

Remarks of the Chief Justice

Launch of the FLAC Annual Report 2013

7th July 2014

Introduction

Colleagues and Friends, Ladies and Gentlemen,

It is a great pleasure to be with you this morning for the launch of the 2013 Annual Report of FLAC.

My thanks go to the Director General, Noeleen Blackwell, for her kind invitation to be here. Thank you Mr. Ward for your warm words of introduction.

We are all proud of how FLAC has developed, from being a student-led organisation in 1969, to its public role today when it makes such a positive contribution to our country.¹

A significant aspect of a democratic society is that there be access to justice. FLAC plays an important part in assisting such access.

FLAC's volunteer lawyers provide legal services on a daily basis, by advising and giving information to people who do not have the financial resources needed to acquire legal assistance from a solicitor and barrister.

However, FLAC's role is even wider. FLAC also promotes equal access to justice by analysing the law, conducting research, and advocating for change to the law when necessary.

¹ The students involved in founding FLAC were Mr. David Byrne SC, former Attorney General and EU Commissioner for Health and Consumer Protection, Mr. Denis McCullough SC, the late Mr. Justice Vivian Lavan of the High Court and Mr. Ian Candy, former Magistrate of Hong Kong. See O'Morain "Access to Justice for All: The History of the Free Legal Advice Centres 1969-2003" (October 2003).

FLAC's educational approach provides much needed information to the community, policy makers and legislators. This may be seen in the conferences and seminars which FLAC organise. Recently, Justice Albie Sachs from South Africa spoke at a successful conference which was themed "Using the Law to challenge Injustice".

I was a FLAC volunteer in the early days of the organisation. I joined FLAC in 1970. For several years I volunteered in the Mountjoy Clinic and then the clinic in Molesworth Street. It was a very rewarding experience. My eyes were opened to social and legal problems in the community, and to how simple advice from young lawyers could be of such assistance.

At its core, the practice of law is a human and social interaction. The lawyer sits down with the man, woman or child who needs their help. As a lawyer you look them in the eyes, you listen to their story, you treat them with dignity and respect, and you do your best by giving sound advice and offering possible routes to solutions of the client's difficulties.

At page 36 of the Report I was struck by the comments of a caller to the FLAC centre in Finglas. His name is Paul and he said of FLAC that:

"It's a vital service. There's not many places people can go for free advice and people need it. The country isn't in a great state so if you can talk to someone who can advise you, it puts your mind at ease."

This illustrates how each lawyer is a representative of the profession. Each time they treat a client with courtesy, respect and professionalism, that is a victory for the justice system. I have no doubt that this is what happens in all FLAC centres across the country, as Paul's comments illustrate.

Access to Justice

FLAC describes itself as existing:-

"...to promote equal access to justice for all, so that the protection and benefits of the law are accessible to all people, regardless of income or background."

Access to justice is a fundamental principle in a democratic society. It is a concept acknowledged internationally.

Lord Neuberger, President of the Supreme Court of the United Kingdom, has described access to justice:-

“Access to justice has a number of components. First, a competent and impartial judiciary; secondly, accessible courts; thirdly, properly administered courts; fourthly, a competent and honest legal profession; fifthly, an effective procedure for getting a case before the court; sixthly, an effective legal process; seventhly effective execution; eighthly, affordable justice.”²

However, as we describe the principle, access to justice must include ease of access to the law and to the courts. It is a vital component of the rule of law in a democratic society.

In March of last year, I listened to the South African born Sir Sydney Kentridge Q.C. interviewed on the radio. The interviewer asked him about the restrictions on legal aid mooted at the time in England and Wales, which have since become a harsh reality in that jurisdiction. He said that:

“It is no use having rights unless you have access to a court in order to enforce them. Your right to claim redress is valueless unless you can be represented in court.”

His words reminded me of the late Josie Airey, from Cork, who was supported by FLAC in her quest for a marital separation, when the costs of doing so were enormous in the 1970s.

² Lord Neuberger speech to Justice-Tom Sargant Memorial Lecture 2013 “Justice in an Age of Austerity” (15th October 2013).

The term “access to justice” was described by researchers Cappelletti and Garth in 1978 as serving “to focus on two basic purposes of the legal system – the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all, and second, it must lead to results that are individually and socially just”. See M. Cappelletti and B. Garth (eds.), *Access to Justice: A World Survey*, Vol. I, Sitjoff and Noordhoff - Alpehenaandenrijn, Milan, 1978, at p.6.

In the case of *Airey v Ireland* the European Court of Human Rights declared that:

“The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial”.³

Article 6 of the European Convention on Human Rights provides that everyone is entitled to a fair and impartial public hearing, within a reasonable time, by an independent and impartial tribunal, established by law.

In the criminal law sphere, Article 6 provides that everyone charged with a criminal offence has a minimum right to defend themselves in person or through legal assistance of their own choosing or, if they have not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

The Constitution of Ireland places strong emphasis on the fundamental personal rights. In addition, Article 38.1 of our basic law provides that:

“No person shall be tried on any criminal charge save in due course of law”.

In the *State (Healy) v O’Donoghue* the Supreme Court has interpreted this provision together with Articles 40.3 and 40.4 of the Constitution as meaning that access to legal advice when required by impecunious persons whose ability to participate in criminal proceedings when liberty is at stake, must be provided with legal aid.⁴

³ *Airey v Ireland*, application no. 6289/73 (9th October 1979) at paragraph 24.

⁴ [1976] IR 325.

Noeleen Blackwell spoke recently at the Legal Aid Board Annual Conference and pointed out the challenges which people face in access to civil legal aid.⁵

Access to justice is an issue for us all. It is a matter for our society, its institutions, including the three branches of Government, and the legal professions.

Annual Report

The publication of this Report each year shines a bright light on the realities of Ireland's justice system. It tells a tale of the legal issues and concerns which are facing the people of Ireland. I highlight some eye-opening statistics:

Visits to FLAC centres

- In 2013, FLAC directly assisted a total of 27,000 people with legal queries.
- There were 13,805 visits to FLAC centres in 2013 (up 6.3% on 2012).
- 34% of callers had a family law query. Almost half related to separation and divorce, while 30% were concerned with custody, access and guardianship.
- 14.3% of callers had an employment law query.
- 11.5% of callers had a credit and debt query (which was a 26.5% increase on 2012).
- 12.7% increase in Housing/Landlord & Tenant queries.

⁵ Noeleen Blackwell, Director General of FLAC, speech to the Annual Conference of the Legal Aid Board "Access to Legal Aid as part of access to justice: a rigid or discretionary right?" (18th June 2014) available at www.legalaidboard.ie/lab/publishing.nsf/Content/Legal_Aid_Board_Annual_Conference_2014

Telephone calls to FLAC

- In 2013, FLAC dealt with a total of 13,741 telephone calls (up 10% on 2012).
- 20.8% of callers had a family law query.
- 9% of callers had a debt or credit query.
- 84% increase in calls on housing/landlord & tenant issues.
- Legal services queries were up 47.5% on 2012 figures.
- Neighbour disputes were up 56% on 2012 figures.
- Thousands more people accessed FLAC's marvellous website.

Effects of recession

It is quite obvious that the Great Recession, which has blighted the lives of so many Irish people, has created to an increasing workload at FLAC. The anonymous case studies in the Report bear this out, as do the statistics.

Not surprisingly, **family life** remains a priority for those coming to FLAC. The resolution of family difficulties is vital. These are the most important of cases. If they are not dealt with in a timely fashion, in a professional manner, then there can be a profound impact lasting down through generations of the family.

The law relating to children and families is a most important area of the legal system. The Honourable Justice Rosalie Silberman Abella of the Supreme Court of Canada has stated that:

“Family law is the legal system’s metaphor, the crucible with which so much else in law intersects. It offers some of the most dynamic layers through which to examine the role of law generally, and the role of those professionals who function on its behalf. It is also, because it is the area of law by means of which most people will come into contact with it, the area by which the legal system will be judged by most people.”⁶

⁶ Keynote address at the 1994 National Family Law Programme on 18th July, Victoria, British

The legal system in Ireland benefits greatly from the work of FLAC, of which a significant number of cases relate to family law matters.

I am delighted that FLAC continue to support the independent **Child Care Law Reporting Project** by sponsoring it and providing practical assistance. This project is providing much needed information about what is happening in Courts all over Ireland.

The rise in **credit and debt** queries to FLAC is not surprising in these challenging times. FLAC is continuing its work advocating fairness for those on low incomes dealing with personal over-indebtedness, in these very difficult times.

Other FLAC initiatives

FLAC's wider activities continue apace. FLAC's **Public Interest Law Alliance, PILA**, goes from strength to strength. It has assisted numerous organisations in their quest for social justice through litigation, advice and information, law reform research, or legal education. This method of working with the law, for the benefit of disadvantaged people, has led to successful advances in fights for recognition of rights.

I enjoyed reading the volunteers' experiences and the encouraging case studies throughout this report. They highlight the types of problems which they address. They also indicate the very important work which is done by the volunteers.

I was delighted to learn about the **FLAC societies** in Ireland's Institutes of Technology and Universities. They are clearly doing great work and remind us of FLAC's origins as a student led body.

Congratulations

As you enter the Four Courts complex at Chancery Street, stop and look across the Luas tracks to the Bridewell Garda Station. Look skywards, you will see a Latin phrase painted onto the building's lintel. It reads "Fiat justitia ruat caelum".

Latin terminology is a barrier in access to justice and should be avoided⁷ Many the lawyer cannot avoid the temptation to use a little Latin! Nevertheless, this is an old phrase with great meaning which translates: -

“Let justice be done though the heavens fall.”

My wish is that justice is done for the people of Ireland in terms of their access to the legal system. Rights are meaningless without access. FLAC is playing an important role in making rights a reality for thousands of people

I congratulate FLAC, the Council Members, the Chairperson Peter Ward SC, Noeline Blackwell, the staff, and the volunteers for their inspiring work.

Launch

Therefore, all that remains for me to do now is to officially launch the Annual Report of the Free Legal Advice Centres for 2013.

Thank you.

Susan Denham

Chief Justice

7th July 2014

⁷ Muriel Walls, Chair of the Legal Aid Board speech to the Annual Conference of the Legal Aid Board “Civil Legal Aid in a rapidly changing world” (18th June 2014) available at www.legalaidboard.ie/lab/publishing.nsf/Content/Legal_Aid_Board_Annual_Conference_2014