

Legal Services Regulatory Bill 2015



FLAC Submissions to Seanad

24 November 2015

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. Reading from the Bill as enacted by the Dáil, FLAC respectfully submits the following observations and amendments:

1. Functions of the Authority:

The Authority has an important role to play in advancing equal access to justice. It is uniquely placed to help promote greater knowledge of the law, which would assist people to navigate the legal landscape in which they must live. The authority must and should ensure that basic values of human rights and equality are upheld in the Bill; in section 12, it is important that the new authority recognises equal access to justice and diversity in the legal profession as strong principles. FLAC submits

- I. Functions of the authority (section 12.2)
 - I. In section 12(2), add a further function between lines 1 and 2 on page 20, *“promote understanding of the law and the legal system”*.
- II. Objectives of the authority (section 12.4):
 - I. In s.12(4) add another objective after (b) on p.20 between lines 17 and 18 *“protecting and promoting equal access to justice”*.
 - II. In s.12(4)(e), p 20, line 21, adding ‘diverse’ between ‘independent’ and ‘strong’.

2. Professional principles:

Surprisingly, for a country that is held in high regard for its respect for human rights at the UN and is a member of the UN Human Rights Council, the Minister has resisted including the UN Basic Principles on the Role of Lawyers in the legislation. Some are included in the existing section 12 (5). FLAC submits that section 12(5) should be deleted and the following inserted instead, which is a direct transcription of s.12-15 of the UN Basic Principles on the Role of Lawyers, adopted by the UN at its 8th Congress on the Prevention of Crime and the Treatment of Offenders in 1990:

- III. Delete S.12(5)(a) p.20, from line 24 – 28 and replace with:
 - a) *Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.*
 - b) *The duties of lawyers towards their clients shall include:*
 - i. *Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;*
 - ii. *Assisting clients in every appropriate way, and taking legal action to protect their interests;*
 - iii. *Assisting clients before courts, tribunals or administrative authorities, where appropriate.*

- c) Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.*
- d) Lawyers shall always loyally respect the interests of their clients.*

3. Legal fees to be more transparent:

FLAC welcomes the greater transparency and levels of communication of fees that this legislation will bring but remains concerned that the process remains complex and expensive and particularly that some adjudications will not receive the same level of publication. Those are cases held in private – typically family law cases – and the fees that are charged directly to clients by their own solicitors or fees on settlement. Given the protection for sensitive information in the proposed section 113(5), there should be no need to hide what can be very substantial family law costs. FLAC submits:

- IV. Delete Section 113(3), p92, between lines 21 and 35.

4. Litigants in the public interest:

It is most disappointing that FLAC’s recommendations to recognise the unique difficulties for those who go to court in the public interest or to seek redress from the State have not been recognised. In a number of cases – notoriously in Louise O’Keeffe’s case – the State has used the threat of proceedings to stop people seeking fair redress. Those who seek to challenge unfair laws or practices risk losing everything. This Bill should recognise the obligation of the State to protect the public interest and fairness – even when that might not be in the State’s own financial interest. Section 142 is headed ‘Costs to follow event’. FLAC submits that the section be amended as follows:

- V. In Section 142(1), p115, insert between lines 8 and 9 a new sub-section:
“whether the matter raised issues of substantial importance in the public interest”.

At Section 142, p.115, insert after line 37 a new subsection:

(6) Nothing in this Part shall be construed as preventing a court from making a Protective Costs Order at any stage of a case where the court determines that:

- (a) the issues are of general public importance*
- (b) the public interest requires that the issues be resolved*
- (c) the applicant has no private interest in the case*
- (d) it is fair and just to make the order; or*
- (e) the applicant is likely to discontinue the proceedings if no such order is made.*

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