**THE DAVE ELLIS MEMORIAL LECTURE 2016**

**INTRODUCTION TO THE LECTURE BY JUSTICE EDWIN CAMERON, JUSTICE OF THE CONSTITUTIONAL Court OF SOUTH AFRICA**

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**INTRODUCTION**

Distinguished guests, ladies and gentlemen, it is my honour and pleasure to welcome you to the 10th annual Dave Ellis Memorial Lecture.

FLAC is delighted to welcome once again such a large gathering of its friends and supporters to this annual reflection upon the work of the organisation over the past year and the opportunity to hear from a most distinguished speaker. All of this is done in commemoration of our dear departed friend Dave Ellis, whose contribution to public interest law and community activism was a shining example to all who work or volunteer in this sector. We’re delighted to welcome Dave’s family and Sarah and Brian in particular to this 10th  memorial lecture. Before introducing our guest speaker, we traditionally take the opportunity to reflect on the year that has passed and how FLAC has performed over the past 12 months.

We have had a number of important changes in personnel in the past year. Noeline Blackwell devoted almost a decade of her professional life to this organisation. Her contribution has been enormous and her legacy will be a lasting one. She has handed over the reins as chief executive officer to Eilis Barry to whom we extend a warm welcome and every best wish for the future. Noeline’s legacy has been one whereby the organisation is in a position of great strength in terms of both its volunteers and professional staff and also in terms of its position on the legal and political landscape. We thank Noeline very sincerely for that outstanding contribution and we wish her well in her new roles as chief executive officer of the Rape Crisis Centre.

Michael Farrell’s retirement from FLAC was marked last year with his delivery of the 9th Annual Dave Ellis Memorial Lecture. Sinead Lucey has joined FLAC as Senior Solicitor and again we welcome Sinead and wish her well and the years of challenging work ahead.

The evening should not pass without mention of the fact that Paul Joyce, Senior Policy Officer, has reached the milestone of 25 years’ service in flac. His incredible industry and output has been of the highest quality and his work in particular on the issues of debt and credit are simply without parallel in this country. We wish him well for his next 25 years with flac.

We also wish to thank all of the staff and volunteers for their incredible hard work and dedication over the past year which has resulted in almost 30,000 people availing of our services over the course of the past 12 months. The PILA project of the public interest law alliance has deepened and strengthened its work and the pro-bono work conducted by so many solicitors that it has become now an established part of professional solicitors practices in Dublin in particular.

These past 12 months have seen some very significant events on the world political stage which are of immediate concern to those of us who are concerned with human rights and public interest law. The rise of a populist right in western democracies as reflected in so much of the debate leading to the Brexit vote in the UK and the election of Donald Trump to the Presidency of the United States are matters that rightly cause us deep concern. The content, tone and impact of the debate prior to both the Brexit vote and the US presidential election were of a type that we thought we had consigned to history. Far from the populist right wing rhetoric which predominated in those debates being a failed throwback to times past, they heralded victories for their proponents and supporters. This demands a response from the other side of what is a clear political divide.

Those of us who have campaigned for human rights and fought on issues such as equal access to justice which is at the core of FLAC’s philosophy must be deeply troubled and stirred into action.

I believe that the battle lines have been so starkly drawn that we cannot pretend to be unaffected by it in this country or to believe that same forces are not at work here.

One of the most interesting responses to the election of Donald Trump as President of the United States was that of the American Council for Civil Liberties (ACLU). The ACLU’s response to his election was summed up in one line: “We’ll See you in Court”. That is a very interesting response from an organisation that shares many of the values and objectives that we do in FLAC. The ACLU’s general counsel, Steve Shapiro, delivered the Dave Ellis Memorial Lecture in 2008. The very telling point about that response to the election of Donald Trump is that it was seen to be an election of a person whose policies and platform was clearly one that was adverse the interests and rights of those represented and protected by organisations such as the ACLU.

Philip Pettit, Professor of Politics at Princeton University, wrote in the Irish times in the aftermath of the Trump victory that normal democracies enable citizens individually or in social movements to contest the policies proposed by government and to work at getting them changed. He calls this the ”contestatory power” and he described how it is normally imposed on governments by political mobilisation and active measures such as court action. He described it as a virtual form of influence which while often going unnoticed may be the most effective form of democratic power. He made the point that citizens enjoy contestatory power only because the officials they elect are not the sole authorities in a democracy. Citizens must enjoy security in the information they have about government, in their capacity to complain and organise against official policy and in their access to the Courts, the media, and the streets. He made the point that it is extremely disturbing that someone such as Donald Trump has been elected to the presidency of the United States but it would be much worse if he had come to power in the absence of constitutionally guaranteed contestatory institutions.

These populist movements pose as being “anti-establishment” in their attempt to tap into widespread discontent.

I believe that it is important to take the route of organisation and opposition to the forces that have led to the Brexit vote in the UK and the election of Donald Trump in the US. Organisation and opposition is necessary in order to ensure that the gains that have been made in western democracies are maintained and strengthened - and not reversed. There is no question now but there is a very real movement for the reversal of the gains that have been made on behalf of those who suffer social and economic exclusion, are economically and politically powerless, or are members of minorities who suffer discrimination.

FLAC’s central mission is equal access to justice. If the justice to be accessed was not worth it there would be little point establishing an organisation designed to ensure that the people of this country can access it and avail of it. Indeed it is sobering to consider how this very debate about our fundamental principles which we have taken for granted leads us to other central elements in our democracy that we can perhaps sometimes take for granted. A central pillar of a functioning democracy is an independent judiciary as one arm of the government of the State. It is access to that independent judiciary that lies at the heart of our belief in equal access to justice for everyone in this country. The right of a citizen to have recourse to a judiciary that is independent of government is a fundamental one.

The recent attack by Minister for Transport Shane Ross on the entire judiciary in this country was an extraordinary event. He subjected the entire judiciary to what can only be described as “Trumped-up charges” in an apparent attempt to gain some sort of perceived popular support – or at least attention. His accusations against the judiciary included the allegation that they had attempted to resist reform of judicial appointments; that they had for decades fought change from a position within a “protected citadel”; that reform was urgently required because they could not be trusted “not to forget their oath”; that they were “masters of delay”; and he characterised them generally as leading “charmed lives”.

This was part of his justification for a pursuit of reform of judicial appointments and oversight which was in fact a process of reform actually supported by the judiciary itself rather than resisted by it.

FLAC has always been conscious of the need to have a judiciary composed of as a diverse membership as possible reflective of the society that it serves. For decades FLAC has been part of the debate on how the legal profession ought to be more reflective of the society it serves and how we needed radical reform to effect this. Reform of the appointments process has been part of that wider debate and we have had much to say on that topic.

What was shocking, however, about Minister Shane Ross’s attack was how it attempted to portray an utterly privileged elite who were cosseted in their “protected citadel” –as if they operated in an environment where they were unaffected by, and unaware of, the realities of the lives of the people of this state. It was an attack that was both gratuitously offensive and factually incorrect. But something deeper and more worrying is at work. The attempt to validate at the highest political level casual offensive and undermining remarks about another pillar of government can only serve to undermine it in the public eye. What we require and need as citizens of this country is a judiciary in which we can have confidence and to which, more importantly, we can have recourse when we bring cases before it which require resolution by the most qualified lawyers appointed to those positions and who have objectivity and integrity beyond question. We have been very fortunate in this country to have been served by such a judiciary.

Of course we have often criticised and bemoaned the results of individual court cases or indeed the conservatism on the part of individual judges or at times indeed entire courts. But we have never had true or lasting cause for concern about the objectivity and independence from government of the judges who sit there.

It is important to dispel the myth that judges live in a protected citadel. Far from it - they deal with all of the realities - and the greatest difficulties - that befall the people of this state. We in FLAC have waged legal battles in the courts over the last number of decades on issues such as the right to fuel vouchers for those on social welfare payments, the right of women not to be discriminated against in social welfare payments, the right of those who cannot afford legal services to have access to legal aid and the rights of transgender persons to recognition by this state.

It is the judges of this country who have had to grapple with those issues and is to the judges to whom those citizens have looked for vindication of their rights – and on many important occasions secured them there. This debate on the reform of judicial appointments is one that should start from a recognition of how often they have had to address the yawning gaps left in the legal system by the failure of politicians to legislate on important, sensitive and difficult issues.

The leader of Fianna Fail, Micheal Martin, accused Shane Ross of threatening to undermine a core part of democracy, i.e. the separation of powers, with his position and warned that he had to be extremely careful. Brendan Howlin, Labour Party leader likewise highlighted the extraordinary nature of the attack. It is very worrying that Minister Ross’s colleagues in government and in the independent alliance do not seem to have fully grasped the very serious problem he has created.

The attack on the judiciary by the right wing British Press in the wake of the High Court judgment on the rights of the United Kingdom parliament on Brexit is another example of these worrying developments. There is widespread concern in Britain about how unwilling Prime Minister Theresa May and her Ministers were seen to be to defend the independence of the judiciary in the face of the denunciation of the right wing press culminating in their characterisation in one newspaper as “enemies of the people.”

We must be willing to reassert the central role in our institutions of state of an independent judiciary who must be recognised and supported as such. We depend on them to play the vital role accorded to them under our Constitution and they must be free, independent and fearless in that role. We must also be willing to speak out in defence of these core principles and value when they are under attack.

It is therefore entirely apposite and fortunate in the light of the current debate in this country that we have with us tonight a very paragon of judicial independence, objectivity and integrity who stands for all we seek to protect in an independent judiciary in a constitutional democracy.

Justice Edwin Cameron has been a justice of South Africa’s highest Court, the Constitutional Court, since 2009. During the apartheid era he was a human rights lawyer. President Nelson Mandela appointed him a Judge in 1994. He was a Judge of the Supreme Court of Appeal for eight years and a Judge of the High Court for six.

He has been an outspoken critic of former President Thabo Mbeki’s policies on aids. He has written a prize winning memoire “Witness to Aids” and his latest book “Justice; a Personal Account” was published in 2014.

He holds honorary doctorates and fellowships around the world and received countless honours for his legal and human rights work. His judgments as a Judge in South Africa have served to put the protection of human rights at the centre of the post-apartheid legal system. He has delivered far reaching judgments on many areas including the right to freedom of speech, defamation, the right to an independent corruption fighting agency in South Africa and gay rights. He is an inspiration to all of us who believe in the central and vital role of an independent judiciary in a constitutional democracy as something to be valued and protected. It is therefore a very great honour and pleasure for me to invite you now to hear from our distinguished guest lecturer, Justice Edwin Cameron.