

## **Legal Aid Board – 30<sup>th</sup> Anniversary Conference**

**15<sup>th</sup> September, 2010**

*“Access to Justice and Legal Aid – Learning from the Past, Looking to the Future”.*

2010 marks the completion of the Legal Aid Board’s thirtieth year in existence – the Board having originally been established on 21<sup>st</sup> December 1979, when the Scheme of Civil Legal Aid and Advice was introduced. To celebrate thirty years in existence, the Board held a 30<sup>th</sup> Anniversary Conference in the President’s Hall at the Law Society of Ireland, Blackhall Place, Dublin on 15<sup>th</sup> September 2010, with some very distinguished speakers present. In attendance were Board members, senior management, solicitors, and other staff of the Board as well as several invited guests.

The conference was opened by the Chief Executive, Dr. Moling Ryan, who introduced the day as one with “considerable meaning and promise”. He said that the Board was honoured to have such distinguished guests address its Conference and thanked the speakers for giving their valued time.

### **Mr. Dermot Ahern, T.D., Minister for Justice and Law Reform**

The opening address was made by the Minister for Justice and Law Reform, Mr Dermot Ahern TD. The Minister spoke of how his own career had paralleled the development of the Legal Aid Board over the past thirty years. He also stated that as Minister he was “proud to have ensured the continued financial support for the Board’s work” and “the Board has shown itself not just to be extremely productive but also extremely flexible in its operation”.

This led on to the main theme of his speech. The Minister noted that the Board “has never shied away from undertaking further responsibilities which I or my predecessors have requested of it”. He announced that he would be shortly bringing forward proposals to the Government to assign responsibility for criminal legal aid together with the associated non-statutory schemes to the Board, on the basis that the Board “is the organisation where the greatest expertise relating to legal aid resides. It has a very strong record of achievement both in relation to delivery and effective management of services”. He also stated that he hoped to be in a position shortly to discuss with the Minister for Health and Children the possibility of legal aid in Mental Health Tribunals being assigned to the Board. He felt that this would “offer far greater coherence and scope for accountability in relation to the entire area of legal aid.”

### **Mr. Justice John L. Murray, Chief Justice of Ireland**

The second speaker was the Chief Justice of Ireland, the Hon. Mr. Justice John L. Murray. The Chief Justice spoke chiefly on the theme of alternative dispute resolution (ADR). Access to justice, he believed, was “all too often equated with access to the Courts”. He spoke of the

need to encourage the use of mediation as a method of resolving disputes at an early stage. The State had shown itself to be in favour of mediation in principle, but moves towards encouraging it had been ad-hoc. ADR needed to be made an integral part of the dispute resolution process.

The Chief Justice noted that the vast bulk of cases funded by civil legal aid remained in the family law area. He noted that in England and Wales the cost of legal aid for dispute could be reduced by up to 50% by mediation. Use of mediation could reduce costs for the Board as consensual resolutions to disputes reduced the risk of litigation. He referred to the Law Reform Commission's 2008 recommendations in this area and stated that the Courts should be allowed to require parties to a dispute to engage in mediation prior to commencing litigation. In non-family law cases the Courts should be allowed to award costs against a party refusing to engage in mediation. The Chief Justice concluded by welcoming the Minister's announcement regarding the rationalising of the costs of criminal legal aid and wished the Board well in the challenge awaiting it in this area.

### **Ms. Anne Colley, Chairperson, Legal Aid Board**

The Chairperson of the Legal Aid Board, Ms. Anne Colley, spoke next. Ms Colley thanked the Minister for his speech and said that the Board was "up for and able for" the challenge in taking over the administration of criminal legal aid. She spoke initially of the business case for providing legal aid. There were significant financial costs in providing legal aid, to the tune of approximately €26m for civil legal aid and another €8m in asylum cases. However, if individuals experiencing problems did not receive assistance in managing problems, they had potentially adverse personal consequences as well as downstream costs in terms of relationships, finance, and even society. She made reference to a paper presented to the Legal Services Research Centre's International Conference in Cambridge where it was shown that the state saves considerable costs where legal advice is provided in the areas of housing, debt, benefits and employment. She summarised that effective and equal access to justice was one of the key hallmarks of an egalitarian legal system and that there was a strong business case to be made for legal aid.

The Chairperson also spoke on the theme of the future of the legal aid service. This included the benefits of a move towards alternative dispute resolution, mentioning the pilot mediation project the Board was putting in place together with Courts Service and Family Support Agency in Dolphin House, as well as other forms of investment in ADR by the Board such as training for solicitors in collaborative law. She also mentioned the benefits of a greater integration of public services in terms of a greater focus on the client. She also spoke of the problems regarding the provision and availability of information at present and the confusion this can cause.

### **Ms. Patricia Rickard-Clarke, Commissioner, Law Reform Commission**

The conference was next addressed by Ms Patricia Rickard-Clarke, Commissioner at the Law Reform Commission. Ms Rickard-Clarke spoke of access to justice in terms of access to, and understanding of, the rules of the system. Citizens and their advisers had the right to assume

they could access the rules of the system and that they could understand those rules. Legislation was not readily available and easy to access. Legislation on any one topic could be scattered across several different acts and statutory instruments, not necessarily easily identifiable by their short title. For example, the Freedom of Information Act has been amended several times, sometimes in Acts that had little else to do with freedom of information, one could not therefore get the full picture simply by looking at the Freedom of Information Acts 1997 & 2002. She spoke of the difficulties regarding obtaining consolidated legislation in comparison with other jurisdictions and the lack of progress with regard to statute law restatement. The Irish Statute Book goes back over nine centuries and several different parliaments. There are approximately 3000 Acts on the statute book, approximately one-third of which is pre-1922.

She also discussed the terminology used in legislation and court proceedings. Access to the rules also meant that the rules should be written in terminology that people understood and that out of date concepts should be dropped. She advocated the replacement of terminology such as “plaintiff” and “petitioner” with “Applicant” and “Respondent” in all proceedings. She also argued for consistency in drafting legislation. There should also be consistency of requirements between different courts and different circuits. Legislation should be drafted in plain language and be fit for purpose. Delays in cases getting to court should also be eliminated, she added.

### **Mrs. Mary McAleese, President of Ireland**

The Conference was especially honoured to be addressed next by the President of Ireland, Mary McAleese. President McAleese praised the Board for helping considerably to level the playing field:

*“You have been and are agents of both justice and social inclusion and while we can count the number of clients you have assisted, more difficult to assess but just as important has been the far-reaching personal impact on the lives of your service users, especially the alleviation of stress and anxiety at what are almost invariably difficult and troubling times in a persons life...whether it is guiding separating parents to a mutually satisfactory and workable custody agreement, advising on employment law or assisting those who are facing debt problems, you help hold things together at a time when people are afraid that their own coping skills may not be able to prevent things from falling apart”*

President McAleese also looked forward to the future of the Board:

*“The future will demand imaginative, innovative and cost effective solutions to the problems facing your clients and that is why a Conference such as this is so important because it gathers those who hold the experience and insight, offers a process through which that information is shared, interrogated and distilled and gives us the hope that with your help we will more clearly see the next steps we need to take to ensure that our society continues to develop into that Republic that cherishes each of its citizens equally”*

## **Dr. Maurice Hayes**

Dr. Maurice Hayes is a distinguished former Northern Ireland senior civil servant and was also a member of Seanad Éireann for many years. Dr. Hayes spoke on the theme of social justice. He mentioned John Rawls and his principle of justice that all primary social goods – liberty, opportunity, income, and wealth and the basis of self respect are to be distributed equally unless an unequal distribution of any of these goods is to the advantage of the least favoured group or individual. He stated that “while there may be a need from time to time to vindicate rights in the courts, the adversarial culture of the traditional court may not always be the best way of helping people to achieve social justice”.

Dr Hayes argued for

“less formal, less confrontational, less rule bound, more local forms of dispute resolution which would require the parties to engage seriously with each other rather than through professional surrogates, which would restore the loss to the injured party, and which would be enforced not by punitive sanctions but by peer-group pressure and the moral pressure of community solidarity”.

He advocated

*“schemes which do not require lawyer participation, but which draw on the strength of the community, on trained mediators and counsellors, and perhaps even on the elders of the tribe. There are many approaches to choose from and a wide range of programmes and procedures which have been trialled and tested in other jurisdictions across the world which can be adopted or adapted to Irish circumstances and legal culture. The important thing is that they operate under rules and protocol and are subject to monitoring and regulation.”*

## **Mr. Frank Brady, Director of Legal Aid, Legal Aid Board**

Mr Frank Brady, Director of Legal Aid gave an overview of the growth of the Legal Aid Board and his experiences as a staff member for most of those thirty years. The Board had been set up in 1980 with a blank sheet of paper. Six law centres were initially opened and indeed six of the solicitors recruited in 1980 are still employed by the Board. The 1980s saw the Board face difficult times due to budgetary constraints. However, the Board underwent a major transformation and expansion particularly during the 1993-1997 period. The enactment of the Civil Legal Aid Act, 1995 and the introduction of divorce in Ireland shortly thereafter paved the way for a major growth in legal aid in the late 1990s. In 1999 the Government asked the Board to take on the role of providing legal advice and aid to asylum seekers and the new Refugee Legal Service was established, again with a blank slate. This showed the willingness of the Board to take on new challenges.

21<sup>st</sup> July 1999 will be remembered for being the date the Government’s decision to transfer the Head Office of the Legal Aid Board to Cahirciveen was announced. This was a challenge which the Board had met successfully as evidenced by the manner in which the decentralisation was managed.

Mr Brady referred to the cases of *O' Donoghue v. The Legal Aid Board & Ors* and *Kavanagh v Legal Aid Board & Ors* in which the Courts had decided that the statutory obligations of the Board were qualified by the resources available to it. He questioned whether it was fair for the Board to provide services in the same way that it has for the past thirty years and in this regard referred to the challenges being faced by the Board.

These included the need for the Board to be more proactive in its promotion of ADR, the prioritisation of resources at a time when staffing levels are dropping while demand is increasing, and the provision of advice only services. He also mentioned the continuing process for the procurement of a new legal case management system and the major challenge which would be posed by the Board taking over responsibility for the administration of criminal legal aid

**Mr. Colin Lancaster, Director of Policy and Development, Scottish Legal Aid Board.**

The next speaker was Mr Colin Lancaster, Director of Policy and Development at the Scottish Legal Aid Board (SLAB). Mr Lancaster gave an overview of the development of legal aid in Scotland, the funding of the service and what was covered under the civil and criminal legal aid systems in the country. He spoke of the major difference in service delivery between Ireland and Scotland, namely that whereas in Ireland legal aid is delivered mainly through salaried solicitors and a complementary service provided by private practitioners, in Scotland, most cases are dealt with through private practitioners, although there is a small Public Defence Solicitors Office and a small number of Civil Legal Assistance Offices with salaried solicitors.

Mr Lancaster also spoke of how payment structures for legal aid could influence how solicitors advised clients. For example, the SLAB formerly offered a lower fee where the accused plead guilty in a criminal case. However when this was brought up to the same level as the fee for when the case was contested, the criminal courts saw a rise in guilty pleas. He also spoke of how the removal of paper processes through the introduction of Legal Aid Online had resulted in huge gain for the Board.

**Ms. Maja Groff, Legal Officer, Hague Conference on Private International Law**

Following this Ms Maja Groff, of the Hague Conference on Private International Law (HccH), spoke about her organisation and about the 2007 Child Support Convention. The Hague Conference was founded in 1893 by Tobias Asser to develop and assist in the implementation of international norms for individuals, families, and children whose lives and activities transcend boundaries. Originally it had 13 members states, it now has 70.

The latest convention is the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (“2007 Child Support Convention”) which Ms Groff spoke on. This applies to maintenance cases of persons under the age of 21. It also covers spousal support but the provisions on administrative co-operation only apply to spousal support where states opt-in. Among the provisions of the Convention is that persons should have effective access to procedures. This includes free legal assistance to creditors for

all child support applications (although a means test may be applied). She also spoke briefly on the EU Maintenance Regulation and other Hague Conventions and global access to justice.

**Mr. Fergus Finlay, Chief Executive, Barnardo's (Republic of Ireland)**

The conference concluded with an address from Mr Fergus Finlay, Chief Executive of Barnardo's (Republic of Ireland). Mr Finlay said that Ireland had previously been an authoritarian society where citizens had shown undue deference to Church and State, abuse had become systematic, and dissent was not tolerated. On foot of the Ryan Report, the Government had devised an action plan with 99 steps but there had been no progress in implementing this.

Mr Finlay stated that children were not listened to. There were 5,000 children in care. It was still possible to commit a child to a psychiatric hospital. 1,000 children were the subject of court orders in the last year. Children had no right to representation in proceedings and their being heard was at the discretion of the judge. Adoption of children whose parents are married is not legal at present.

According to Mr Finlay, the Constitution currently protects the rights of the marital family. He proposed that the Constitution be amended to give greater rights to children. Children, he stated, should have the right to be heard in any judicial or administrative proceedings involving them.

**Concluding remarks by Chief Executive**

The Conference concluded with closing remarks from the Chief Executive, Dr. Moling Ryan, in which he praised the superb quality of the contributions made, noting that such a Conference was a fitting way to mark thirty years in existence of the Legal Aid Board.

Dr. Ryan thanked the Law Society of Ireland for hosting the conference and the staff involved in organising the Conference. He also thanked the Board's current and former members and staff. He complimented the Board's staff on the professional, effective, and efficient service they provided particularly in the current difficult circumstances.

The Chief Executive concluded by looking forward to continued engagement and enthusiasm in the years ahead.

**September, 2010**