

flacNews

FREE LEGAL ADVICE CENTRES



Lydia Foy (L) with FLAC Director of Funding and Development, Catherine Hickey.

Lydia Foy wins 13-year legal battle

Government must recognise transgender rights First declaration of incompatibility confirmed

Transgender woman Dr Lydia Foy has won the right to be legally recognised as a woman and to get a new birth certificate describing her as female. After a 13-year battle in the courts, the Government has dropped its appeal against a High Court ruling that Dr Foy's rights under the European Convention on Human Rights (ECHR) have been violated and that the current law on gender recognition is incompatible with the ECHR.

This is a major achievement for the transgender community in Ireland. And it is a vindication of the ECHR Act, 2003, without which Dr Foy would not have won her case.

FLAC represented Dr Foy throughout her lengthy legal battle, underlining the need for more lawyers and legal NGOs who can take on ground-breaking cases like this, where the applicant could not afford the costs of a major hearing in the High Court.

Ireland is the last EU member state not to give legal recognition to transgender persons, not to issue them with new birth certificates, or allow them to marry in their acquired gender. The Government will now have to change the law quickly, or face possible condemnation by the European Court of Human Rights based on the Court decision here.

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FLAC News is published quarterly by
Free Legal Advice Centres Ltd.,
13 Lower Dorset Street, Dublin 1.

Editing: Yvonne Woods and Noeline
Blackwell

Layout: Printwell Co-operative

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ISSN 07914148

Photos: FLAC, Derek Speirs

The views of individual contributors
do not necessarily represent the views
of FLAC.

Opinion: Time for a reform

The recession and the spiralling personal indebtedness that has followed in its wake has brought renewed focus on Ireland's bankruptcy laws. The current legislation dates from 1988 but in terms of developments in personal insolvency law worldwide since then and the socio-economic context we face in 2010, it derives its ethos from another era. Since the publication of its 2003 report on debt enforcement, *An End based on Means*, FLAC has campaigned for the introduction of consumer debt settlement legislation. In its September 2009 Consultation Paper on Personal Debt Management and Debt Enforcement, the Law Reform Commission (LRC) provisionally recommended the complete overhaul of the 1988 Act insofar as it concerns court-based bankruptcy proceedings in Ireland. Critically, it also recommended the introduction of an out-of-court debt settlement option. Generally speaking, this involves a scheme that recognises that consumer over-indebtedness may be inevitable for some in a credit dominated society. Thus people who find themselves in this position, generally because of economic and personal events outside their control, should not be endlessly pursued in the courts and face a punitive response from the State that confers blame rather than emphasises rehabilitation.

This is not to say that debt settlement as a concept involves a free ride for the indebted person. As a general rule, the debtor must meet a 'good faith' test prior to entry to such a scheme and must repay debt to the best of his/her ability over a set period, often of three to five years, whilst retaining a minimum protected income generally pitched at social welfare levels. Only on completion of the repayment programme does the debtor earn a so called 'fresh start' with residual unsecured debt being written off. In summary, debt settlement legislation

might be said to be a trade-off – the debtor sees light at the end of the tunnel if s/he sticks to the plan, creditors generally get paid something and do not have to engage in costly and time consuming legal proceedings and the State may be saved the potential costs to society of stressed out debtors whose participation in economic activity is compromised over a substantial period of time.

Compare these principles with the Bankruptcy Act 1988 and it is easy to understand why bankruptcies in Ireland remain very low by international standards. A creditor's application to make a debtor bankrupt usually begins with the service of a Bankruptcy Summons requesting the debtor to pay a sum of money owed (which must be at least €1900) within 14 days. If s/he fails to do so, the creditor may petition for the debtor to be adjudicated bankrupt and files this petition in the High Court. If the High Court is satisfied that the debt is due, a bankruptcy order will be granted and will remain unless the debtor can 'show cause' why such an order should be annulled. The creditor must publish notice of the bankruptcy order in one national and one local newspaper and a 'statutory' court sitting must be organised where other creditors may appear and give details of the debts they claim are due to them. In short, a creditor is unlikely to make such an application without professional assistance and the costs involved may run to thousands of euro. Unless the creditor believes that the debtor has assets that may be sold to meet the debt and costs due, this course of action is unlikely. For this reason, it is practically unheard of for a creditor to file for bankruptcy in a consumer debt case.

A debtor may also petition for his/her own bankruptcy under the 1988 Act. To do this, s/he must show that his/her estate is sufficient to produce

of Ireland's bankruptcy laws

at least €1900. In addition, €650 must be lodged in the Official Assignee's Office towards costs. This requirement alone excludes most consumer debtors who clearly do not have this kind of cash available. Once adjudicated bankrupt, the debtor must attend for interview with the Official Assignee (or trustee in bankruptcy) and file a statement of affairs for the court sitting. The bankrupt's property (apart from essentials to a value of €3100) vests in the Official Assignee for the benefit of creditors and is sold with the proceeds distributed to them. A register of bankrupts whether current or discharged is kept in the High Court and this may severely affect a person's credit rating. Other restrictions such as not acting as a company director and the Court exercising control over a bankrupt's salary or pension also apply.

To bring any bankruptcy to an end the Official Assignee's costs, High Court fees, petitioning creditor's costs and preferential debts (such as taxes) must be paid. In addition "the bankrupt must either pay all debts, be discharged with the consent of unsecured creditors, pay 50 cent in the euro having had all his/her property sold or make an acceptable offer to unsecured creditors. This involves a proposal to pay a percentage of debt that must be acceptable to 60% in value and number of such creditors. Otherwise, the bankrupt must wait twelve years to be discharged and only where the High Court is satisfied that all property has been sold. Finally, there is a mechanism under the legislation where a debtor can avoid bankruptcy by seeking the protection of the High Court from his/her creditors while an arrangement on payment proposal is made to unsecured creditors, similar to the offer of composition above which again must be accepted by 60% in value and number.

Why would any debtor voluntarily

choose to submit themselves to such a regime? In short, only one who had a strong belief that s/he had the means to make an offer of composition acceptable to at least 60% of unsecured creditors. Otherwise, there does not appear to be anything to be gained and much to be endured by a debtor opting for bankruptcy. According to the latest available figures, 17 new Bankruptcy Orders were

made in 2009 up from eight in 2008, with seven arranging debtors in 2009 up from one in 2008. In a deep recession with unprecedented levels of indebtedness, this arguably represents a moderate increase and reflects the fact that Ireland's bankruptcy laws are unsuited either from a debtor or a creditor's perspective to the realities of chronic over-indebtedness.

Advocacy Initiative conference

The Advocacy Initiative recently held a timely and highly successful conference to develop research on contemporary practices of advocacy in Ireland. The Initiative was established in early 2009 following discussions on and an exploration of advocacy and the Community and Voluntary (CV) sector that arose out of a series of events organised by the TCD-based Centre for Nonprofit Management in 2008. FLAC is on the Steering Committee of the Initiative.

A piece of research was commissioned by the group in order to address and explore issues regarding the current state and effectiveness of advocacy within the CV sector in Ireland, as well as its role in a democratic society today. The research, which was the first of its kind in this jurisdiction, involved a survey of 170 organisations in the sector, interviews with senior politicians, policy makers, funders and commentators from outside the sector as well as NGO representatives and a forum involving over 50 NGO advocates.

There were a number of interesting findings in the research, including evidence suggesting that in spite of a

perceived chill factor on advocacy within the sector, more organisations are conducting more advocacy work now than at this time last year. It also included an analysis of the resources and the operating environment of current NGO advocacy as well as highlighting the challenges between how the sector views its advocacy role and function and how this is viewed from within government. The latter referred to issues such as the legitimacy and mandate of NGO advocacy and a lack of understanding from the sector of the needs of policy makers and the constraints under which they work. Policymakers and senior civil servants also acknowledged that some NGOs are highly skilled in their advocacy work and, interestingly, there was a correlation between the organisations which the policy makers and the sector itself believed were effective in their advocacy work.

The feedback from attendees from the widely-attended conference will now be considered in light of the findings and will form part of the research. Watch out for Advocacy Initiative updates in future issues of *FLAC News*.

Changes to Irish Criminal Legal Aid Scheme

The Criminal Justice (Legal Aid) Act 1962 provides that free legal aid may be granted in certain circumstances for the defence of persons of insufficient means in criminal proceedings. Criminal legal aid is granted in all courts, including the District Court, the Circuit Court and higher courts. Under the Act, the grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two barristers in the preparation and conduct of a defence or appeal. The judgment of the Supreme Court in *Carmody v. the Minister for Justice, Equality and Law Reform* in late 2009 extended the right to representation by counsel where it is established that because of the particular gravity and complexity of the case or other exceptional circumstances, such representation is essential in the interests of justice. It is worth noting that while the Supreme Court acknowledged that the State could, having regard to concern for public finances, restrict the availability of criminal legal aid to cases where this is required in the essential interests of justice, once that latter criterion was satisfied, criminal legal aid must be provided.

Legal services under the scheme are provided by private solicitors and barristers who have notified the Minister for Justice, Equality and Law Reform and county registrars, respectively, of their willingness to have their names placed on panels to undertake legal aid work. The Department is responsible for the payment of legal aid fees and expenses to the legal practitioners but has no involvement in the day-to-day operation of the scheme, the assignment of lawyers or the granting of free legal aid, which are matters handled entirely by the judiciary.

The cost of the criminal legal aid scheme to the Exchequer has risen year on year, from just over €40 million in 2005 to €60 million in 2009. The rise in costs can be attributed to a number

of factors which include an increase in the number of legal aid certificates awarded by the courts, in which there was an increase of 50% between 2005 and 2009. In addition, an increase in resources during the same period within the Garda Síochána and the judiciary led to a rise in the number of arrests and reduced processing times for court appearances. Moreover, more efficient court practices have reduced backlogs but increased the throughput of cases. The initial financial allocation for criminal legal aid in 2010 was €51.6 million. However, that allocation was reduced by the Department of Finance by a further 8%, reducing the allocation to €47.4 million. Therefore, savings of €4.1 million are required in 2010. In this regard, a further reduction of 8% in fees for all professional criminal legal aid services is said to be implemented shortly.

The Minister for Justice Dermot Ahern has expressed his concern at the rising cost costs of criminal legal aid and is set to bring forward legislation to intensify the safeguards under the 1962 Criminal Justice (Legal Aid) Act. The resultant bill includes a proposal to introduce means test for criminal legal aid replacing the existing, inchoate power of the courts to determine the financial eligibility of applicants for legal aid. It involves a compulsory means test in cases where the Grdaí or DPP object to the granting of legal aid. It is understood the bill will include a requirement that those with some means to make a contribution towards the cost of their defence do so, and will also give the court power to withdraw a legal aid certificate in certain circumstances. It is likely to substantially increase the penalties for fraud and also restrict power to grant additional counsel to the trial court.

The Minister has also indicated a number of times in the recent past its commitment to examining all of the issues associated with the provision and cost

of legal aid and to establish the potential for savings and efficiencies. The Government has stated that the potential to achieve further reductions through changing existing administrative systems and a market-based approach to the procurement of legal services, similar to the tendering of criminal defence services in the UK, is also being actively pursued. The Minister claims that the issues and concerns identified in regard to costs in our criminal legal aid system are shared by other jurisdictions and any learning that can be taken from other international models will be applied if the evidence suggests it is appropriate to do so.

It should be duly noted, at this juncture, that a functioning criminal justice system is an essential part of a democracy, and Ireland is constitutionally and internationally obliged to make provision for the payment from the public purse of legal fees for those persons accused of serious offences who are not in a position to discharge their own legal costs. It is crucial that the State keep in mind the prime function of legal aid, namely to allow people real and effective participation in their own trials.

Civil legal aid, which is legal aid for anything other than criminal matters, is already subject to a very complex means test and is heavy with regulations and bureaucracy. This can lead to inflexibility and real unfairness. FLAC's experience with civil legal aid has shown that means testing and other bureaucratic measures do create barriers to people seeking to access their rights who cannot afford to engage a private lawyer. The State must ensure that any new systems it proposes to introduce for criminal legal aid do not repeat the mistakes of the current civil legal aid scheme, which can be time consuming, inefficient and lead to people being denied the right of proper participation in courts and legal processes affecting their lives.

Mayo launch for FLAC report on direct provision

This article is by
Michelle Rooney,
Project Coordinator with
Mayo Intercultural Action

MIA is a voluntary community organisation which was formed in 2004 in response to the growing needs of migrants coming to live in Co. Mayo and asylum seekers who were located to live in the county under the direct provision and dispersal system introduced by the Department of Justice, Equality and Law Reform in 2000. Since 2000 there have been several direct provision centres in operation in Co. Mayo. Following the most recent closure of the Railway Hotel in Kiltimagh in June 2009, there is now just one direct provision accommodation centre remaining, located in Ballyhaunis. This centre has a capacity for over 329 people, including families, couples and single men, making it one of the largest centres in the country. Mayo is the third-largest county in Ireland and for asylum-seekers this presents a challenge in accessing basic health, social and legal services located in Castlebar, Galway and Dublin when travel within and outside the county is expensive and infrequent.

In this rural context, MIA has endeavoured to meet the vast needs of asylum-seekers living in Co. Mayo through the provision of a support and information service, operation of a women's support group, capacity-building and training programmes for asylum seekers, facilitating community art projects, providing a space to integrate with local community, liaising with other organisations to provide supports to young people, and through promoting the participation of asylum seekers in local *fora* in order to have their views and concerns heard.

The large crowd gathered for the launch had the opportunity to see a clip from Vukasin Nedeljkovic's video



(L-R): Kany Kazeza Kazadi (MIA volunteer); Michelle Rooney, MIA; Saoirse Brady, FLAC; Therese Ruane (MIA) and Vukasin Nedeljkovic

documentary on the closure of the Railway Hotel in Kiltimagh, Co. Mayo. After several years in operation, providing a home to over 80 residents who had made significant efforts to integrate into the local community, the centre closed in June 2009, and the Residents were moved on with very little notice. The film recorded the impact of this sudden closure on the town and on those who had worked with and befriended the residents of the Railway Hotel. Saoirse Brady, Policy Campaigns Officer with FLAC, gave a concise overview of the findings and recommendations from *One Size Doesn't Fit All*, which raised questions and comments from the audience on the serious challenges for residents within direct provision accommodation centres and the restriction on their human rights.

The audience heard personal moving accounts from individuals currently living within direct provision and from those who have left the system. They spoke of the isolation, powerlessness and poverty they have experienced. One woman spoke of experiencing discrimination in Ballyhaunis, citing as an example local families leaving the public playground when centre residents entered with their children. Another resident spoke of frustration and anger at not being able to provide adequate nutritious food for their chil-

dren. It highlighted a need to examine the long-term impact of direct provision on children who are forced to live in these unnatural conditions, deprived of a normal childhood.

The complaints procedure adopted by the Reception & Integration Agency (RIA) was discussed by the audience. The procedure for making a complaint in relation to the accommodation centre or the accommodation is clearly unjust, given that residents must make complaints to the same department which provides their accommodation and indeed will make the decision on their application. If a complaint is not upheld, an independent appeals mechanism does not exist. RIA recently reviewed its *House Rules and Procedures*, but did not take the opportunity to adequately reform the complaints procedure leaving residents vulnerable when making a complaint.

MIA was delighted to have the opportunity to host the Mayo launch of FLAC's important and valuable research. We are very thankful to Saoirse Brady and Emma-Jane Morrissey from FLAC who made the trip to Mayo for the event. We are very grateful for the brave and powerful inputs from asylum seekers living in direct provision who highlighted the real life impact of this unfair system.

Inside the Centre: The Free Legal Advice Centre @ Dundrum CIC

FLAC has long operated a legal advice service in Dundrum, but recently relocated to the top floor of Dundrum Town Centre, hosted by the Citizens Information Centre (CIC). CIC staff kindly provide valuable assistance by arranging appointments and forwarding the details on to FLAC, allowing our volunteer lawyers to prepare for questions they might encounter in advance. The Dundrum centre opens every Thursday evening from 7.30pm to 9.30pm. Here we talk to two volunteers in the Dundrum FLAC who regularly give their time to help clients with their legal problems.



Noreen Maguire with client at Dundrum FLAC

Noreen Maguire is a solicitor who has been volunteering with FLAC for over ten years. In 2002 she established Maguire Muldoon Solicitors, a general practice firm in Clonskeagh covering all areas of law. Noreen's particular expertise lies in litigation and family law. Volunteerism was always important in Noreen's family, so she grew up with the expectation of getting involved. Her mother taught her the value of volunteering for its own sake and she gets a lot of pleasure from helping out in the community: "Without wanting to sound corny, I think it's important to give something back," she comments. In college she helped out with various charities, including the St Vincent De Paul, and when she qualified she wanted to donate her expertise to help those in need. When she heard about FLAC, signing up as a volunteer proved an easy decision. Noreen recalls, "it sounded absolutely perfect. It really sounded like something I could really help with." She has volunteered in several FLAC centres over the years.

Things can be a little hectic some nights, but it is always manageable. In her experience, many people find law intimidating because they don't understand it. Legal language and formalities can be very off-putting, and it is a solicitor's job to help people navigate the law. She has met nervous clients who find it reassuring just to be able to sit down with a lawyer and ask a few questions without worrying about fees. It helps just to see exactly how legal costs work and know that, these days,

solicitors expect clients to ask them about charges. Clients get to see lawyers volunteering with no motive other than to help, which helps people relax and indeed gives a new perspective on the legal profession.

In the current economic crisis, Noreen has seen a big increase in clients with debt problems. In the past, most of her FLAC clients would have been less well off, but with the downturn she says it is not unusual to find people from traditionally better-off areas now struggling to pay their mortgages or saddled with large business or personal debts and thus seeking free legal help.

Noreen also notes that debt complicates other legal problems, especially in family law. She has encountered many sad and complicated cases of people who over-indebted and dealing with relationship breakdown at the same time. People are increasingly seeking arrangements that allow them to remain in the family home while splitting. There is a greater need to 'think outside the box' when helping clients and advice that was valid a few years ago has completely changed today. Noreen recommends volunteering with FLAC to anyone interested in doing something that genuinely helps people in need. While it is also a good way for solicitors to try something different and keep their skills sharp, she feels the benefit to the community is the most important reason to volunteer with FLAC.

David Rafferty has been a FLAC volunteer for many years. As a solicitor in general practice, he covers most areas of law, which is useful at FLAC centres dealing with all kinds of queries. He says volunteering at the FLAC centres is challenging but rewarding. Being able to visit a solicitor free of charge is tremendously reassuring to people who are unsure of the law or have misconceptions as to how it works. These cases can often be simply resolved by explaining their legal rights or responsibilities.

However he warns it is important to recognise the limits of what can be done. Some cases can be very complex and no lawyer is an expert in all areas of law, thus it is important to refer clients on to appropriate resources or agencies where further help is not possible in a FLAC centre. It is crucial to be straight with clients when you don't have quick solutions to their problems.

David would encourage anyone to volunteer with FLAC, but he thinks it can be a particularly valuable experience for young practitioners. Fresh out of college, many graduates have a very academic view of the law, and volunteering in a FLAC centre is instructive in finding practical solutions to real-life problems.

Human rights lawyer Morris Dees visits FLAC

Ahead of his presentation at the Law Society's annual human rights lecture, noted American public interest lawyer Morris Dees gave a talk at FLAC offices to representatives from the independent law centres. In attendance were lawyers from Mercy Law Centre, the Irish Traveller Movement Law Centre, and Northside Community Law Centre.

Dees has been a powerful voice for civil rights for decades, founding the influential Southern Poverty Law Centre in Alabama in 1971. Growing up in a tenant farming family in Alabama, he grew up working in the cotton fields alongside black fellow cotton-pickers. Originally entering the legal profession with the aim of making money, he found many of his early childhood friends in need of legal help. Describing the situation as a dilemma, Dees soon discovered that if he won cases he became at odds with the white power structure, but if he did poorly he was branded a bad lawyer. His firm began to take on more and more civil rights cases, many of which led to innovative legal strategies and influential precedents. One of Dees' notable early cases, taken in 1969, opposed the YMCA's segregationist policies. His black client's sons had been denied access to a summer camp on racial grounds. The seminal 1954 case of *Brown v Board of Education* had already barred public bodies from segregating, but private bodies were still free to do as they pleased. Dees successfully argued that the YMCA was fulfilling a public function and



Morris Dees

should thus be bound by the same rules. This precedent and the legal reasoning behind it was used in many subsequent anti-discrimination cases.

While the centre has taken on cases opposing discrimination in many forms, from segregation to exploitation of immigrant workers, Dees' personal work focuses on suing hate groups. The Ku Klux Klan, the US' oldest hate group, was responsible for church bombings in Alabama in 1963, an event which left a marked impression on Dees who was three years out of law school at the time. In 1981, a black man was lynched in Alabama in response to the acquittal of another black man accused of shooting a police officer. Dees took a civil case on behalf of the deceased's mother against the KKK as an organisation. Over the course of the proceedings, they traced the Klan's history of encouraging violent

acts of racism and successfully linked the lynching to the organisation itself. The jury awarded \$6 million dollars against the Klan and a precedent was set on holding hate groups responsible for the actions of its members.

Dees has earned many enemies through his work and is usually accompanied by security 24/7 while in the US. As well as the KKK, he has taken cases against the Aryan Nation and similar outfits. In the 1980s, SPLC expanded its work in the area by establishing the 'Intelligence Project', a specialist section comprised of ex-law enforcement individuals dedicated to monitoring the activities of hate groups across the country. According to Dees, hate group activity has increased by 50% since 2000, prompted by the worsening economy, immigration and the election of Barack Obama.

Defining a 'win' or 'loss' is not always easy in SPLC's work. Many anti-death penalty cases are taken where the client's guilt is usually not in doubt. A life sentence through mitigating circumstances would be a victory in such cases. Dees claims that the most important case to him is usually whatever one he is working on at that moment, although he clearly enjoys the big wins he has claimed against hate-groups. The centre has built up a reputation among hate-groups aptly illustrated on one occasion when Dees took a deposition from a Neo-Nazi. On the side of the man's head were tattooed the words 'F*CK SPLC'.

New FLAC Centre for Dublin's north inner city

A new FLAC advice centre in Dublin's inner city opened its doors on 7 May 2010. Every Monday afternoon from 2pm to 4pm, volunteer solicitors Aoife McCann and Matthew De Courcy will be on hand to give legal advice to the public. Currently there is no need to book in advance, so people can arrive on the day at 2pm and get the advice they need.

The new centre is located at Dublin City North East Citizens Information Centre, Unit 4, Killarney Court, Buckingham St Upper (at the end of Sean McDermott St Lwr), Dublin 1.



Volunteer solicitor Aoife McCann at the new centre

Lydia Foy wins 13-year legal battle -

[continued from front page]

Background: Lydia's story

Born in Athlone, Dr Lydia Foy was registered at birth as a boy. Growing up she was confused about her gender identity but tried to live as a male and fit into society. She went through university and qualified as a dentist, later marrying and having two children. Gradually, however, she became more and more unhappy in her male role. She was diagnosed with Gender Identity Disorder in 1990.

It was a very difficult time for her. Her marriage broke up and she lost her job. She began the process of gender reassignment and had surgery in England in 1992. Since then she has lived entirely as a woman.

Lydia applied for a new birth certificate in her female gender in March 1993 but was refused by the Registrar General's office. She changed her name by deed poll and was able to obtain a driving licence and a passport in her female name that gave her gender as female. She wanted a birth certificate, however, because it is constantly required as a proof of identity and because it would be an official recognition of her as a woman.

Legal action

Represented by FLAC, she began High Court proceedings to secure recognition of her acquired gender as a woman in 1997. In July 2002 the High Court ruled against her. Judge McKechnie rejected Lydia Foy's claim holding that only physical and biological indicators should be used to determine sex/gender. He was sympathetic to Dr Foy's position, however, and called on the government and the Oireachtas to take action and bring clarity to the position of transgender persons.

In the immediate aftermath of the decision, the legal landscape was altered by two major developments: firstly, a judgment was handed down by the European Court of Human



Dr. Lydia Foy and Michael Farrell, FLAC Senior Solicitor

Rights holding that the UK had breached the rights of a transgender woman when it refused to recognise her new gender identity (*Goodwin vs*



Michael Farrell, FLAC Senior Solicitor

UK). Secondly, the ECHR Act came into force giving the ECHR more standing in Irish law.

Dr. Foy had appealed to the Supreme Court but when the ECHR Act came into force, she made another application for a new birth certificate, relying on the European Convention. In light of the new developments, the case was returned to the High Court but would not end up being heard again until April 2007.

In the meantime, almost all other European countries had granted legal recognition to transgender persons. In October 2007, Mr Justice

McKechnie ruled that the lack of provision for recognising Dr Foy's new gender identity was a breach of her rights under Article 8 of the ECHR, which protects private and family life. In his judgment he said that "In this regard, Ireland as of now is very much isolated within the member states of the Council of Europe".

First-ever declaration of incompatibility with ECHR

The State appealed Judge McKechnie's decision, despite the general consensus on transgender recognition elsewhere in Europe. It is that appeal that has now been withdrawn, thereby confirming and finalising the declaration of incompatibility, which has become the first declaration to be confirmed. The Taoiseach must now report the Court's decision to the Dail within 21 sitting days and must introduce legislation allowing for recognition of gender change or risk censure from the European Court of Human Rights.

This declaration of incompatibility with the European Convention was the first to be granted in this State. It is now the first declaration to have been finalised. It is a ground-breaking legal development and it is all the more significant because it is about a positive obligation on the State to establish rights that were not recognised up to now, rather than to stop

Government must recognise transgender rights



L-R: Kate Harnett, Rhea Bohan BL & Ruth Dowling BL, former FLAC legal interns who worked on the Foy case

an infringement of a right that was already there.

Because this is the first declaration to have been finalised there is no precedent for what happens next. The declaration does not strike down the existing law or invalidate decisions already made. But the ECHR Act requires that the Taoiseach should notify the Houses of the Oireachtas within the next 21 sitting days about the making of the declaration by the High Court.

After that it is not clear what has to happen but doing nothing is not an option. The Council of Europe and the UN Human Rights Committee have already called for a change in the law and there is a clear and unchallenged decision by the High Court that the State has violated Dr Foy's rights under the European Convention. Yet she still cannot obtain a new birth certificate until the relevant law is changed. Every day that the law continues unchanged, the violation of Dr Foy's rights continues and it would be open to her at any time to lodge a complaint with the European Court of Human Rights, relying on the decision of the High Court.

The UK has recognised the obligation to act upon declarations of incompatibility made under its Human Rights

Act – the model for the Irish ECHR Act 2003. So far, out of more than 20 declarations of incompatibility that have been finalised, the British government has acted upon almost all of them and has committed itself to act upon the others.

New legislation

Hopefully the Irish government will follow that example. The government has already set up an inter-departmental work-

ing group “to advise the Minister for Social Protection on the legislation required to provide for legal recognition by the State of the acquired gender of transsexuals”. The group began meeting on 6 May 2010. This is a welcome development and hopefully it will not take the group too long to report as they already have a ready-made template for legislation in the UK's Gender Recognition Act, which was changing and amending legislation very similar to the law here.

Legislation is also needed to clarify and protect the rights of spouses and children of transgender persons because this issue affects family members of transgender persons as well and uncertainty and anxiety about their position only makes things worse.

There are a few flaws in the UK legislation that have become apparent over the last six years since it was enacted and Ireland has the opportunity to improve on its example, but there should be no delay. Successive governments failed to act after the clear warning by Judge McKechnie in his judgment in 2002 and after the European Court of Human Rights had made clear that our obligations under the European Convention required action to protect the rights of transgender persons.

This small and marginalised community has suffered for long enough. As Thomas Hammarberg, Human Rights Commissioner of the Council of Europe, said in January 2009: “There is no excuse for not immediately granting this community their full and unconditional human rights”.

This has been a long, difficult and painful struggle for Lydia Foy but she has achieved a great step forward for the transgender community. Her legal case helped to educate judges, lawyers and the general public about the hurt and anguish of all too many transgender people and it is, hopefully, about to change the law for her sisters and brothers in that community. It is a great tribute to Lydia Foy's courage, endurance and perseverance over the last 17 years.

This has also been a landmark case for the European Convention on Human Rights Act, 2003. It has demonstrated in the teeth of considerable scepticism that the incorporation of the European convention into Irish law can add value to the human rights protections that are already there and can fill in gaps in our human rights provisions.

How the Government responds to the declaration of incompatibility in this case will be a test of the seriousness of its commitment to the European Convention on Human Rights and of how effective a mechanism for the protection of human rights the ECHR Act will be.

FLAC wants to pay tribute to and thank all the members of its staff, interns and volunteers and the team of barristers who worked on this case over the last 13 years. They have helped to protect the rights of a small and vulnerable community and have helped to make some legal history as well.

Reform needed in area of debt collection

FLAC recently launched its annual report for 2009 by flagging issues emerging in its centres and on its telephone information line. One such issue is debt collection. With no system of regulation or licensing, anyone can set him/herself up as a debt collection agency. This has predictably led to 'cowboy' operators entering the market who harass and intimidate indebted consumers.

The economic downturn has seen a massive expansion in third-party debt collection. Creditors are increasingly turning to agencies to recover money owed or, in some cases, selling on debts to such agencies outright. FLAC's telephone information line is getting more calls from people in debt who have been subjected to intimidation and harassment at the hands of debt collectors. This is echoed by the Central Statistics Office which reports a six-fold increase in the crime of "demanding payment of debt causing alarm" in recent years.

Whereas in the UK there is at least a Code of Conduct regulating the activities of these agencies, no such rules govern Irish debt collectors, who remain completely unregulated. Only the Consumer Protection Act 2007 (S.52)



and the Non-Fatal Offences against the Person Act 1997 (S.11) offer any protection to borrowers by providing that persistent harassment of a debtor will constitute an offence. Legislation is clearly needed to define acceptable conduct for debt collection agencies and protect indebted consumers.

While the government-appointed Expert Group on mortgage arrears and personal debt considers proposals for reform, immediate steps might be taken to protect indebted people and regulate the industry:

- ▶ Firstly, the Consumer Credit Act 1995 currently regulating money-

lenders, credit intermediaries and mortgage intermediaries could be amended to extend its provisions to cover debt collection agencies;

- ▶ Secondly, debt collectors could be required to be licensed and monitored;
- ▶ Finally, a legally enforceable code of conduct, similar to that in the UK, covering issues such as frequency of contact, clarification as to for whom the collector is working and Garda involvement where appropriate would be of great help.

The economic crisis has revealed the inadequacies of our outdated policies on third-party debt collection. It is telling that many reputable debt collection agencies are supportive of progressive regulation, eager to disassociate themselves from the 'cowboy' operators. However it is solely within the government's power to protect beleaguered consumers from such shady practices; it is imperative that it musters the political will to act swiftly on this issue.

FLAC's Annual Report is available from our website
www.flac.ie/publications/annual-report-2009

Queries to FLAC up in first quarter of 2010

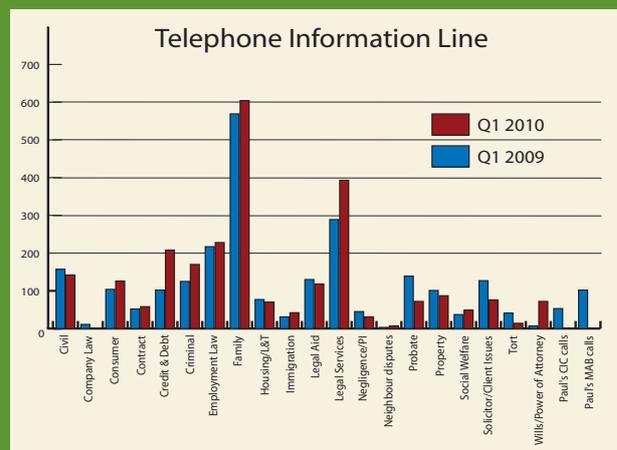
FLAC telephone and information line received over two and half thousand calls during the first quarter of 2010, a very slight rise of 2% increase on the same period last year.

There was a 6% rise in the number of family law queries to the telephone line, accounting for a quarter of all calls during the first quarter of 2010. The next largest area was employment law at 9% of all calls, followed by credit and debt related queries at 8% of all calls. The number of debt-related queries doubled on the same period last year, from 102 calls in the first quarter of 2009 to 208 calls in the first quarter of 2010.

Criminal law queries on the phone line also rose by 36%, immigration by 35%, social welfare by 32% and consumer by 21%. A comparison with the first quarter of 2009 shows a reduction in the number of calls regarding tort, probate, client-solicitor issues, negligence / personal injury, property, housing and legal aid.

FLAC received 2570 data collection forms from its network of centres in the first quarter of 2010, a 20% increase on the same time last year. Family law continues to account for 30% of all queries to FLAC centres in this period.

Credit and debt-related queries to centres rose from



5.2% in Q1 of 2009 to 7.6% in Q1 of 2010. Consumer law queries increased from 5.5% to 6.7% of all queries at centres. A comparison with the first quarter of 2009 also

shows a reduction in the number of calls regarding neighbour disputes and client-solicitor issues.

Thirty-five years of legal advice to the community: Northside Community Law Centre

This year marks the anniversary of an ambitious experiment in community law, FLAC's establishment of Northside Community Law Centre (then known as Coolock Community Law Centre) in 1975. Inspired by the US model pioneered by US President Johnson in the 1960s, community law centres were intended to tackle inequality by educating poorer people as to their legal rights and organising them to make their voice better heard by law makers. The Coolock centre was intended as a model to convince the government to take the concept nationwide. Civil legal aid had not yet been implemented by the government, but FLAC had always believed that community legal education was a vital element of any legal aid infrastructure.

There was immediate demand for the centre's services. In its first ten years, it handled 4,000 case files. With the arrival of solicitor Dave Ellis as full-time Community Law Officer in 1977, things improved considerably. Running the centre for 20 years, Ellis was a stable and permanent face of the centre allowing for the development of strong links with the community. In 2003 the centre was renamed Northside Community Law Centre (NCLC) to reflect a larger catch-



Colin Daly, solicitor-in-charge,
Northside CLC

ment area across Dublin North Central and North East.

NCLC's governance has long been community-based. A voluntary board of directors drawn from across the community advises the centre's management. However, as well as serving the local community, NCLC has played an active role in many campaigns at a national level. NCLC has worked on reports and submissions on numerous areas of law (including consumer debt), while also playing key roles in nationwide campaigns, including the establishment of Divorce Action Group in 1986. The cen-

tre has also continued to work alongside FLAC, jointly producing legal information booklets and submissions as well as co-organising conferences.

The national importance of NCLC's work is highlighted by the recent *McCann judgment*. This case, taken by a client represented by NCLC, challenged the unfairness of Irish debt enforcement, a system in which a person could be imprisoned for their debts without legal representation or without even appearing before the court. The law on imprisonment for failure to pay civil debts was found to be unconstitutional, leading to new legislation that better protects the rights of vulnerable people to fair procedures and legal representation.

After 25 years, NCLC remains a vital fixture of the Northside community. Whether assisting with legal questions, empowering people through legal education and training, or campaigning for progressive law reform, we hope Ireland's first community law centre will continue to thrive in the years to come. NCLC continues to be a shining example of how a community can be empowered by access to justice.

Major changes ahead for UK Legal Aid system

In the UK, almost 75% of criminal legal aid firms are set to exit state provision under major provider reforms to be implemented from summer 2011. These envisage a consolidated market in which larger contracts are allocated to fewer providers. The change is aimed at enabling firms to take advantage of economies of scale and efficiencies, while getting a better deal for the UK taxpayer. They will likely affect small to medium-sized law firms most.

The Legal Services Commission (LSC) is to invite all interested parties to tender for publicly-funded criminal defence services for eligible clients in England and Wales. 'Criminal defence services' is defined as delivering publicly-funded legal advice and representation to eligible clients being investigated or charged with

a criminal offence. It is an open process; applicant organisations need not hold an LSC existing contract to apply. If a tender is successful, the LSC will enter into a contract with the applicant organisation to operate the services under the terms of the 2010 Standard Crime Contract.

This contract will be awarded to whole organisations rather than to single offices, meaning there will be one crime tender for an entire firm covering all its branches. Such contracts will also cover Associated Community Legal Services work.

While providers contract with the LSC to conduct criminal advice and representation services, the LSC does not control the allocation of cases. Clients are free to choose a legal representative to advise or represent them from

providers holding a crime contract. Lord Bach, the then UK Legal Aid Minister, estimated that no more than 500 firms will get contracts, meaning that up to 75% of the 1700 firms currently doing criminal legal aid work will be axed. It is envisaged that the earliest start date for new contracts in selected areas would be summer 2011. Firms will tender for the new contracts against fixed prices "set at a discount to current rates".

The UK Law Society has said it accepts reform is necessary but questioned the viability of the plans. It says the proposed model bears little resemblance to the market as it is currently structured and it is not clear how, or how quickly, any move to such a model could be implemented without causing serious disruption to service provision.

Campaign on direct provision continues with lobbying

FLAC continues to progress its campaign to reform the system of direct provision and dispersal of asylum seekers in Ireland. To this end, it has sought a series of meetings with government authorities responsible for the different aspects of the direct provision and dispersal system.

At the start of May, Noeline Blackwell, Director General, and Saoirse Brady, Policy and Campaigns Officer, met with Mary White TD, the newly appointed Minister of State with special responsibility for Equality, Integration and Human Rights. FLAC raised concerns about the direct provision and dispersal system as addressed in our recent report, *One Size Doesn't Fit All*, including the excessive time spent in direct provision accommodation by asylum applicants, ineffective integration policies pertaining to asylum seekers and the implication of this in the long-term. FLAC also raised the issue of training direct provision centres staff in human rights practice and decried the lack of an independent complaints mechanism for residents and inadequate inspection of the accommodation centres. Minister White said that while some of these issues were not directly within the remit of her department, she would raise them with the Minister for Justice & Law Reform.

In a subsequent interview with the *Irish Times* published on 10 May, Minister White discussed her views on the direct provision and dispersal system. The article reflected the areas of concern conveyed by FLAC to the Minister. The Minister was critical of the rules in the direct provision system and "would like to see more flexibility in kitchen open hours... as children don't feed on demand"- a point made during FLAC's meeting with the Minister. Minister White also called for the right to work for asylum seekers while they await a decision.

FLAC also met with the new Minister for Social Protection, Eamon Ó Cuiv TD. Again, concerns from the report were raised, especially in relation to social welfare payments and the applicability of the Habitual Residence Condition

(HRC) vis-a-vis asylum seekers. FLAC affirmed its opposition to the provision in the Social Welfare and Pensions Act 2009 which excludes all asylum seekers from applying for certain social welfare payments as they are now automatically deemed not to meet the requirements of HRC. The change in legislation took place only a week after the Chief Social Welfare Appeals Officer had overturned a number of negative decisions in favour of people living in direct provision. FLAC represented people in a total of nine successful cases where the Chief Appeals Officer held that a person in the asylum or leave to remain process could be found habitually resident for the purposes of claiming a social welfare payment.

Minister Ó Cuiv reiterated the Government's policy that asylum seekers or people seeking other forms of protection are excluded from the State's integration policies while they are awaiting determination on their status. The Minister agreed that the key to resolving the issue is a quicker decision-making process that would not see some applicants spending up to six years in direct provision accommodation. The social inclusion portfolio of the former Department of Social and Family Affairs has now been moved to the Department of Community, Equality and Gaeltacht Affairs.

FLAC also met with senior officials from the Department of Justice and Law Reform to discuss the administration of the direct provision and dispersal system. Unfortunately Minister Ahern did not have time to meet with us but he has publicly ruled out any overhaul of the direct provision system (see *Irish*

Times at the end of May. He made his comments as he announced the withdrawal of the long-awaited Immigration, Residence and Protection Bill. These comments seem to be in direct response to the views articulated by Minister White in her *Times* interview.

We discussed a number of our recommendations with the officials to improve the existing system while it remains in place. Concerns about transfers, the length of time people are currently spending in direct provision and the inadequacy of the complaints procedure were all highlighted. FLAC hopes to engage further with the authorities over the coming months in order to improve the situation for people living within the direct provision system who are living in inappropriate conditions for protracted periods of time. We hope the new Immigration Bill will reduce the length of time people will have to spend in this system and will provide people with a fairer and more efficient single procedure for determination of their claim for protection.

However, while the direct provision system remains in place, the Government should ensure that it is fulfilling all of the human rights obligations to which it has voluntarily subscribed.

In this regard FLAC hopes to contribute to a number of upcoming shadow reports on the International Covenant on Economic, Social and Cultural Rights and the Universal Periodic Review as well as the NGO Alliance Against Racism (NAAR) shadow report on the International Convention on the Elimination of all forms of Racial Discrimination (CERD).



Copies of the *One Size Doesn't Fit All* Report & Executive Summary are available to download for free (in PDF format) from www.flac.ie/publications/category/reports or for free collection at FLAC's office. You can receive it by post at a cost of €3 by sending an stamped addressed A4 envelope to FLAC, 13 Lower Dorset Street, Dublin 1.

Also, check our website for updates on events, resources & news: www.flac.ie/campaigns/direct-provision-campaign

RIA issues virtually unchanged *House Rules & Procedures*

The Reception and Integration Agency (RIA), an administrative unit of the Department of Justice and Law Reform, is responsible for the direct provision system. To this end, it publishes House Rules which set out the regulations by which direct provision residents must live and outlines the basic level of service residents can expect to receive while living in direct provision accommodation.

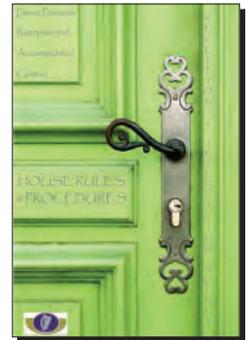
In March 2010, RIA published an updated *House Rules and Procedures* document. However, it does not contain any significant changes other than a limited right of appeal to RIA for a person to be readmitted to direct provision accommodation in circumstances where he or she has been evicted for breaching the house rules. A RIA official, with whom FLAC recently met, informed us that members of RIA staff are visiting direct provision centres around the country to inform people of their rights and obligations in relation to the direct provision centres.

The change in the *House Rules* follows a review of the *House Rules* which was carried out between September 2007 and May 2008. The Review Committee com-

prised officials from the RIA, the HSE, the Attorney General's Office, the Garda National Immigration Bureau as well as representatives from the Irish Peace and Justice Commission, the Irish Refugee Service. Managers and staff from the direct provision centres were also involved in the process. NGOs, working in the area of refugee and asylum rights, called for a change in the rules and made a number of proposals but the majority of these were not incorporated in the new version.

In our recently published report on direct provision, *One Size Doesn't Fit All*, FLAC emphasised that one of the main concerns with the current system is that a resident has to complain to the same government department which is not only responsible for accommodating him or her but which will also make a final determination on his or her claim for protection. FLAC believes that in some instances this deters residents from making complaints and has thus recommended the establishment of independent appeals mechanism for residents modelled on the Ombudsman's *Guide to Internal Complaints Procedures*.

The revised *House Rules* incorporate a diagram from FLAC's report to explain how the complaints procedure works.



FLAC, along with our partners in the direct provision campaign, will continue to lobby for substantial changes to the complaints procedure to ensure that direct provision residents are afforded a fair hearing and can obtain a fair result when difficulties arise in a direct provision setting.

FLAC's Frequently Asked Questions on direct provision

In order to drive FLAC's campaign on direct provision and to raise public awareness of the issues involved, the organisation recently published a Frequently Asked Questions (FAQ) document to compliment the factsheet issued in February. The FAQ document details the process of applying for asylum in Ireland, the provision of accommodation to asylum seekers, the statistics relating to the number of people in direct provision, the amount of social welfare payments payable to asylum seekers and other pertinent facts.

The aim of the short factsheet and the FAQs is to counter the myths and untruths surrounding asylum seekers and to inform members of the public, journalists and policy makers about the complex and often illusory process that applicants must undergo. FLAC hopes to publish a series of short factsheets during the course of the campaign.

For more information on direct provision see
www.flac.ie/campaigns/current/direct-provision-campaign

Former direct provision resident granted arrears

FLAC has learned that a person has been granted arrears of Child Benefit on appeal for the time she spent in direct provision. The Department of Social and Family Affairs (DSFA) had refused to grant arrears as the applicant did not apparently satisfy the Habitual Residence Condition (HRC). However, a Social Welfare Appeals Officer found that the applicant was in fact habitually resident during her time in direct provision. The DSFA asked the Chief Appeals Officer to review this decision making similar arguments to those it made in a series of cases taken by FLAC in 2008/2009, stating that no asylum seeker or person within the direct provision system could be habitually resident.

Geraldine Gleeson, the Chief Appeals Officer appointed in January 2010, rejected these arguments and did not see any

basis for a review as the Department was relying on "the same objective argument for maintaining that an error of law has occurred when the point has been examined in earlier reviews... and found not to constitute an error of law".

Although there has since been a change in legislation regarding direct provision residents and the HRC, many people will have submitted appeals under the former legislation and will not yet have had an oral hearing due to long delays in the appeals process. Therefore, the Appeals Officer will have to consider their claims under the legislation in force at the time the appeal was submitted and a person may qualify for arrears of a social welfare payment during the time spent in direct provision if s/he can demonstrate habitual residence during that time.

Focus on FLAC: Jo Kenny, PILA Legal Officer

When Jo Kenny took up her post with FLAC a year ago, she achieved a long-standing ambition to work with the law in the public interest. As Legal Officer since the formative stages of the PILA project, she works with the rest of the PILA team to lay the foundations for the more active use of law as a tool to achieve progressive social change.

Beginning her legal career in England, Jo trained as a barrister before taking on a role as a government legal advisor. At the Department for Work and Pensions, she gained her first exposure to international legal mechanisms in action. Her work even involved a case to the European Court of Human Rights in Strasbourg revolving around Article 6, and the meaning of a fair hearing in the social welfare context. Jo recalls “It was a really interesting opportunity to see how these matters are teased out at an international level”.

Yet despite working on the side of the state, the experience left Jo with an appreciation of how international mechanisms such as the ECHR could be used to effect change. As a result of that case being taken, the state enacted legislation that made the social welfare system fairer. It was at this point Jo resolved to seek out opportunities where she could use her knowledge and experience for the benefit of claimants rather than on the side of the defence with the state.

A little over three years ago, Jo returned to Ireland, where she had grown up until the age of 16. While looking for opportunities in human rights and public interest law, Jo found out about FLAC and contacted Noeline Blackwell. Jo remembers that “she was very helpful, and gave me a good picture of what was happening in Ireland.”

There were no job opportunities in the area at the time, so Jo found herself working at commercial law firm Arthur Cox, where she gained invaluable legal experience. Yet she continued to keep an eye on FLAC, as “Noeline had suggested I sign up to the PILA bulletin to keep abreast of the issues. And that’s where I noticed that FLAC was doing a

lot of work in social welfare”. Given her experience, she felt she could be of assistance and offered to help, leading to involvement in a research project with Campaigns Officer Saoirse Brady. During this time, Jo also volunteered at FLAC’s advice centres.

It was a couple of years later that the ad for the PILA Legal Officer came up. To Jo, it was just the thing she had been looking for: “When I heard I got the job it was like a dream come true!”

Jo’s role primarily revolves around the *pro bono* initiative, an attempt to establish a referral scheme to match legal need in the community with professional expertise. This often involves going out to law firms big and small to try and get them on board with the concept. So far they have had a number of very successful meetings where they have brought along prominent speakers from other jurisdictions, such as Ed Rekosh of the Public Interest Law Institute, Miriam Buhl of Weil Gotshal & Manges and Mark O’Brien of ProBono.net. “I think it’s really valuable for Irish law firms to hear an international perspective on how *pro bono* can work as part of the day to day work of a law firm.” The idea of *pro bono* as an integrated part of legal practice is much more highly developed in other jurisdictions.

As well as speaking to practitioners, Jo also works with Project Officer Lianne Murphy to assess exactly what legal needs are out there. This involves ongoing dialogue with NGOs, “it’s very important to listen to their points of view and look at the different ways law reform and legal advice can advance the work that they do.” says Jo. “At the heart of the whole PILA project is recognising different actors: private practice; the NGO sector; barristers; academics; students. It’s trying to find ways to draw them together to maximise the work already being done for marginalised and disadvantaged people.”



Photo by Derek Speirs

For Jo, the principal highlights of her time so far have been the training events PILA has organised. These have included seminars, such as the well attended talk by British academic and solicitor Kevin Kerrigan on the European Convention on Human Rights last November; and the recent international law seminar featuring Colm O’Cinneide of the European Social Committee and Kate Fox of the United Nations. “It’s great to hear NGOs and practitioners talk about the possibilities of using international mechanisms to advance their goals.”

PILA’s work remains at an early stage, and for the time being Jo is focused on continuing to raise awareness of how public interest law can be used and analyse barriers such as costs, standing and mootness. The team’s efforts to date recently culminated in the first PILA conference on 16 April last. As she says, “it wasn’t just about speaking to people about PILA, but recognising and supporting the public interest law work that is already being done by the community law centres, the Immigrant Council of Ireland, the ITM law centre, the Mercy Law Resource Centre and many

Launch of *Irish Human Rights Law Review*

PILA hosted the launch of the *Irish Human Rights Law Review* (IHRLR) by the Ombudsman Emily O'Reilly on Thursday, 20 May 2010. It is edited by Donncha O'Connell of NUI Galway and published annually. The *Review*, which should be of interest to academics, students, practitioners and activists working in human rights, will focus on the domestic application of international human rights law and the critical analysis of human rights standards and processes.

Opening the launch, **Michael Farrell**, FLAC Senior Solicitor, welcomed the *Review* as appropriate "at a time when the human rights of many vulnerable people are under attack as a result of the economic crisis, and the state's human rights and equality infrastructure has been undermined by disproportionate budget cuts."

Launching the *Review*, the Ombudsman **Emily O'Reilly** said it presented an opportunity "to begin the process of demystifying human rights and not just for the public, but for the political class, those charged with our public administration and even those charged with engaging with human rights issues in the courts."

Donncha O'Connell said it was time to consider further the question of 'constitutionalising' the office of Ombudsman. He suggested reform through reorganising



L-R: Siobhan Cummiskey, Mr Justice Niall Fennelly, Angel Fahy & Dr Maurice Manning



L-R: Donncha O'Connell, Michael Farrell & Emily O'Reilly

various statutory bodies for the protection and promotion of human rights and equality under a 'constitutionalised' Office of Ombudsman with a clear and strong nexus to Parliament (like the Comptroller & Auditor General); also, by reforming the Attorney General's office to remove the potential for conflict in its role as notional guardian of the public interest and legal adviser to the Government.



Alva Clissmann, Betsy Keys-Farrell & Elaine Dewhurst

Pro bono breakfast meeting for lawyers



On 2 June 2010 PILA held a pro bono breakfast meeting with guest speaker Miriam Buhl, Pro Bono Counsel of Weil Gotshal & Manges.

PILA law seminar on international mechanisms

PILA's seminar series continued with a well-attended seminar on using international legal mechanisms on 7 May. **Kate Fox** of the United Nations Office of the High Commissioner for Human Rights spoke about using the UN treaty body individual complaints mechanisms. This allows an individual from a State that has ratified the relevant provisions to take their complaints under the pertinent treaty against that State. This complaint will be reviewed by a committee which will then issue its view on the matter. This is a low-cost, uncomplicated means of pursuing a case at international level and an alternative to going before the European Court on Human Rights, but domestic remedies must first be exhausted.

Kate explained Ireland has ratified the relevant provisions relating to the UN

International Covenant on Civil and Political Rights, the UN Convention against Racial Discrimination, the UN Convention against Torture and the UN Convention on the Elimination of Racial Discrimination Against Women. While the views of the committees are not binding in Irish courts without the incorporation of the relevant provisions of the conventions and protocols into Irish law, they are persuasive. Moreover Ireland has a good-faith obligation under the Vienna Convention on the Law of Treaties to perform its obligations under the international treaties it ratifies.

Colm O'Cinnéide, Vice-President of the European Committee of Social Rights, spoke about using the European Social Charter and taking cases to the Committee to vindicate charter-based

rights. He explained that the Charter is the younger, often ignored sibling of the European Convention on Human Rights. Again it is an alternative European route that has a low profile in Ireland but is widely used in other European states. That Committee hears complaints which relate to structural and collective issues. Unlike other international mechanisms, exhaustion of domestic remedies is not required before taking a case. However, only NGOs with standing before the Council of Europe may bring such complaints. PILA is very grateful to the speakers for their very valuable inputs.

The presentations of both speakers are available on the PILA website at www.pila.ie

