



Jason Griffin along with his family parents Bernie and Winnie Griffin, Magraret Kerrigan, Lisa Gallagher and Etain Bokoun presenting a cheque for €2,700 to Eammon and Lynn McDevitt from the Good and New Donegal to Galway Cancer Bus Service and to €2,700 to Isobel Doherty from the Donegal Hospice. The money was raised Night at the Races which was held recently at Dinny Grants Bar in Buncrana. A total of €5,400 was raised divided between the two charities. The family would like to thank everyone for their support and donations and to the sponsors and for all the spot prizes. If you need to contact Jason for any more information 086 0522683.



Niall Diver and Dermott McGonagle from Inishowen Rugby Club presenting a cheque for €1,440 to the Good and New Donegal to Galway Cancer Bus Charity. The money was raised when members of Inishowen Rugby Club took part in November

# Rights of Way can be contentious

Almost 150 years ago on the 8th of February 1870 following a trial which commenced a year and a half earlier, Judge Flanagan of the Landed Estates Court ruled that the Rights of Way in Bundoran would be granted in perpetuity to the people of Bundoran. The court awarded the public rights of way for horses, carts, carriages, and foot passengers, at all times, from the Main Street of Bundoran to the seashore and back.

Matters had commenced in September 1868 when Mr James Hamilton bought lands next to what is now known as "the Promenade" and began building a wall along the street in order to exclude the public from accessing the shore. This move of course put him in a position where he could charge tourists to access the beach. Tourists had been coming to Bundoran from the 1770s and were growing in numbers following the opening of the Bundoran

Railway Station just two years earlier in 1866.

One key witness, a local Fisherman called Mr Francis Kerrigan who was 75 years of age at the time and had lived in Bundoran all his life recalled that there had always been a public Right of Way for walking, dancing, music and all kinds of entertainment. In addition, he stated that for centuries, people had drawn seaweed and sand from the seashore along the route.

Nowadays, Rights of Way can be every bit as contentious leading to hard fought and often embittered litigation. Where a Right of Way is granted in a document, the route would typically be mapped, and registered as a burden on the title of the subject land. Frequently, Rights of Way would be in use for a very long time and would not be noted in any document or registered as a burden.

The Land and Conveyancing Law Reform



Conor McLoughlin

Act 2009 changed the law in relation to the length of time needed to establish and therefore register a Right of Way and provided for a new "user period" of 12 years. There are two significant dates in this respect.

The first is up to and including the day of 30th of November 2021 which is just 22 months from now. For

that period an Applicant claiming a Right of Way by "long user" will continue to claim a right of way accrued under the Prescription Acts and must establish that they have used the right of way for a minimum period of 20 years.

The second period is from 1st of December 2021. For this period an Applicant does not refer to the Prescriptions Acts, but instead would claim under Section 35 of the Land Law and Conveyancing

## Not by Force, nor Stealth, nor the Licence of the owner

- Lord Hoffmann in R. v. Oxfordshire County Council ex p. Sunningwell Parish Council [2000]

Act 2009 to establish a "relevant user period" which is 12 years in the case of private lands.

The Land Law and Conveyancing Act 2009 has brought much confusion and in turn has led to a new method of claiming a right of way under the Civil Law (Miscellaneous Provisions) Act 2011. This method is by application to the Property Registration Authority directly, without the necessity of first having to obtain a court order. If the application to the Property Registration Authority is rejected, a claimant can appeal the decision or apply to court.

An applicant may however still apply to court though any applicant considering same should be aware of the costs involved. The Application is served on the owner of the servient lands. If there is a dispute, then and applicant may still apply to court for a Declaration that the Right of

Way exists which can then be registered.

Please note where there is only one access point to lands then the law remains unchanged. This is referred to a right of way by necessity. A right of way by necessity would occur, for instance, if there was only one access road to a house or land.

*The above article is one of a series of bi-monthly legal articles drafted by Conor McLoughlin, Solicitor and Principal at McMorro & McLoughlin Solicitors. They do not constitute legal advice and should not be acted upon without seeking legal advice particular to your set of circumstances. McMorro & McLoughlin Solicitors have offices in Letterkenny and Bundoran, County Donegal. For further information on the above or any other legal issues you may have, please contact us on TEL: 071 984 1322, Email: info@cmlsolicitors.com or at www.cmlsolicitors.com*

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