

PILN Bulletin, 29 June 2007

This Bulletin on Public Interest Law is issued by FLAC.
Please feel free to distribute it as widely as you wish.

In this Bulletin:

- 1. *O'Donnell & Ors v South Dublin County Council***
- 2. Equality Authority welcomes State Exams Commission settlement of case**
- 3. SICEDA conference to look at creating inclusive communities**
- 4. 'Pay to Play' campaign in Los Angeles**
- 5. Law Reform Commission - final public consultation**
- 6. Report shows Human Rights Act being used effectively in UK**
- 7. Local authority ordered to compensate and provide suitable accommodation for family of disabled child**

1. *O'Donnell & Ors v South Dublin County Council*

Miss Justice Laffoy delivered judgment in this case in the High Court on 22 May 2007 but adjourned it to allow the parties to consider how best to proceed. She found that while she could not award judgment to the plaintiffs in their claim under the Housing Acts and Constitution, she did find there was a breach of Article 8 of the European Convention on Human Rights which is now enacted in Irish law under the ECHR Act 2003.

The plaintiffs are Bernard, Mary and Patrick O'Donnell, three siblings who reside together with their parents and other members of their family in a mobile home at Lynch's Lane in Clondalkin County Dublin. The three plaintiffs suffer from a condition known as Hurler's Syndrome which is severely disabling and the three plaintiffs require assistance with dressing and washing. The plaintiffs currently reside in a 2-bedroom, wheelchair-accessible mobile, following previous court proceedings. This mobile home is currently occupied by ten persons.

However, due to the disability of each of the plaintiffs, the overcrowding in the mobile and the lack of privacy, the relief sought is a second wheelchair -accessible mobile home to accommodate the plaintiffs. This would also need ramped access in order to accommodate their mobility restrictions. The issues addressed by Miss Justice Laffoy and based on the submissions made by the parties in this case are:

1. Whether there has been a breach by the defendant of its statutory duties under the Housing Acts, as properly construed having regard to the provisions of the constitution and s.2 of the European Convention on Human Rights Act, 2003.
2. Whether there has been a failure on the part of the defendant to perform its functions in a manner compatible with the State's obligations under the Convention, in particular, articles 3 and 8 of the Convention, and whether a remedy is available to the plaintiffs under s.3 of the Act 2003.
3. Whether the plaintiff's constitutional rights have been infringed by activity or inactivity on the part of the defendant.

1. In re the argument advanced on behalf of the plaintiffs that the statutory provisions of the Housing Acts should be construed in the light of the Constitution by reference to the judgment in *O'Brien v Wicklow Urban District Council*: Laffoy J found that the plaintiffs did not establish an entitlement to a declaration that the defendant, in failing to provide for the accommodation needs of the plaintiffs in the manner in which they assert they should be provided for, has acted in breach of any of its duties under the Housing Acts.

2. Laffoy J stated that the plaintiffs had not made out a case of s. 3(1) of the ECHR Act 2003 by reference to article 3 subject to the relationship between article 3 and article 8. The issue boils down to whether the compliance with article 8 required that another wheelchair accessible mobile home be made for occupation and use by Mary, so that her living conditions and those of Bernard and Patrick can be brought to an acceptable level. The judge stressed that "the court must strike a fair balance between competing interests, the interests of the community as a whole, on the other hand, and the interest of the individual plaintiffs, on the other hand, within the margin of appreciation which the ECHR has held the State has". She noted too that the fact that "Mrs O'Donnell [the plaintiffs' mother] desires, and intends, to care for them with the assistance of other members of her family in the home setting must be in their best interest and it must be in the interest of the State and its organs to facilitate her in so doing." The judge found that "it is open to the court to make a finding on the facts that there has been a breach of Article 8."

3. The judge stated that she was "not satisfied that a case has been made out that the defendant has infringed the plaintiffs' constitutional rights." Counsel for the defendant reminded the court of the caveats issued by the Supreme Court in *TD v Minister for Education*, "save where an unenumerated right has been unequivocally established by precedent ... some degree of judicial restraint is called for in identifying new rights". Secondly, the inadvisability of the courts at any stage assuming the function of declaring what are frequently described as socio-economic rights to be unenumerated rights guaranteed by Article 40.

She held that there had been a breach of Article 8 of the European Convention on Human Rights. The remedy stipulated is an award of damages. However Laffoy J emphasised that "whatever assets accrue to the plaintiffs should be secured for the plaintiffs, not for the O'Donnell family generally" and adjourned the case for the parties to consider how to further proceed.

2. Equality Authority welcomes State Exams Commission settlement of case

On 31 May, a case taken by a transsexual person against the State Examinations Commission and the Department of Education and Science was settled when the Commission agreed to reissue the person's school certificates in her new name corresponding to the gender with which she identifies. She was supported in her action by the Equality Authority. Read more at <http://www.equality.ie/index.asp?locID=135&docID=682>

3. SICCD A conference to look at creating inclusive communities

SICCD A – South Inner City Community Development Association - invites you to attend a conference aimed at examining the changing nature of Irish society and promoting inclusive and sustainable communities. It will be held on 3 July 2007 from 9:30am to 3pm in the Guinness Storehouse, Dublin 8. From its inception, SICCD A has been developed and managed by local working class people using a right based integrated strategy. The conference has its context in an Irish society which continues to experience rapid and major social, economic and cultural changes. The physical, psychological, social and economic impact of the 'Celtic Tiger' on disadvantaged families and communities is very marked. These issues leave individuals and communities feeling isolated and excluded. Invited speakers include Government Secretary General Dermot McCarthy, FLAC Director of Funding and Development Catherine Hickey and Environment Minister John Gormley. For further information, contact Marie Bennett at SICCD A on 01-4536098 or by e-mail at mbennett@siccda.ie

4. 'Pay to Play' campaign in Los Angeles

Robert Garcia, who spoke at last year's Public Interest Roundtable on his work with disadvantaged communities in Los Angeles, is running a new campaign opposing a 'Pay to Play' proposal which would charge non-profit organisations for use of sports and other facilities. For more information, see <http://www.cityprojectca.org/blog/archives/371>

5. Law Reform Commission - final public consultation

The Law Reform Commission will hold its final Public Consultation on its *Third Programme of Law Reform* in Dublin Castle, on Wednesday 18 July 2007, from 9am to 12:45pm. This Public

Consultation will provide an opportunity to suggest areas of law in need of reform and modernisation. This Consultation will also be the Commission's Annual Law Reform Conference for 2007. All are welcome and the Conference is free to attend. Contact Charles O'Mahony, Legal Researcher, at 01- 6377608 or by e-mail at comahony@lawreform.ie

6. Report shows Human Rights Act being used effectively in UK

Seven years on from the introduction of the Human Rights Act in the UK, a new report from the British Institute of Human Rights challenges the perception that the law is being used solely by criminals or celebrities. The report, entitled 'The Human Rights Act - Changing Lives', shows how various people from different backgrounds in the UK are using human rights arguments to challenge poor or shoddy treatment from public services without having to go to court. You can download the report from the BIHR website at:
http://www.bihar.org/downloads/bihar_hra_changing_lives.pdf

7. Local authority ordered to compensate and provide suitable accommodation for family of disabled child

The Equality Authority was recently successful in representing the mother of a child with autism who is a tenant of a local authority and seeking to have appropriate accommodation provided, either by extension of existing buildings or rehusing in a suitable house. She was awarded the maximum compensation as part of her disability discrimination case before the Equality Tribunal. Read more at
<http://www.equality.ie/index.asp?locID=135&docID=679>

PILN Bulletin issued by FLAC on 29 June 2007

Public Interest Law Network Ireland - PILN

c/o FLAC, Lower Dorset Street, Dublin 1

T: +353-1-874 5690 E: piln@flac.ie

F: +353-1-874 5320 W: www.flac.ie

Free Legal Advice Centres Ltd is a company limited by guarantee not having a share capital, registered in Dublin, Ireland. Company registration number 49413. Directors: Don Crewe, Iseult O'Malley, Peter Ward, Paul O'Connell

NB: The information in this e-mail may be confidential and may be legally privileged. It is intended for the listed addressee(s). Access to this e-mail by anyone else is unauthorised. If you are not the intended recipient, any distribution, copying, or other actions taken in reliance on it are prohibited and may be unlawful. The opinions and advice contained in this e-mail may not be those of FLAC.

FLAC – promoting access to justice

<http://www.flac.ie>