

# flac News

FREE LEGAL ADVICE CENTRES

## Public Interest Law conference proceedings launched

**P**resident of the Irish Human Rights Commission, Dr Maurice Manning, launched the proceedings from FLAC's recent conference on 'Public Interest Law in Ireland – the Reality and the Potential' on 24 February in Chief O'Neill's Hotel, Dublin. The conference, held in October 2005, brought together lawyers and activists in public interest law from Ireland and abroad to hear an array of speakers, whose contributions are now collated in the publication.

Included in the proceedings is *Public Interest Law and Litigation in Ireland*, a report commissioned by FLAC and carried out by Mel Cousins BL. The report examines the role Public Interest Law and Litigation (PILL) plays or might play in advancing the position of disadvantaged and vulnerable groups in Ireland. It identifies barriers to this role and maps out a strategy for the future development of PILL. Mel spoke at the launch of the proceedings, briefly introducing the report.

Also addressing the launch were Philip Joyce, Senior Vice-President



Photo © MacInnes Photography

Dr Maurice Manning, President of the Irish Human Rights Commission, who launched the Proceedings with Philip Joyce, Vice-President of the Law Society (left) and Mel Cousins BL, author of the report (right)

of the Law Society, Michael Farrell, FLAC Senior Solicitor, and Noeline Blackwell, FLAC Director General, who was MC for the event. Philip Joyce praised FLAC's initiatives around PILL, in particular around equal access to justice for all.

Michael Farrell delivered an address to the launch (which is set out on the

back page). The event ended with a showing of conference highlights from a DVD that is now available of the conference. It comprises all the presentations made to the conference as well as a shorter clip summarising the main themes of the event.

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# FLAC Public Interest Law Seminar Series

FLAC is organising a series of seminars to provoke discussion around Public Interest Law and Litigation (PILL) in Ireland. It follows FLAC's major conference which brought together lawyers, NGOs and activists in October 2005.

lawyers within the community legal sector and lawyers and policy makers generally.

The schedule is as follows:

### 1. Procedural Obstacles to PILL

On: Friday 12 May, 9.30am-1pm  
At: Tara Room, Royal Dublin Hotel, O'Connell Street, Dublin 1.

This seminar focuses on procedural obstacles to PILL and how they might be overcome. It will cover issues such as *amicus curiae* briefs, class actions, *locus standi*, dealing with costs and protective costs orders. It is aimed largely at lawyers and those working in the NGO sector. Its primary goal is to identify the main procedural obstacles to PILL in this jurisdiction and formulate strategies for removing them.

### 3. Structures for public interest law and litigation

On: Friday 16 June, 9.30am-4.30pm  
At: Hogan Mezzanine Suite, Croke Park Conference Centre, Jones' Road, Dublin 1.

This seminar will focus how public interest law and litigation might be best delivered in Ireland. It will examine structures in place in other jurisdictions and discuss their suitability in the Irish context.

### 2. How PILL can address the needs of NGOs

On: Wednes. 31 May, 2-5:30pm  
At: Royal Dublin Hotel, O'Connell Street, Dublin 1.

This seminar will cover how PILL can address issues for voluntary and community organisations who work with disadvantaged and vulnerable groups. The seminar will be of interest to non-governmental organisations, advocates,

### 4. Roundtable Discussion

On: Friday 30 June, 9.30am-5pm  
At: Royal Hospital, Kilmainham, Dublin 8

This roundtable will hear presentations from three experienced public interest law practitioners from other jurisdictions, and a position paper from independent consultants engaged to consider how Public Interest Law and Litigation should be developed and supported in Ireland. Following those presentations, there will be a number of workshops to consider the necessary elements to practically implement a public interest law and litigation strategy in Ireland. The workshops are intended to generate a thorough debate of relevant issues and results of the workshops will form part of the consultants' further deliberations.

## Advertising LAB services: What do you think?

One of FLAC's many concerns about the civil legal aid scheme is that it is not widely advertised or well known to many of those it is intended to serve. In turn, many who are aware of its existence believe that it offers a family law service only. Recently in response to a Parliamentary Question, the Minister for Justice, Equality and Law Reform, Michael McDowell, T.D reminded the Dail that 'ambit of the (Civil Legal Aid) Act is very broad in terms of the areas of law covered'. Although you would be

hard pressed to glean this from the family law-dominated statistics in the Board's Annual Reports, it is nonetheless welcome news that the Minister sees such breadth in the legislation.

There are many ways to spread this news. We wonder whether our readers have any thoughts as to how the range of civil legal aid options and entitlements on offer could be effectively communicated to the public.

**If you have any suggestions, please contact Paul Joyce at FLAC.**

# Civil legal aid now available for Coroner's Court

In a judgment delivered in October 2006, High Court Judge Paul Gilligan called Theresa Magee's circumstances "unfortunate". And so they were.

Mrs Magee's son Paul had died on St. Stephen's Day in 2002. He had been arrested for public order offences at a time when he displayed signs suggestive of paranoid delusion. He was taken to Kilmainham Garda Station in Dublin. Shortly after he arrived, in the early morning of 26 December 2002, he became unconscious. He later died in hospital. He was 19 years old.

Mrs Magee had several questions about Paul's treatment whilst in custody and about the possible extent to which the State or state agents were responsible for the death. As with all sudden deaths, there was an inquest, where the Coroner investigated the circumstances. Mrs Magee wanted to use the inquest to help answer her questions. She needed a lawyer to assist her in getting the answers that she needed. Being unable to afford private solicitors, she applied for legal aid but was refused. Representation by a lawyer at inquests is not covered by the current statutory civil legal aid scheme.

Mrs Magee challenged that refusal in the High Court. She claimed that her rights to an effective remedy and to fair procedures included a constitutional right to civil legal aid. This right to civil legal aid had been considered by Mr Justice Kelly in the High Court in the case of *O'Donoghue v Legal Aid Board*. In Mrs Magee's case, Mr Justice Gilligan considered a number of precedents around the right to legal aid, including the *O'Donoghue* case. Taking those cases, and the facts of this case into account, Judge Gilligan said the following:

"... I take the view that as a result of the death of a citizen while in the custody of An Garda Síochána, it is

evident that the next of kin needs the benefit of legal representation in order to deal with any possible apprehension or concern and also to give the next of kin an effective right of audience before a coroner sitting with a jury.

"Having regard to the fact that the coroner presides over the relevant inquest and his role is judicial in nature, that the inquest of itself is inquisitorial and that a jury will record a verdict, it appears reasonable to come to the conclusion, applying the rationale of Kelly J. in *O'Donoghue v. The Legal Aid Board* and Lardner J. in *Stevenson v. Landy and Others* and *Kirwan v. Minister for Justice*, that, due to the unfortunate circumstances of the plaintiff in the present case and the fact that her son's death occurred within a very short period of time of him becoming unconscious while in the custody of An Garda Síochána, fair procedures under the Constitution require that she be provided with legal aid for the purpose of being adequately represented at the forthcoming inquest into her son's death." (The High Court 2005 IEHC 388. *Magee v Farrell, The Minister for Justice Equality and Law Reform, Ireland and the Attorney General*. Judgment 26 Oct. 2005)

In a press release from the Department of Justice, Equality and Law Reform in January 2006 announcing government approval for new legislation to comprehensively reform the law relating to coroners, Minister McDowell said that the bill would include limited provision for legal aid. He stated that he "may, with the consent of the Minister for Finance, arrange for the granting of legal aid in proceedings before a coroner where a person has died in, or resulting from being in, state custody or in certain institutional care situations."

In the meantime, presumably pending the passage of that legislation, the Department of Justice, Equality and Law Reform does now make some legal aid available for Coroners Courts. In a small number of cases, ex-gratia, discretionary payments for legal representation at inquests have been made to the families or next of kin of people who died in state care or custody or where the State was directly involved. There is no particular procedure for applying for assistance and decisions are made by the Department on a case by case basis.

FLAC welcomes the recognition in principle from government that some families will need legal aid to be properly represented at inquests. However, the current scheme is not sufficient to vindicate the right of access to justice. Bearing in mind the complex and judicial nature of proceedings in the Coroners' Court, there should be a wider recognition of the need for legal aid for representation at inquests.

Currently, there is a separate, ad-hoc scheme without guidelines covering legal aid for inquests. If this separate scheme is to be adopted for Coroners Courts, then it must extend to all families in need, whether or not the death under question occurred in state custody or care. Confining it only to the cases currently covered means that many next-of-kin of limited means will not be adequately represented. That failure will in turn mean that they may not understand the procedures of an inquest nor be able to ask the necessary questions to discover the cause of a loved one's death. This could lead to an incomplete hearing and to a serious failure where their fundamental rights to fair procedures and to an effective remedy are not vindicated.

# Research project to expose rough justice of Irish debt law

**A** new study to be conducted by FLAC in 2006 will look at the experience of debtors in the legal system when a judgment has been granted against them and the creditor seeks to enforce the judgment by using the instalment order procedure. In brief, this involves a debtor being asked to attend court to have their means examined with a view to setting a periodical instalment. Ultimately, failure to pay the instalment may result in an application to commit the debtor to prison. Detailed interviews are to be carried out with a cross section of debtors who are former or current clients of the Money Advice and Budgeting Service (MABS). Some clients will have actually gone to prison and others will have avoided prison because of a successful intervention by a money advisor or other agency.

FLAC has worked closely with MABS since its inception and provides legal information and training to money advisors to assist them in providing an effective service to their clients. In recent years, this work has also involved the development of policy positions and submissions on legislative reform in the field of debt and credit law. In 2003, FLAC published *An End based on Means?*, a research report that was critical of current debt enforcement procedures. Its overriding conclusion was that a more enlightened and user-friendly approach needed to be taken to enforcement procedures around consumer indebtedness, especially in light of the massive increase in the extension of consumer credit over the past decade.

Anecdotal evidence suggests that the participation of debtors in the

enforcement process is minimal, with many opting to ignore the process rather than engage with it. In some cases, this eventually culminates in the imprisonment of the debtor, with all the ramifications that follow for the individual and his/her dependants, the taxpayer, the State and even the creditor who initiated the process. It is hoped that the study will test this hypothesis and will attempt to get at the reasons why there is such a reluctance to participate. Aspects such as the fact that such hearings are in public, that legal documentation is intimidating and difficult for some to understand and that there may be significant time gaps between the various stages – not to mention the overwhelming stress of personal debt – are thought to contribute.

The reaction of the credit industry to FLAC's 2003 report has been positive in the main, with many creditors arguing that the legal system does them no favours either in terms of expense and accessibility. Many legal professionals working in the area of debt enforcement have also acknowledged that the creation of MABS and the professional approach brought to repayment negotiations by money advisors on behalf of their clients has been helpful. The Courts Service has also been pro-active recently in examining how it can make the courts more accessible to users.

However, the Department of Justice, Equality and Law Reform, who would be responsible for initiating legislative reform in this area, has indicated no great desire to undertake a review. It may be that the State wishes to maintain the ultimate sanction of imprisonment at the base of the system, in partic-

ular to deal with recalcitrant debtors, the so-called 'won't pays'. However, even if imprisonment is to be maintained as a last resort, we believe that there are a number of improvements that could be made to the existing structure that would improve participation substantially.

It is hoped that this study will record the profile of those affected by these problems and provide a snapshot of the current extent of participation or otherwise. It will also give those directly affected by these rules the opportunity to describe how they interacted with this system, how they felt about the procedures that were invoked and what affect they had on the their personal life and that of their dependants. It is envisaged that a research report complete with findings and an analysis of the procedures will be published following the analysis of the results of the survey.





# Increase in calls to FLAC on solicitors costs

**F**LAC has recorded an increase in telephone queries/complaints relating to Solicitors Fees. This is partly due to the publicity given to the number of solicitors who had charged their client fees in addition to the fees received by them from the Residential Institutions Redress Board. The common thread going through these calls is the lack of understanding of how fees are charged and we are often asked what fees should be charged. Few callers have any memory of receiving a Section 68 letter, which is a requirement set out in Section 68 of the Solicitors (Amendment) Act 1994 whereby the solicitor must provide the client with details in writing of :

- the solicitor's actual charges, or where this is not possible or practicable,
- an estimate of the solicitor's charges, or where this is not possible or practicable,
- the basis on which the solicitor's charges are to be made.

In December 2005 the Department of Justice Equality and Law Reform issued the Haran Legal Costs Working Group Report on Legal Costs. The terms of reference in respect of the Report were as follows:

1. To examine the present level of legal fees and costs arising in Civil Litigation; How such fees arise and are calculated; The basis for such fees and costs and the system and arrangements in place in the State relating to the taxation of costs.
2. To undertake a historical analysis of fees and costs to determine whether the relative level of such fees and costs have increased over time and, if so, the reasons for such increase.
3. To the extent that the Group thought it appropriate, to undertake a comprehensive study of the systems and methods employed in other jurisdictions for setting

and determining fees and costs in Civil Litigation.

4. To consider whether a scale of Solicitors costs and Counsel's fees should be made by way of regulation as provided for by Section 46 of the Court and Court Officers Act, 1995
5. On the basis of the aforementioned examination and study to make recommendations for initiatives or changes in this area which, in the Groups considered view, would lead to or assist in a reduction of costs associated with Civil Litigation, and would improve accessibility to Justice and provide for greater transparency.

Significantly the terms of reference only specified costs arising in Civil Litigation. No mention was made of costs arising in non contentious matters. In addition no solicitor in private practice was appointed to the group despite such an application made by the Law Society. That being said the Report made a number of noteworthy recommendations. The main points are as follows:

1. The Section 68 letter to be amended to provide the client with more detailed information.
2. Clients should be afforded a cooling-off period from the time they receive their S.68 letter before proceedings are commenced
3. Periodic updates be provided.
4. Solicitors be obliged to notify clients of material developments in the conduct of litigation, and
5. Clients be given the opportunity to cease their action before any material increase in expenditure is incurred.
6. The establishment of a Legal Costs Regulatory Body to formulate guidelines, setting out the amounts of legal costs that normally can be expected to be recovered in particular types of proceedings. The group recommends that such cost guidelines

be based on an assessment of the amount and nature of the work required to be done and would take into account:

- the appropriate hours expended by the various persons to be remunerated
  - the complexity of the proceedings
  - and the level of the court in which the case is to be heard.
7. The Group is also to provide information to the public on the law and on clients entitlements relating to such costs.
  8. The establishment of a Legal Costs Assessment Office to replace the current office of the Taxing Master.
  9. The establishment of an Appeals Adjudicator to conduct assessment appeals.
  10. The Group recommended amending the rule in respect of counsels' fees whereby the Junior Counsel gets 2/3 of the Senior Counsels fees.

The Group also made an important recommendation in respect of Family Law. It pointed out that in family law cases it is important that there is the fullest disclosure possible of the capital and income of each spouse at the earliest opportunity. Spouses and their advisers are not able to negotiate successfully if one or even both parties are convinced that the other is hiding financial information.

To address this problem, each party should, at the earliest possible stage after the commencement of separation or divorce proceedings, have the right to require the other party to make a full and complete disclosure of their assets and liabilities. There will have to be suitable penalties enforceable for any party who does not provide full and complete disclosure or is later discovered to have failed to do so.

(continued on next page)

## Increase in calls to FLAC on solicitors costs (cont'd)

In a recent address entitled "Matrimonial Litigation – A Dysfunctional Legal System and the Mediation Alternative" to a family law conference at the IMI institute in Dublin, Alan Shatter welcomed the recommendation in respect of Family Law on the basis that it will speed up cases and not cause unnecessary delay and so cut down on costs. The President of the High Court also introduced a practice direction in October 2005 along those lines.

Another important recommendation relates to penalties to be imposed on solicitors who fail to issue a S. 68 letter as specified. The Group recommends that costs should only be certified as recoverable with reference to the valid Section 68 letter or update and costs which have not been so specified

should not be recoverable. To this end the Group recommends that legislation should be enacted to make it explicit that a legal practitioner may not seek reimbursement from his client in respect of that portion of costs which are not recoverable.

Up until now even though a solicitor was required by law to furnish a S.68 to his client the absence of such a letter did not prevent a solicitor from being paid. In the case of *A&L Goodbody v Colthurst and Anor*, Judge Peart stated "...I do not believe that Section 68 was intended to deprive the solicitor, who has failed to send a S.68 letter, of his right to recover his costs when taxed, in spite of the fact that the section is worded in mandatory terms".

Finally, in respect of the Report, it should be noted that the Minister for Justice has announced the establishment of a Legal Costs Implementation Advisory Group. Chairing the Group is Desmond Miller, Accountant and former president of the Dublin Chamber of Commerce. The other members of the group are John Cronin of the Department of Justice, Noel Rubotham, Courts Service, Professor Mary Lambkin of UCD's Smurfit Business School, Brian Evan, an expert in Price Waterhouse, Maurice Curran, former President of the Law Society and Garrett Cooney SC.

This group sought written submissions by 31 March 2006 and it is their objective to prepare a report by October 2006.

## Focus on FLAC staff: Jackie Heffernan, Information & Referral Line

Jackie Heffernan qualified as a solicitor in 1981 and subsequently worked with Black & Co Solicitors before taking a career break in the 1990s. Jackie joined FLAC in 2004 on a part-time basis, working on the information and referral line.

Her main role involves providing information over the phone to people who call FLAC for first-stop legal information. She says the main areas of law include family, employment, probate and consumer. The job also involves directing people to appropriate agencies or other sources of further information. However Jackie also advises people to visit FLAC legal advice centres where they can speak to a solicitor face-to-face at no charge.

Speaking of her role in the organisation, Jackie says "it's the first point of contact with FLAC for a lot of people – many are in need of some direction on a legal issue.

"It is important for people to be aware of where to get help when they need it.

For me, it is equally important to be able to give people proper direction when they seek help," she explains.

One area where she would like to see change is the Small Claims Court. This increased its jurisdiction in February 2006 from €1269.74 to €2000. However, in order to reflect present-day expenditure for goods and services, she feels that this could be increased still further to €10,000. Calls to FLAC's information line show that a large proportion of people who have consumer issues cannot afford legal representation. An increase in jurisdiction to this level would go a long way towards providing people with greater low-cost access to the courts. There is also a growing number of solicitors who are not prepared to take on cases of relatively small monetary value.

At present the small claims court deals with consumer claims, claims in respect of minor damage to property and the non return of rent deposits in respect of holiday premises. (Another



body, the Private Residential Tenancies Board, caters for disputes relating to non-return of rent deposits in respect of the private rented sector.) Claims in respect of debts and hire purchase agreements are excluded. Jackie would like to see the Small Claims Court open up to take on a wider range of cases.

# Capital Assessment for Legal Aid

Applicants for civil legal aid are generally aware that it is a means-tested service but are often surprised to learn that it is not free and that a contribution is required in all cases, unless the Board waives the contribution. This contribution will vary according to the applicant's disposable income and whether it is simply legal advice that the applicant requires or legal representation.

What is even less commonly known is that the applicant's capital means may also be taken into account in determining whether s/he qualifies and may also be used to assess the legally represented person's contribution for the service.

For the purpose of these assessments, 'capital' is defined as the value of every resource of a capital nature including cash, stocks, interests in a company, house property, life insurance, valuables, debts owed to the applicant and the value of equipment including a car. If the applicant's capital means appears to exceed €3200, s/he must fill out a statement of means (capital) form. This can be quite a detailed exercise that will involve the Board assessing the market value of capital assets held by the applicant.

In relation to the specific issue of house property, the value of the family home of spouses is not assessed if it is part of the subject matter of the dispute between

them and if both parties have lived there, such as in family law cases. Otherwise, the value of the applicant's principal private residence is assessed as capital to the extent that its 'unencumbered value' (generally market value minus outstanding mortgage) exceeds €190,500. An applicant assessed as having over €320,000 disposable capital is not entitled to civil legal aid. Thus, a person seeking legal aid outside the area of family law whose family home and other capital assets exceed €510,500 will not qualify.

This is a large capital amount in theory but a person who has paid off their mortgage may find themselves in this position due to the housing market boom, even when living in a relatively modest house and even though their income may be very modest, so modest that they would qualify for legal aid in relation to disposable income. When you consider that most people in this situation have no intention or desire to move home, it is highly questionable as to why the family home is part of the calculation at all.

Assuming that the person's disposable capital as assessed does not exceed €320,000 (and their income €13,000) they will qualify for civil legal aid. However, the extent of a person's capital may influence the contribution they are required to pay for legal representation. In relation to the family home, where its

unencumbered value exceeds the threshold of €190,500, the capital contribution is 1% of the difference. However, where the unencumbered value is less than €250,000, the capital contribution cannot exceed the applicant's income contribution. In relation to other capital resources, there is no contribution payable in respect of the first €3200 of disposable capital. Thereafter, 2.5% is payable on disposable capital up to €79,500 and for any amount over €79,500, 10% must be paid.

The cumulative effect of these rules is that a person may have to pay a sizeable contribution for legal representation provided by the state, through a combination of the income and capital contributions. Conceivably, these contributions can run to the full commercial rate for the service offered.

FLAC's report on the civil legal aid system in Ireland, *Access to Justice: A Right or a Privilege?*, published in July 2005, called for the assessments in relation to capital resources to be updated and for the family home to be excluded from any calculation. There are positive indications that a general review of the means test currently taking place in the Department of Justice, Equality and Law Reform will include a fundamental overhaul.

News of any such changes will be carried in future editions of FLAC news.

## National Women's Council of Ireland encourages public to sign anti-trafficking petition

Back in March of this year, the National Women's Council of Ireland (NWCi), launched a public awareness campaign to highlight the fact that thousands of women and young girls will be trafficked into Germany this June for the FIFA World Cup 2006 for the purposes of sexual exploitation and prostitution.

The NWCi views trafficking for the purposes of sexual exploitation as one of the most serious and unacceptable human rights abuses of women and young girls in the world today and as a contemporary form of slavery.

A major part of the 'Buying Sex is not a Sport' Campaign was the launch of an

on-line petition which can be found at [www.nwci.ie](http://www.nwci.ie) and asks people to join with the NWCi in calling upon:

- all sporting bodies, including FIFA and the Football Association of Ireland (FAI), to publicly disassociate themselves from the sexual exploitation of women around sporting events and to affirm the dignity and human rights of all women, and
- the Irish government to introduce legislation that criminalises the trafficking of human beings for the purposes of sexual exploitation; that punishes the trafficker and accomplices; identifies the victim and offers

services to women who have been victims of trafficking.

**At present Ireland remains the only EU member state that has yet to criminalise the trafficking of human beings.**

All signatures collected before the start of the FIFA World Cup in June will be collated and sent to Justice Minister Michael McDowell TD, FIFA President Josef Blatter and Football Association of Ireland Chief Executive Officer John Delaney.

**Sign the petition and say no to the exploitation of women and young girls TODAY! Contact: [info@nwci.ie](mailto:info@nwci.ie) for more information or call (01) 87 87 248.**

# LEAPing forward in

**T**he Legal Education for All Project (LEAP) commenced in late 2005, with the goal of widening access to justice by making legal education more accessible to disadvantaged and minority groups. The project is funded under the European Union's EQUAL initiative and is operated in partnership between the Irish Traveller Movement, the Ballymun Community Law Centre, Community Legal Resource, Trinity College Law School and FÁS. The Irish Traveller Movement acts as the project's financial manager, while the overall Project Coordinator is Elizabeth Davidson.

LEAP is delivering a FETAC-accredited law module to a current 20 participants in two local communities in Dublin and Limerick. Additionally, LEAP is running a research project chronicling the duration of the project, its impact on the participants and their career paths, and the obstacles faced in implementing their skills.

In essence, LEAP aims to develop

alternative access routes to legal education for minorities and disadvantaged groups, traditionally under-represented in the legal field. While the legal profession has traditionally been accessed by means of high scores at university, the targeted groups generally have little or no experience with legal education. Any previous experiences with the legal profession may have been hostile, such as interactions with criminal law. To this end, a secondary school course is being developed in collaboration with Dave Ellis of Community Legal Resource with the aim of heightening awareness among disadvantaged communities and areas to the possibility of law as a realistic career path.

Further, legal training is generally not an option for disadvantaged groups due to the length of time needed for study, the financial burden of studying and possible lack of previous academic credentials. LEAP seeks to take these other factors into account, emphasising participants' willingness to engage in and commit to the proj-

ect and providing the promise of credentials and qualifications along the way.

The project will also create employment opportunities, with better wage potential and routes to more highly skilled employment. While it aims to increase the involvement of Travellers and disadvantaged settled groups in third level education generally, it is also seeking to open the legal professions to such groups, giving them a practical entry route.

LEAP is delivered at a community level and involves structured mentoring for the participants. Indeed the project is specifically structured to allow the target community a role in designing the programme, thus making it more interesting and more relevant. The course has been developed using a multi-level approach, including a diploma option, although the aim is to get participants to certificate level initially. The diploma level will add the possibility of entry to a law degree course. Accredited community-based courses are also offered, as is support for extant courses, like the FAS legal secretary traineeship.

As part of the EQUAL programme, LEAP has been partnered with the Slovak branch of the Kolping Foundation, which promotes the rights of the local minority Roma population from its base in Spisské Podhradie, Eastern Slovakia. The EQUAL programme seeks to facilitate an exchange of practices addressing socio-economically disadvantaged communities across the EU and to provide a transnational dimension to the projects. Participants from each country make study visits and the programme provides for five meetings to exchange information and ideas. This in turn fosters solidarity on a range of issues and allows exchange of modules of



Pictured are LEAP's Transnational Partners who attended the launch, with Deputy Lord Mayor of Dublin Cllr Bronwen Maher (centre), David Joyce ITM (second from right at front) and Elizabeth Davidson, LEAP Co-ordinator (front far right)



# legal education

learning, to be jointly delivered to project participants.

A seminar chronicling the experience with LEAP to date took place in Dublin at the Mansion House on 23 March 2006 that detailed the project's genesis and progress and introduced the content of the research project. Currently, there are two modules running, one in Dublin at the Carmelite Centre, and one in Limerick at St. Michael's Parish. This group is comprised of people from both the Traveller and settled communities, both Irish and foreign nationals, and women make up a 3:1 ratio of the participants. The participants range in age from mid-20s to mid-40s.

Students come from Ballymun, Santry, Sallynoggin and Artane for the Dublin group, and from Ennis, Killarney, Tipperary and Clonmel for the Limerick group. Participants range from people involved in full-time employment as taxi drivers and book-keepers, to full-time carers to volunteers. Classes are held weekly, on Friday mornings, at the Dublin and Limerick centres. A team of four rotating tutors conduct lessons, guided by the FETAC Legal Studies modules but where course participants also have input in choosing optional subjects. The system of tutors and mentors provides effective assistance where people are struggling with the course.

Participants expect their studies will entail personal development in skills and confidence, that LEAP will be a springboard to further education or to a legal career and that participation in this project will provide them with an opportunity to benefit their communi-



© Photographer: Tommy Clancy

Pictured are Prof Gerry Whyte, Trinity College Law School, Ken Murphy, Director General, Law Society of Ireland, and Marcella Higgins, Director of Education at the Kings Inns.

ties. One Limerick course participant, Brigid O'Donoghue, explained how she had always had an interest in law but felt that it was inaccessible. The course had enabled her such that she felt she could go back to her community and be a resource to the people there. Brigid added that she hoped LEAP would enable marginalised people to overcome injustices and help people help themselves.

Speakers at the well-attended seminar included David Joyce BL of the ITM, Law Society President Michael Irvine, research facilitator Philip Mudge and Deputy Lord Mayor Bronwen Maher. Future plans for LEAP include a summer school and an intensive legal weekend, as well as the development of an in-house legal module and cooperation with the Law Society on IT issues.

FLAC News is available by subscription for €10 a year from:

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Site: [www.flac.ie](http://www.flac.ie)

New subscribers are always welcome.

Copies of Proceedings and/or the DVD from FLAC's Public Interest Law Conference are now available from the FLAC office. You can also sign up to the PILL Ireland Network (PILN) to receive updates on PILL issues and share opinions and information with other Network members.

Mail us at [piln@flac.ie](mailto:piln@flac.ie) or call us at 01-874 5690

For more information on LEAP,  
see the project website at  
<http://www.itmtrav.com/LEAP.html>

# Taking women's rights seriously

**A**s the conference programme put it: "[d]espite the fact that it is over 20 years since CEDAW was ratified by the Irish Government, there is still little awareness of the Convention among the general public, politicians, civil servants and policy makers. Few NGOs use CEDAW as a tool in their campaigning work, nor is it used as a strategy by legal practitioners to take cases."

The conference "Taking CEDAW Seriously" held in March 2006 was organised by the Women's Human Rights Alliance and was partially funded by the Irish Centre for Human Rights, NUIG and the Irish Council for Civil Liberties. CEDAW, the acronym for the United Nations Convention on the Elimination of All Forms of Discrimination against Women, is one of the world's main human rights treaties. Ireland ratified the treaty in 1985 and then ratified an Optional Protocol to the Treaty in 2000 to allow for an individual complaints mechanism if national remedies had failed to solve a problem. The conference was designed to examine how the mechanisms of the convention could be applied practically.

Shanthi Dariam, CEDAW Committee Member and Director of International Women's Rights Action Watch, Asia-Pacific, explained that CEDAW was based on the principles of equality, non-discrimination and state accountability. She outlined how CEDAW assessed whether a measure gave substantive equality rights. To decide if a legal or policy measure gave substantive equality, it should be checked to ensure that it provided:

- equality of access;
- equality of opportunity; and
- equality of result.

Ms Dariam outlined the consequences for a State of ratifying an international human rights law treaty. Ratification meant that a State accepted the obligations of that treaty. This meant that it committed itself to re-ordering domestic



L-R: Noirin Clancy, Co-ordinator, Women's Human Rights Alliance; Noeline Blackwell, FLAC Director General; Shanti Dariam, CEDAW Committee member and Director of IWRWA; Faustina Pereira, Advocate of Supreme Court, Bangladesh; and Joshua Castellino, Acting Director of the LLM in International Peace Support Operations at the Irish Centre for Human Rights, Galway.

law and policy in a way that accords to universal and international law standards.

In many States, ratification means that the treaty becomes part of the domestic law of the land. As Noeline Blackwell of FLAC explained in her presentation, this is not the case in Ireland. CEDAW is not part of Irish domestic law because it has not been incorporated by Irish legislation. Under Irish law, it is up to the government and the legislators to decide on how the rights extended by the treaty should be guaranteed to people in the State. Individuals are not entitled to insist on the implementation of their CEDAW rights through the Irish courts. Even a complaint to CEDAW's own committee can only be made after all useful domestic legal remedies have been used. Irish courts have interpreted this separation quite strictly. As Siobhan Mullally of UCC's Law Faculty demonstrated in her presentation, other states have not been quite so strict.

Because the treaty rights cannot be directly implemented, there is a tendency for lawyers to ignore the convention when seeking to vindicate women's rights. However, the conference showed that the rights guaran-

teed by CEDAW should be considered by lawyers because these are rights by which Ireland is legally bound and also because it is important that the implementation of rights in domestic legislation be seen in the context of international human rights and be consistent with international law. It concluded that the use of CEDAW by lawyers was likely to be most effective when used in conjunction with other tools, such as lobbying and human rights awareness and education.

This conclusion shows similar thinking to FLAC's own examination of how law may be better used in the public interest. Conclusions from FLAC's conference on public interest law last October also reflected best results for the implementation of rights where litigation is just one strand in a programme that also incorporates law reform, education of lawyers and community legal education.

For further information on CEDAW, contact the Women's Human Rights Alliance, 3 The Plaza, Headford Road, Galway, tel.: 091-764372 or see their website: [www.whra-ireland.org/](http://www.whra-ireland.org/)

## Beyond the figures: Persons on insufficient means cannot always avail of state civil legal aid

**A**fter 25 years of state civil legal aid, the scheme has failed to achieve its stated goal “to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases”. As FLAC concluded in its 2005 report on the subject, civil legal aid and advice is not available to every person of insufficient means, given that many on very modest incomes fail to qualify.

The financial criteria make the service very restrictive. When the statutory scheme was introduced in 1996 a means test was devised by regulation. The scheme does not provide for a periodic review of the financial limits on eligibility. Since then it has been revised just once, in 2002. The amount of allowances is not linked to a variable such as Consumer Price Index.

Except for separated or separating spouses (whose incomes are individually assessed), the “disposable” family income of a legal aid applicant must not exceed €13,000 a year, i.e. €250 a week or less, to qualify for legal aid. To calculate this figure, certain deductions such as income tax, allowance for dependants, social insurance contributions, childcare expenses up to €21.15 per child and accommodation or mortgage costs up to €94.50 per week are allowed. Small allowances which were taken into account such as loan repayments, hire purchase and travel expenses were all abolished in 2002.

In addition to providing details of income, if a person’s total capital of any nature – whether in the form of

property, car, cash in hand, in the bank, investments or other resources, exceeds €3200, s/he must pass a “capital” test. Those whose disposable capital exceeds €320,000 will not be entitled to civil legal aid. Unless the family home is in dispute in a case, this “capital” will include a person’s house to the extent to which the unencumbered value (which is the market value less any mortgage) exceeds €190,500. This for example, can impact particularly hard on older people who may have paid off their mortgages, but have very limited income. Clearly, the financial criteria used in the current means test are outdated.

In fact, FLAC’s Data Collection Programme has found that these restrictive financial criteria may exclude many potential needy litigants. During 2005, slightly over one-third of FLAC clients were in full employment and only one-third indicated that they had a gross annual household income of €20,000 or more. These figures show that a majority of FLAC clients are not in full employment and are on low incomes. Of particular concern were clients whose gross household income was between €13,000 and €20,000, a group that amounted to nearly 20% of FLAC callers. Of those, 1 in 3 lived in a cost-free accommodation and 2 in 3 had no dependants. These would appear to be persons of “insufficient means”, however, and depending on their individual circumstances they may not pass the financial criteria for civil legal aid.

### Beyond the figures...

The state civil legal aid scheme does not address unmet legal need. Instead, the present system provides a service which is focused almost exclusively on family law and is one where delay and lack of resources introduce significant barriers to the right of access to justice. “Beyond the figures” is a series of articles based on statistical information collected from FLAC centres that aims to highlight these barriers. In this article, we will examine how the current financial eligibility criteria are so restrictive that many potential clients in need of assistance are excluded.

In addition, FLAC figures indicate that almost 4 in 5 of FLAC clients who visited our centres last year had no solicitor. Of those who had a solicitor, FLAC found that only 10% had obtained legal assistance through the Law Centres. FLAC also found that two-thirds of people who didn’t have a solicitor had never heard about the Legal Aid Board. This may suggest that the current scheme of civil legal aid is not meeting the legal need of those it was designed to help.

If the scheme of civil legal aid is to be effective and to achieve its goal to provide legal aid and advice to persons of insufficient means, it is imperative that an assessment of means reflect the actual cost of living and be reviewed annually. In addition, allowances provided for in the Civil Legal Aid Regulations 1996 but which were removed later in 2002, covering hire purchase, loan interest payments, health, insurance, life assurance and for travel to and from work, should be reinstated at realistic levels. The cost of common household utilities should be recognised and an appropriate allowance made. Last but not least, the family home should be excluded from any capital review.



## Public Interest Law: FLAC launches conference proceedings

The following is an address presented by Michael Farrell, FLAC's Senior Solicitor, to the proceedings launch:

For most of us New Orleans before the hurricane conjured up an image of music, dancing, gaiety and excitement. But Robert Garcia, in one of the most compelling presentations at the FLAC Public Interest Law and Litigation conference last October, demonstrated how Hurricane Katrina had shattered that gaudy, carefree image. It had exposed the hidden New Orleans, the poverty-stricken black neighbourhoods that were least protected against the flooding and where many families could not escape when public transport collapsed, because they did not possess that quintessential symbol of the United States, the automobile.

It was a bit like a metaphor for our society as well. We have never been richer but behind the affluent facade, for the old, the sick on hospital trolleys, Travellers camped by the roadside, lone parents dependent on social welfare, the physically and mentally disabled, asylum-seekers and exploited migrant workers, life is still an unrelenting daily struggle to survive. And the gap between rich and poor is widening rather than getting narrower.

It is an irony that in this deeply unequal society we have more rights than ever before – at least on paper. But accessing rights is the problem, especially for the poor and marginalised, to whom the law is generally something remote and threatening rather than liberating.

That is why FLAC commissioned a report on Public Interest Law and Litigation (PILL) from Mel Cousins and organised last October's conference on "The Reality and the Potential" of public interest law and litigation. We hoped to learn from, and be a little inspired by, the experiences of leading public interest law practitioners from around the world, people who were turning rights into reality in their own societies.

We were not disappointed. It was a memorable experience for all who were there and we hope the publication of these proceedings will bring something of the flavour of the conference to those who were not able to make it on the day.

The turnout of those who did come also showed that we were not alone in believing that there is a very large area of unmet legal need out there, and in wanting to find ways to enable people to access their rights through the law.

Mel Cousins' report defines public interest law as "a way of working with the law for the benefit of vulnerable and disadvantaged people". He looks, not uncritically, at the current level of public interest law provision here. However, his essential message, reinforced by the other speakers at the conference, is the need for cooperation and a coordinated strategy by all the key players in the area and across the various component parts of public interest law and litigation, which he describes as law reform, legal education, community legal education and strategic litigation, i.e. litigation targeted to test and stretch the law in the interests of those whom it is intended to serve.

There is a role in this for everyone:

- For the law schools, both the colleges and the professional bodies, to put more emphasis on the law as a means of achieving rights and to become more involved in community legal education to make disadvantaged communities aware of their rights and empower them to claim those rights;
- For the legal professional bodies, to encourage and structure a greater commitment to *pro bono* work by their members, including assisting and working with independent and community law centres and NGOs - there are welcome signs that both the Bar Council and the Law Society are taking significant steps in this direction;
- For practitioners and law firms, to increase the amount of *pro bono* work they do and to think of more innovative ways of doing it, like seconding people to work in independent law centres and assisting or funding cases or projects undertaken by such centres;
- For NGOs working with particular disadvantaged groups, to see the law as an instrument of change and to work with the legal community to bring change about.
- And there is a key role for community law centres, whether based on geographical areas or in particular



Michael Farrell, FLAC Senior Solicitor.  
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deprived communities. The Report acknowledges that such law centres will be essential to the development of a public interest law and litigation strategy, though we feel that it underestimates the amount of public interest law work already being done by the existing centres against considerable odds and financial constraints. The independent law centres, always vulnerable, need secure funding and support to consolidate their position and to expand into other areas.

The task now is to move forward and develop new structures and supports for the development of public interest law. FLAC is planning a series of seminars to deal in more detail with particular aspects of public interest law and how it is organised in other jurisdictions. The seminars will be followed by a roundtable in the summer to enable the stakeholders in this area, law schools, practitioners, professional bodies, community law centres and NGOs, to come together and debate the structures and strategies best suited to delivering access to justice in our still unequal society.

Mel Cousins' report and the conference papers are intended to inform and stimulate that debate and we hope that many people here will reflect on them and then bring their own experiences and ideas to the roundtable. FLAC has already made some preliminary comments, not all of them in agreement with the Report, as a contribution to that debate.

Thirty-seven years ago, a conference in Trinity College led to the founding of FLAC and played a key role in leading to the establishment of the civil legal aid scheme – a scheme that is urgently in need of renewal today. The conference last October was charged with a similar enthusiasm and desire for change. It is up to all of us now to try to channel that energy and enthusiasm into a new departure that will help to turn the law into an instrument for realising the rights of the disadvantaged in our society.