probably for Solicitors themselves.

The issue which can arise is what happens if you are not in a position to look after yourself.

What happens if you suffer from an illness or accident which means that you are not able to make business decisions or decisions relating to your care and maintenance or to look after your investments?

A recent ERSI report has revealed that life expectancy in Ireland has increased by 15 years since 1950. In the period from 2002 to 2036 the number of people suffering from dementia is expected to rise 303%. An Enduring Power of Attorney is a document which sets out what happens when you are not in a position to make decisions for yourself.

An EPA appoints a person or persons to make personal care decisions for you when you are not mentally in a position to do so.

It is important that this document is drafted before that situation arises as it cannot be done afterwards.

There are two stages.

The first is the actual execution of an EPA.

The second is registration.

An EPA does not come into operation when it is drafted. It only comes in when you are deemed to be incapacitated by a Doctor and the document is entitled to be registered. You are required to appoint an attorney. We would always recommend that you appoint two more persons. You can give as much power to the attorney as you want. It can include where you would live, your diet and dress. As a general power granted to an attorney is significant there are a number of protections for you as a donor. The donors Doctor is required to meet with the donor at the time that the EPA is drafted. The Doctor must sign a statement to say that you are in a fit mental state to understand the document. The Solicitor acting for the donor must satisfy themselves that you have not been pressurised to appoint an attorney to look after your affairs and that you understand the significance of the EPA. You must also sign a statement to say that you fully understand the document. You are also required to notify

two notice parties to alert them to the fact that the document has been drafted. The EPA does not come into operation until this is registered. There are further safeguards. Firstly if an attorney becomes aware that you are becoming mentally incapable they are obliged to notify both you and the notice parties. Both you and the notice parties have an opportunity to dispute this. Secondly, the Attorney will also need the Doctors report stating that you are not in a position to deal with your affairs before they register the EPA.

An EPA is not a permanent arrangement. You can revoke it at any time before registration. It will be revoked by the Courts if you become mentally capable again.

It is important for everybody to consider an EPA. If anything is to happen to you it is important that matters can be dealt with quickly, effectively, and cheaply. It is much cheaper to deal with an enduring power of attorney than it is to have to make an application to a Court.

We would advise everybody and in particular business owners to have an EPA.

For a business owner what happens if you are involved in an accident. What happens if you are not mentally capable of managing your affairs? This could be because you are in a coma. What happens if important business decisions have to be made? If you subsequently recover then great. The EPA can be cancelled. If not, you need to have a plan in place to cover what will happen if you are not capable of managing your own affairs. We would encourage everyone and in particular business owners to consider having an EPA.

Tax Clearance Certificates

An eTax Clearance was introduce in December 2015. These changes are in line with Section 95 of the Finance Act 2014. This provides two key changes.

(a) The processing of Tax Clearance applications, certificates issued by the Collector General and verification by third parties is all in electronic format and,

(b) Where a taxpayer is found to be non-compliant with the obligations their tax clearance certificate can be rescinded or withdrawn.

Tax Clearance Certificates can be important for many businesses. Applications for eTax clearance are processed in real time. Customers who are tax compliant receive a tax clearance access number. This along with their PPSN / Reference Number can be given to a third part to verify their tax clearance details. ETax Clearance produces electronic output in ROS or myAccount and customers of the Revenue have a facility to print their tax clearance certificate from screens if this is required.

The new eTax Clearance system has been available from 7 December 2015 and applicants can apply for an electronic tax clearance certificate from that date. There are a number of guidance documents which are provided for applicants who wish to apply being eTax Clearance (eTC) – one page leaflet, a summary Guide for applicants and an eTax Clearance for SPSV licence holders (Taxi Drivers). It is possible for third party users to be able to verify an eTax Clearance Certificate via ROS or the government.

If you are not yet registered then you need to register for ROS to obtain your ROS digi-cert. Once registered for ROS you can then access your verified Tax Clearance from the "My Services" tab in ROS.

Finance (Local Property Tax) (Amendment) Act, 2015

Amendments have been made to the Local Property Tax Manual at part 02/10A.

There are exemptions for properties damaged by pyrite. This is to reflect changes made by the Finance (Local Property Tax) (Amendment) Act 2015. This extends the existing exemption for properties certified with significant pyrite damage to include properties where the liable persons can provide Revenue with certain specified evidence that significant pyrite damage has occurred. If this affects you it is an important issue to address.

***Before acting or refraining from acting on anything in this update legal advice from a Solicitor should be obtained.**

In contentious cases a Solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.