

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

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 Legal Aid 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 33 full time Law Centres, legal services are also provided through 12 part-time law centres and a varying number of information clinics. Three of the full time clinics and most of the information clinics are dedicated to asylum cases.

Legal services are also provided through private solicitors on panels. There are three panels at the moment. The first is a panel for divorce and separation cases. This panel was introduced on a permanent basis on the 1st October 2006. All solicitors who applied for this panel were interviewed by the Board in order to ensure their suitability. The second panel relates to family law matters at District (local) Court level. It is the board's intention to move to a situation where admission to this panel is by interview. The third panel provides for representation by private solicitors in cases before the Refugee Appeals Tribunal. All such provision is subject to quality control – a combination of file reviews and conditions of engagement.

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 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. However, the scheme that involves private solicitors for divorce and separation cases provides for one fee only. It is a matter for the solicitor whether they wish to retain a barrister and pay the barrister from the single fee.

There was an increase in demand for the Board's services in 2008 of 17%. The percentage increase on the number of applications in 2006 was 23%.

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.

3.1 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).

Just over two thirds of advice cases in 2007 related to family law.

3.2 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.

In the 30 law centres dealing with non-asylum matters the bulk of the is in the area of family law. The Board is actively promoting dispute resolution models that do not involve contested court proceedings. The Board has facilitated extensive training both for the Board's solicitors and for private solicitors in one of the ADR models namely collaborative law.

4. Statistics

In 2007, more than 90% of the litigation services provided by the Board to its clients was in the family law area leaving aside the area of asylum. 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 includes professional negligence, medical negligence, personal injury, contract. The Board established a specialised Medical Negligence Unit in 2006 dealing exclusively with such matters and on a nationwide basis.

5. Expenditure per capita of the population

The Board's Grant-in-Aid (covering civil legal aid matters but excluding the Refugee Legal Service) for 2009 is €26.6m. This represents a modest reduction on 2008 but amounts to an increase of 9.5% on the amount for 2007. There is a further €9.5m for asylum cases provided through the Refugee Legal Service. There are approximately 4.2 million persons living in the Republic of Ireland. The expenditure per capita on civil legal aid in respect of the Board is approximately €6.30, and €8.60 including asylum cases.

6. 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 €18,000 per annum. Capital resources are treated separately. An applicant whose disposable capital exceeds €320,000 is ineligible for legal services. If a person's disposable income is less than €11,000 they are charged the minimum contribution for legal advice which is €10. If the value of their assets excluding their home does not exceed €4,000, they pay the minimum legal aid contribution which is €50.

A recent study indicates that some 48% of the population is financially eligible for legal services from the Legal Aid Board with 38% qualifying for the minimum income contribution. These statistics are based on 2006 data and it is intended to update these on an annual basis as data becomes available.

(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.

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

7. 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.

8. Other legal aid schemes in Ireland

8.1 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 basis.

8.2 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 came into operation in November 2006. Services are provided to patients through a panel of solicitors who are paid on a fee basis.

8.3 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 Department of Justice, 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

8.4 Community Law Centres

In addition to the services provided by the Board, there are a number of independent 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 – both in Dublin

9. Recent Developments

The Board has recently undertaken a comprehensive review of all its operations. Many of its core systems and structures had remained unchanged for a considerable number of years and it was considered appropriate to undertake a structured review of the operational performance of the law centres to ensure that the Legal Aid Board is best placed to continue to provide a professional service to those in need of it. It was also sought to ensure that the arrangements for the delivery of services are organised in such a way as to ensure professionalism and quality while, at the same time, having regard to the issues of efficiency and effectiveness. The review has been completed and recommendations are in the process of being implemented.

The Legal Aid Board has also recently completed a risk assessment audit which addressed both procedural matters and support infrastructure such as Information Technology. The

recommendations in this audit will have considerable implications in the manner in which legal services are delivered.

As noted earlier, the Board continues to actively promote methods of alternative dispute resolution in appropriate cases as a means of resolving issues as an alternative to the traditional adversarial court based methods with their attendant personal, relationship and societal consequences.

Finally, the Board is also promoting an integrated method of the delivery of related public services as a response to the extensive international research on the clustering and related nature of justiciable problems.