

PILA Bulletin, 4 November 2009

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- 1. Criminal Legal Aid now to include a barrister, in addition to a solicitor, for District Court proceedings**

The Supreme Court has expanded the constitutional right to legal aid for persons facing trial in the District Court for serious criminal offences.

Until now, unless charged with murder, persons facing trial in the District Court had no statutory right to legal representation to include a barrister and could only access legal aid through a solicitor. The five-judge Supreme Court last week upheld claims by Edward Carmody, a Co. Kerry farmer charged with 42 offences related to alleged wrongful movement of cattle. It was found that he has a constitutional right prior to trial to apply for legal aid to include representation by a barrister as well as a solicitor. The Chief Justice said the Supreme Court was satisfied — given the range of criminal offences and increased complexity of modern legislation and regulatory measures — that cases would arise where it would be essential that a defendant of insufficient means should have a barrister and a solicitor. Effective and fair advancement of a defendant's case was "essential for public confidence" in the system of trial and also gave victims confidence true perpetrators of crime were convicted.

To read the full judgement in the case of *Carmody v. Minister for Justice, Equality and Law Reform & ors* [2009] IESC 71, see: <http://www.bailii.org/ie/cases/IESC/2009/S71.html>.

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2. Ireland before the UN Human Rights Committee: One Year On

Regular readers of the *bulletin* will be aware that last year the UN Human Rights Committee reviewed the compliance of Ireland with its obligations under the UN International Covenant on Civil and Political Rights. FLAC, together with the Irish Council for Civil Liberties and the Irish Penal Reform Trust were involved in shadow reporting of the State's periodic report to the Committee and in lobbying the Committee at the review. A successful follow-up conference was also hosted by the three organisations in April of this year at which members of the Committee spoke. At the end of July last year, the Committee adopted its Concluding Observations on Ireland and invoked its power under its rules of procedure to require Ireland to respond within one year on priority areas of concern. These areas of concern are prison conditions, extraordinary rendition and religion in education.

Again shadowing the State's report on these areas of concern, FLAC, ICCL and IPRT made a submission highlighting its concerns in these areas as well as a number of other issues which have arisen in the past year such as the attacks on the human rights and equality infrastructures of the state by the cuts to the budgets of certain bodies. The Committee considered the reports last week and will be in touch with the State shortly. Watch this space for further updates.

Both the State and the FLAC, ICCL and IPRT follow-up reports are available on the UN's website at: <http://www2.ohchr.org/english/bodies/hrc/followup-procedure.htm>.

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3. Supreme Court upholds golf club's right to exclude women

On November 3 2009, a three-to-two decision of the Supreme Court confirmed the legal right of Portmarnock Golf Club in Dublin not to allow women to become full members. The case was the result of an appeal from the Equality Authority. The Equal Status Act allows discrimination in favour of a particular group, including a gender group, if the "principal purpose" of the discrimination is "to cater only for the needs of that group or gender. A District Court ruling in 2004 found that the principal purpose of Portmarnock Golf Club was the playing of golf and not catering only for the needs of men. Based on this it found that it was a "discriminating club" under the Act. It was held that the Club was subject to the only sanction which may be imposed upon it under the Act that is the withdrawal of its drinks license. This was described as "extraordinary" by the court, noting that a club could continue to discriminate without further penalty indefinitely if it chose to lose its drinks license. The Club was successful in its appeal to the High Court which held that the central purpose of the club was to cater for the "needs" of "male golfers".

In agreeing with the High Court's decision, Mr. Justice Hardiman with Mr. Justice Hugh Geoghegan and Ms. Justice Fidelma Macken held that the ordinary, natural and literal meaning of the word "needs" was sufficiently wide to include cultural, social and sporting needs as well as more basic needs such as air or water. Mr. Justice Hardiman found it significant that the Equality Authority could not point to any club which could come within the exemption on the authority's interpretation of the section. The Equality Authority has welcomed the clarification in the law, stating that it "is now a matter for the Oireachtas to consider whether it should amend the Equal Status Act."

Ms. Justice Susan Denham and Mr. Justice Nial Fennelly dissented stating that it was "preposterous" for the club to purport that it's main purpose was the cater for the needs of men, as permitted by the exemption under the Act, and not the playing of golf.

The Equality and Rights Alliance as well as the National Women's Council of Ireland have strongly condemned the Supreme Court's decision.

To read the judgement in the case of *Equality Authority -v- Portmarnock Golf Club & ors and Cuddy & anor -v- Equality Authority & ors* [2009] IESC 73, please see: <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/e30f998d5e1e1a6680257663003b8ed8?OpenDocument>

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4. UK: Proposed cuts to English criminal legal aid scheme could result in legal action by lawyers

The UK Ministry of Justice last week announced a review of the £2.1bn legal aid scheme to assess the effectiveness of the legal aid budget. This could involve a split in the budgets between criminal and civil legal aid, the government has said. The proposed re-organisation

of the legal aid scheme follows criticism that the current system of provision of criminal legal aid is too expensive. The legal aid minister, Mr. Willie Bach, has said that civil legal aid tends to be "swallow[ed] up" by demand-led criminal legal aid and for this reason dividing the two may be meritorious. Lawyers may bring legal action over proposed cuts to the criminal legal aid scheme. But bodies representing barristers and solicitors are already said to be considering legal action to challenge government proposals to save money on legal aid which could see a cut of 23% for those who undertake police station or Crown Court work.

While the English are considering splitting the budgets of criminal legal aid from civil legal aid in a cost cutting measure, the Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern, recently signaled that the administration of civil and legal aid may be merged into one body in Ireland. An article last week in the *Irish Times* quoted Mr. Ahern about the possibility of moving responsibility for administering the criminal legal aid scheme from his Department to the Legal Aid Board.

For further information on the review of the legal aid scheme in the UK see: <http://www.justice.gov.uk/news/newsrelease160909b.htm>.

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5. EU: Commission takes the Netherlands to court on discriminatory student grants

According to the European Commission website, *Europa*, the Commission is taking the Netherlands to the European Court of Justice (ECJ) over a student grant scheme which is alleged to discriminate against workers and their families from other EU countries.

The Dutch law on student finance provides that in order to obtain funding to study abroad, the student must have legally resided in the Netherlands for at least three of the previous six years. The Commission believes that this condition contravenes Community law on free movement.

The impugned residence condition could potentially place migrant workers and their families at a disadvantage, even if it applies to both nationals and non-nationals. This is because such a condition can be more satisfied by national workers and their families compared to those from other EU countries.

The Commission sent the Netherlands a reasoned opinion in 2008 inviting the Netherlands to fulfill its obligations under Community law, which the Netherlands did not do. The Commission has now decided to bring the matter to the ECJ.

See the European Commissions' website at:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=607&furtherNews=yes>
for more details.

For further information on the EU Race Equality Directive (2000/43/EC), please see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/257&format=HTML&aged=0&language=EN&guiLanguage=en>

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6. USA: Law firms pay newly qualified lawyers to work for public good

Hundreds of recent law school graduates in the US have been forced by the economic recession to take a year out before beginning their contracts at top law firms. Instead they are assisting nonprofits, public defenders and other public interest law offices for as little as a third of the salary they would otherwise have expected.

Across the US, large firms that have seen a slowdown in business are postponing the start dates of newly hired lawyers that they recruited before the recession. Many are paying the "deferred associates" stipends to do public interest work until business picks up.

The young lawyers and the firms that pay them say they get valuable training and hands-on and in-court experience that they may not get during their initial training at big firms and may help with research and client interviews, allowing staff attorneys to concentrate on more cases. There are some concerns that law firm fellowships are making it harder for those intending to enter public interest law to land jobs. But the nonprofits insist deferred associates are not taking anyone's place since these organisations would not have the money to hire anyway.

Many firms have announced plans to defer next year's new attorneys also with some hoping that sending recruits into the field before bringing them on board full-time will become a permanent feature of legal hiring. Big firms in the US generally carry out pro bono work as standard practice throughout the year to remain in good standing with their professional associations.

To read more, please see: http://www.google.com/hostednews/ap/article/ALeqM5g2HjR8DdVL3iRm_bqKfqWyqbNY4AD9BGNJCG0

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7. Legal Education: More practice needed in legal education in Ireland

Law schools in every other common law jurisdiction have embraced the role of practice in legal education, but Irish law schools still lag far behind, according to an article published last week in *The Irish Times* by Larry Donnelly. Legal studies in other jurisdictions have incorporated law practice primarily, though not exclusively, by promoting and investing in

clinical legal education programmes. Donnelly has worked in the NUIG School of Law since 2001. He is a Lecturer and Director of Clinical Legal Education and directs the largest clinical programme of its kind in Ireland and places a large number of final year students each year in "real world" placements for which they receive academic credit.

While Irish law schools are far off the leaders in this field, there are fledgling clinical legal education programmes. These programmes involve placements for students who receive academic credit for and are evaluated on the merit of their work, much of which is undertaken in the field of public-interest law. Efforts to expand existing programmes are ongoing, and exciting new initiatives are in the works.

To read the article in full, please see:
<http://www.irishtimes.com/newspaper/ireland/2009/1019/1224256967858.html>

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8. Law Centre Northern Ireland training courses, December 2009

The Law Centre Northern Ireland will host two training courses at its offices in Belfast. The first on deportation is aimed at immigration practitioners and practising criminal defence lawyers interested in developing their knowledge and awareness of immigration law. The course will include: automatic deportations (under the 2007 Borders Act), conducive deportations, deportation of European nationals, and rights of appeal. It will take place on 1 December 2009 at the Northern Ireland Law Centre.

A second course on 1 December 2009 on mental health and the criminal justice system is aimed at those who work with clients who are involved in the Criminal Justice system and who have been, or may be placed in a psychiatric hospital either during their remand period or following conviction. It will look at the legislative framework; pertinent case law; the powers of the Courts and hospital authorities; and what rights and recourses are available to the client. It will also deal with the Mental Health Review Tribunal in so far as particular rules apply to offender patients.

For more details, contact Deborah Hill at Law Centre (NI), 124 Donegall Street, Belfast, BT1 2GY, Tel: 048 9024 4401, or by email at deborah.hill@lawcentreni.org

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9. Call for expressions of interest, Research Project on the Practice and Experience of Advocacy in Ireland

The researcher will be exploring the role of advocacy in Ireland in a project known as Advocacy Initiative. The leadership and process for this Initiative will be driven by a Steering Group chaired by Kieran Murphy, National Director, Society of St Vincent de Paul.

The following organisations are represented on the Steering Group: Amnesty International Ireland, Barnardos, Carmichael Centre, Centre for Nonprofit Management, Disability Federation of Ireland, Free Legal Advice Centres (FLAC), Focus Ireland, Glencree, Irish Cancer Society, Irish Charities Tax Research, National Women's Council of Ireland, OPEN, Simon Communities of Ireland, Society of St Vincent de Paul, 54 Degrees.

Applications should be received by close of business, 13 November 2009 Further information is available here: www.activelink.ie/2009/NPManAdditionalAdvocacyInfo.pdf

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10. Events: FLAC's Third Annual *Dave Ellis Memorial Lecture*, 1 December 2009

FLAC's third annual *Dave Ellis Memorial Lecture* will take place on Tuesday 1 December 2009 at 6pm, followed by a wine and cheese reception. The venue will be the President's Hall of the Law Society of Ireland, Blackhall Place, Dublin 8. Dr. Maurice Hayes will deliver this year's address. All are welcome.

For further information, please contact Doreen in FLAC at doreen.mescal@flac.ie or (01) 8745690. You can also check www.flac.ie for updates under the events section.

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11. Public lecture by Prof Barbara Hudson, Queens University, 12 November 2009

Barbara Hudson will deliver a lecture entitled *All the People of the World: A Cosmopolitan Perspective on Justice* hosted by the Institute of Criminology and Criminal Justice at Queen's University Belfast on 12 November 2009. Barbara Hudson is Professor of Law and Director of the Centre for Criminology and Criminal Justice at the University of Central Lancashire. Her current research projects concern the extension of human rights to marginalised and excluded groups, transitional justice, and cosmopolitan justice.

The event will take place at 4pm in Langan Hall/G9 at the University. For further information please contact Deaglan Coyle, School of Law d.p.coyle@qub.ac.uk: Tel: 048 9097 3472

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12. Child and Family 8th Welfare Network Event, Community Policing and Early Intervention, NUIG, 24 November 2009

Key Note Speaker Chief Inspector Kathleen O'Toole will deliver a lecture on 'Community policing and early intervention.' The lecture will be held in *Áras Moyola*, NUIG and will

commence at 6pm on 24 November. For more details, contact Gillian Browne at Gillian.browne@nuigalway.ie or Tel: 091 495398.

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