PILN Bulletin, 24 June 2008

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In this Bulletin:

1. Judge calls for State legal aid in cases raising public interest matters

A High Court judge has called for the State to set up a scheme to meet the legal costs people who are caught up in litigation of significant public importance. Mr Justice Frank Clarke was giving judgement in a dispute over waste collection charges which were referred to the High Court by the Small Claims Court.

Two years ago, Moira Rosborough paid Cork City Council €261 in advance for a year's waste collection. When collections were changed from weekly to fortnightly, Rosborough claimed a refund of €130.50 in the local Small Claims Court. District judge David Riordan ruled that the council had broken its contract with Rosborough and awarded her damages of €86.66.

However, the council denied that it had a contract with individual households, and asked the judge to state a case to the High Court. In his judgment, Mr Justice Clarke said that, while the scale of each individual case was very small, ''nonetheless the overall effect on Cork City Council has the potential to be very significant indeed''.

He ruled that the relationship between 34,000 householders in Cork and the local authority was governed by statute and public law, rather than by contract, so the only way Rosborough could have raised the issue was by issuing judicial review proceedings. Counsel for Rosborough said the city council should guarantee her legal costs, irrespective of the outcome, otherwise she would not be able to take part in the High Court case ''in any meaningful sense''. However, the judge said he was unaware of any power for the court to order the payment of costs in advance.

''It is regrettable that no adequate system is in place to consider making provision, in appropriate cases, for the costs of parties who may find themselves caught up in litigation which has a significant degree of public importance," said to the judge. It

seems to me that it would be appropriate to give consideration to putting in place a scheme whereby funding could be made available . . . so that the difficulties which have arisen in this case would not reoccur."

2. *Boumediene* Decision: Guantánamo Bay detainees have a right to pursue *habeas* challenges to their detention, rules US Supreme Court

The US Supreme Court has ruled that foreign nationals held at Guantánamo Bay have a right to pursue *habeas* challenges to their detention. The Court, dividing 5-4, ruled that Congress had not validly taken away *habeas* rights.

In upholding the right of *habeas corpus* for Guantanamo detainees, the Court found that the "Combatant Status Review Tribunals" process (CSRT) offered to Guantanamo detainees established by the Detainee Treatment Act 2005 is not a constitutionally adequate substitute for *habeas corpus*. To the contrary, the Court found that such procedures, which have long been criticized as sham hearings – due to the fact that defendants cannot have a lawyer present, government evidence is presumptively valid and defendants are prevented from challenging (and sometimes even knowing about) much of the evidence against them – "fall well short of the procedures and adversarial mechanisms that would eliminate the need for habeas corpus review." These grave deficiencies in the CSRT process mean that "there is considerable risk of error" in tribunals' conclusions. The Court's ruling was grounded in its recognition that the guarantee of *habeas corpus* was so central that it was one of the few individual rights included in the Constitution even before the Bill of Rights was enacted.

The Court stressed that it was not ruling that the detainees are entitled to be released — that is, entitled to have writs issued to end their confinement. That issue, it said, is left to the District Court judges who will be hearing the challenges. The Court also said that it does not "address whether the President has authority to detain" the individuals at the US Naval base in Cuba; that, too, it said, is to be considered by the District judges.

For more information on this case, read the judgment at
http://www.scotusblog.com/wp/wp-content/uploads/2008/06/06-1195.pdf

3. Sikh 'bangle case' in the UK High Court

The UK High Court is hearing the case of a Sikh girl who was banned from classes at Aberdare Girls' School in South Wales because she would not remove her bangle, a symbol of her faith. The 14-year-old claims unlawful discrimination, but the school counters that pupils are banned from wearing most jewellery.

Sarika's lawyers claim the school's policy is inflexible and a violation of race equality and general human rights laws, as in the Sikh religion the bangle is not considered as piece of jewellery but a symbol of faith. The school policy and the steps taken to enforce it are thus unlawful, according to the claimants, because it is insufficiently justified indirect discrimination on grounds of race, contrary to the 1976 Race Relations Act, and of religion, contrary to the 2006 Equality Act. Sarika wore the bangle in school for two years before a teacher noticed and asked her to remove it in April 2007. Counsel for the girl argue that the bangle (Kara) was one of the five Ks of

Sikhism, the others being the Kesh (uncut hair), the Kanga (wooden comb), the Kaccha (cotton underwear) and the Kirpan (sword).

The girl was asked by the school to remove the bangle but she refused and asked for an exemption from the policy, claiming that wearing the Kara on her right wrist was central to her ethnic identity and religious observance. While the school considered her application, she was allowed to attend the school wearing the Kara, but was taught in isolation and kept socially segregated from her friends. The school appeal panel refused the exemption in October 2007, saying they were ''not convinced that, as part of her religion, it is a requirement that Sarika wear the Kara on her wrist.'' They also said the bangle would mark her out as different from her peers, putting her at risk of being bullied, and it was suggested that she should carry it in her bag as a compromise.

4. Scholarships for Civil Society Activists in UCD

The UCD Egalitarian World Initiative (EWI) invites applications for two EWI Civil Society Research Scholarships. These scholarships are funded by the Combat Poverty Agency and hosted by the EWI in UCD. They are worth 10,000 euro each. The scholarships are designed to support people based in non-governmental organisations in Ireland who are actively working for social change on issues relating to poverty, social exclusion and social justice. The scholarship provides the resources to the organisation to allow the activist take research 'time out' and spend three months at UCD within the EWI working on a project of their choice.

Closing date for receipt of applications is Friday 27 June 2008. For more information and application form please follow the link http://ent.groundspring.org/EmailNow/pub.php?module=URLTracker&cmd=track&j=217162140&u=2243374 and http://ent.groundspring.org/EmailNow/pub.php?module=URLTracker&cmd=track&j=217162140&u=2243375

5. Lunchtime law seminars in Ballymun, summer 2008

Ballymun Community Law Centre is organising lunchtime seminars over summer 2008. The first in the series is ‘Trial by Jury’ with Charles O’Mahoney and it is taking place on 9 July. It will examine the history of jury trials in Ireland and outline the main provisions of the Juries Act 1976, looking at the importance of jury trials and the role of jurors. There will be an examination of the challenges facing the jury system and the issue of representativeness. Jury service is a topical issue, the Department of Justice, Equality and Law Reform announced in May 2008 that the Civil Law (Miscellaneous Provisions) Bill 2006 will amend the Juries Act 1976 to remove the age limits for jury service. This paper will talk about the change in the law and the other categories of people excluded from jury service and whether further reform is needed.

To book a place, please contact Christina McGranaghan in BCLC at 01-8625805 or by e-mail at information@bclc.ie.

6. Human Rights Council adopts Optional Protocol on ICESCR

UN High Commissioner for Human Rights Louise Arbour has congratulated the Human Rights Council on its adoption of an important new human rights instrument to strengthen the protection of economic, social and cultural rights. "Since the adoption of the two core international human rights covenants in 1966, the lack of a complaint procedure for economic, social and cultural rights has been a missing piece in the international human rights protection system" Arbour said. "As we are celebrating the 60 years anniversary of the Universal Declaration of Human Rights, the Optional Protocol reaffirms our commitment to a unified and comprehensive vision of human rights, sending a strong, unequivocal message about the equal value and importance of all human rights." The Protocol will allow persons to petition an international human rights body about violations of rights guaranteed in the International Covenant on Economic, Social and Cultural Rights. Adopted by the Human Rights Council on 18 June 2008, the Protocol is expected to get final approval by the United Nations General Assembly later this year. Thereafter, the Protocol will enter into force once it has been ratified by ten States. Further information on the Optional Protocol is available at http://ent.groundspring.org/EmailNow/pub.php?module=URLTracker&cmd=track&j=218136065&u=2257225

7. Law Lords consider UK computer hacker case

Extraditing a Briton accused of the biggest military computer hack of all time to the US would be an abuse of proceedings, lawyers for Glasgow-born Gary McKinnon have told the House of Lords. According to McKinnon's legal team, US authorities had warned him he faced a long jail sentence if he did not plead guilty. The systems analyst is accused of gaining access to 97 US military and NASA computers from his London home. Known as 'Solo', he was arrested in 2002 but never charged in the UK. John Reid, then home secretary, granted the US extradition request. McKinnon's lawyers told London's High Court last year that he was subject to improper threats and extradition would breach his human rights. However two judges found no grounds for appeal (to view the High Court Judgement see http://www.bailii.org/ew/cases/EWHC/Admin/2007/762.html). Without co-operation, the case could be treated as a terrorism case, which could result in up to a 60-year sentence in a maximum security prison should he be found guilty on all six indictments. With co-operation, McKinnon would receive a lesser sentence of 37 to 46 months, be repatriated to the UK, where he could be released on parole and charges of "significantly damaging national security" would be dropped. Judgment is expected within three weeks.

8. UK woman wins right to review of law on assisted suicide

A woman with Multiple Sclerosis who wants her husband to help her end her life won a landmark legal review of the law on assisted suicide. Two judges gave Debbie Purdy permission to bring a High Court challenge forcing the Director of Public Prosecutions, Sir Ken Macdonald, to clarify under which circumstances people could be prosecuted for helping their loved ones die. Her lawyers argued the DPP acted illegally by not providing guidance.

Purdy, 45, wants her husband to accompany her to the Dignitas clinic in Switzerland to end her life once her suffering has become unbearable. However, she is worried

on returning to the UK he may be liable to prosecution and a prison term of up to 14 years if found guilty of assisting, aiding or abetting a suicide. It is currently illegal in the UK to assist the suicide of another person - even if it happens abroad and assisted suicide is legal in that country. However the legal situation is unclear because none of the relatives of the 92 Britons who have already died at Dignitas have been prosecuted on their return to the UK.

Lord Justice Latham, sitting with Mr Justice Nelson at the high court in London, ruled that "without wishing to give Ms Purdy any optimism that her arguments will ultimately succeed", she did have an arguable case which should go to a full hearing.

9. FLAC Public Interest Law seminar well attended

The Board and staff of FLAC would like to thank all those who attended the seminar on Public Interest Law held in the Morrison Hotel on Friday 20 June. It was an informative session, focusing on the comparative analysis of Public Interest Law, its relevance in society in the US and Ireland. Three speakers from the US and one from Ireland shared their experiences of working around the promotion of *pro bono* work, with the role of legal education in the public interest sphere in particular emerging as central in all the presentations.

Sue Donaldson spoke about the work of Washington Appleseed (www.waappleseed.org/) as a public interest law centre tackling injustices in the community. Doug Lasdon talked about taking PIL cases on behalf of vulnerable groups in New York for his Urban Justice Centre (http://www.urbanjustice.org/) and Michele Storms described the need for more work in public interest law both practically and in academia (see the Gates Public Service Law Program at http://www.law.washington.edu/GatesScholar/). Frank Murphy, Director of the Ballymun Community Law Centre (http://www.bclc.ie) presented a thought-provoking journey from the Four Courts to Ballymun, focusing on the barriers facing those who do not come from privilege in the face of the Law and on their equal claim to legal knowledge and representation.

More detail on the event in the next issue of *FLAC News* (available in July in print format and on the FLAC website).

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