

**INTERNATIONAL LEGAL AID GROUP CONFERENCE:  
8 TO 10 JUNE 2005 – KILLARNEY, IRELAND  
NATIONAL REPORT – IRELAND**

**1. Civil Legal Aid and the establishment of the Legal Aid Board**

The Scheme of Civil Legal Aid and Advice was introduced in 1979 following the decision at the European Court in the case of Airey - v - Ireland E.C.H.R. 9/10/1979, 6/2/1 981 (1979) ECHR 305 and the recommendations made by the Pringle Committee which had been set up by the Minister for Justice to advise him on the introduction of such a scheme. An independent body, the Legal Aid Board, was established to administer the scheme the purpose of which is to make the services of solicitors and, where necessary barristers available to persons of modest means. The service continued on an administrative basis until 11 October, 1996 when the Civil Legal Aid Act, 1995 was brought into effect.

**2. Provision of Legal Services by the Board**

Legal services are mainly provided by solicitors in the full-time employment of the Board, working in Law Centres established by the Board. In addition to the network of 30 full time Law Centres, legal services are also provided through 12 part-time law centres.

The use of private practitioners is designed to improve access to legal aid services in situations where a law centre is not in a position to provide a timely service. The private practitioner

scheme in the District Court assists the Board in its efforts to provide a service to all applicants in certain District Court matters - domestic violence, custody, access and maintenance cases - within a reasonable period of time.

Earlier this year, the Board prepared a report on the effectiveness of the pilot project for the use of private practitioners in the Circuit Court, which operated in 2001/2002. The Board has recently re-introduced the Circuit Court private practitioner scheme and is initially focussing on law centres with greatest waiting times for an appointment with a solicitor. The Circuit Court Private Practitioner Scheme will be established on a formal and permanent basis later this year.

The services of barristers are provided in accordance with the terms of an agreement between the General Council of the Bar of Ireland and the Board.

**3. Scope of legal aid services**

The Act makes provision for the "*grant by the State of legal aid and advice to persons of insufficient means in civil cases*".

The Act allows for the provision of legal advice and legal aid to persons who satisfy the financial eligibility and merits test laid down in the Act and Regulations.

**Legal Advice:**

Legal advice is available to persons on the application of Irish Law to any particular circumstances which have arisen in relation to the person seeking legal services. It also includes any steps that a person might appropriately take having regard to the application of the law of the State to those circumstances (other than the institution or conduct, including defence, of civil proceedings).

**Legal Aid:**

Legal aid (representation in Court) is available to persons in civil proceedings (other than certain excluded matters) in any Irish court of law and also for proceedings before the European Court of Justice. With the exception of representation of asylum applicants before the Refugee Appeals Tribunal, legal aid is not available for the

conduct of proceedings before an administrative tribunal. Advice and assistance can, however, be given to persons who are contemplating taking tribunal proceedings.

**Statistics on cases:**

In 2004, over 90% of the litigation services provided by the Board to its clients was in the family law area. The legal services provided by the Board can cover most types of non-family civil law matters, except for excluded matters, which are outlined below. The range of non-family law matters dealt with by the Board include professional negligence, medical negligence, personal injury, contract.

The table below provides an overview of the broad categories of cases in which legal services were provided in 2004:

<b>Subject Matter</b>	<b>% of cases in which legal services were provided in 2004</b>
Divorce/separation/nullity	61%
Childcare	6%
Other family law matters	25%
Other civil law matters	8%

**Expenditure per capita of the population:**

The Board's Grant-in-Aid for 2005 is €21.362 million (\*US \$26.982 million). There are approximately four million persons living in the Republic of Ireland. The expenditure per capita on civil legal aid in respect of the Board is approximately €5 (\*US \$6.32), in 2005.

**4. Eligibility**

Under the Civil Legal Aid Act, 1995 and Regulations made thereunder, there are two basic tests of eligibility:

(a) a financial test and, (b) a test of merits

**(a) Financial test**

An individual will satisfy the financial test if his/her disposable income is under a figure prescribed from time to time by

the Minister for Justice, Equality and Law Reform with the consent of the Minister for Finance. Disposable income is the applicant's gross income from all sources less various allowances in respect of dependants, mortgage, tax etc. The current disposable income limit is €13,000 (\*US \$16,420), per annum. Capital resources are treated separately. An applicant whose disposable capital exceeds €320,000 (\*US \$404,192), is ineligible for legal services.

**(b) Test of merits**

The second basic requirement is that the Board must be satisfied that it is reasonable to take or defend proceedings having regard, for example, to the legal merits of the case and the likely outcome.

The criteria include prospects of success; reasonable grounds for taking or defending proceedings; the availability of any other method other than court proceedings for dealing satisfactorily with the problem (e.g. mediation or negotiation of a settlement) and the possibility of the person obtaining legal representation outside the scheme.

**5. Exclusions**

Legal representation is not available before tribunals, with the exception of refugee cases. In addition, certain matters have been designated in the Act as being outside the scope of legal services as follows:

- defamation
- disputes concerning rights or interests in or over land other than those exceptions which are allowed by the Act

- civil matters within the jurisdictions of the District Court (Small Claims Procedure) Rules
- licensing
- conveyancing (not connected to a matter for which legal services were provided)
- election petitions
- applications made in a representative, fiduciary or official capacity
- group actions

**6. Refugee Legal Service:**

The Refugee Legal Service (RLS) was established by the Board in 1999 as a specialised unit to provide legal advice and assistance at all stages of the asylum process to persons applying for asylum in Ireland. To complement the staff based service of the RLS, the Board engages the services of solicitors in private practice and barristers to submit appeals on behalf of legally aided asylum applicants and represent them before the Refugee Appeals Tribunal.

**7. Other legal aid schemes in Ireland**

***Criminal Legal Aid***

The Criminal Justice Legal Aid Act, 1962 and the Regulations made thereunder provide that free legal aid may be granted for the defence of persons of insufficient means in criminal proceedings. The decision as to whether or not persons are granted free legal aid is made by the courts. Services are provided through panels of solicitors and barristers who are paid on a fee per case basis.

***Mental Health Legal Aid***

The Mental Health Act, 2001 provides for the establishment of

a scheme of legal aid for the granting by the Mental Health Commission of legal aid free of charge to patients challenging the legality of their detention before a Mental Health Tribunal and in appeals before the Circuit Court. This scheme of legal aid will be coming into operation during 2005. Services will be provided to patients through a panel of solicitors who will be paid on a fee per case basis.

#### **Attorney General's Scheme**

In certain circumstances, where a party cannot afford to pay fees, the legal costs of such a person may be defrayed from funds administered by the Attorney General's Office, on the recommendation of a court, under a scheme that is referred to as the Attorney General's Scheme.

The Scheme applies to the following forms of litigation:

- (a) habeas corpus applications;
- (b) bail motions
- (c) Judicial Reviews that consist of or include certiorari, mandamus or prohibition

And

- (d) applications under S 50 of the Extradition Act, 1965

A person seeking a recommendation from the court that the Scheme be applied to their situation must make an application to the court (personally or through his/her lawyer) at the commencement of the proceedings, The court must satisfy itself as to the financial situation of the applicant, and that the case warrants the assignment of counsel and/or solicitor. Where there is more than one applicant, but only one matter is at issue before the court, the solicitor and counsel

assigned shall represent all applicants.

#### **8. Community Law Centres**

In addition to the services provided by the Board, there are a number of services provided by community law centres. A community law centre is an independent and community-based service which provides legal aid and advice to individuals and groups. They may provide court and tribunal representation and usually concentrate on areas of law such as housing, debt, employment law, welfare rights, equality issues and family law. There are two community law centres in Ireland – Northside Community Law Centre and Ballymun Community Law Centre. The State provides some funding for these centres.

**\*Euro / dollar rate as at 17<sup>th</sup> May, 2005**  
**- €1 = \$1.2631**