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**International Legal Aid Group**

**Frank Goodman**  
Civil Legal Aid and Advice

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Australia  
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## (MR FRANK GOODMAN'S NATIONAL REPORT)

### CIVIL LEGAL AID AND ADVICE

1. 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. The Act does not cover legal aid provided under the Criminal Justice (Legal Aid) Act, 1962.

#### 2. Administration

The statutory scheme is administered by the Legal Aid Board, the members of which are appointed by the Minister for Justice, Equality and Law Reform. The Board consists of a Chairman and twelve ordinary members, of whom two must be practising barristers and two practising solicitors. The Board's administrative structure is headed by a Chief Executive who is responsible for the day to day operations of the Board and for the execution of the policies formulated by the Board within the terms of the Act.

#### 3. Fund

The Act established a fund (the Legal Aid Fund) from which expenditure incurred in the operation of the statutory scheme is met. The fund consists of:

- (a) Grants in Aid paid in each financial year through the vote for the office of the Minister for Justice, Equality and Law Reform;
- (b) All other payments made to the fund including contributions paid and costs/damages recovered by legally aided persons.

4. The Boards accounts are submitted to the Comptroller and Auditor General and when audited by him are, together with the Report of the Comptroller and Auditor General thereon presented to the Minister who lays copies before each House of the Oireachtas.

#### 5. Annual Reports:

The Board is also required to make a report to the Minister each year of its activities during the preceding year and the Minister lays copies of the report before each House of the Oireachtas.

6. Provision of Legal Services:

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 14 part-time law centres. In October 1993, the Board introduced a pilot project using private practitioners to provide legal services in certain District Court family law cases, domestic violence, maintenance and custody. Following a review of the pilot project, Ministerial approval was obtained for the establishment of the private practitioner project on a permanent basis. Private practitioners would provide a complementary service in District Court family law cases particularly, in cases of geographical remoteness, conflict of interest and in cases where the exigencies of the service so require. The Private Practitioner Scheme, which operated in the Dublin area only and was administered from the Head Office of the Board, was extended nationwide in May, 2000.

The Board is currently in the process of introducing a pilot project for the involvement of private practitioners for certain cases in the Circuit Court. The case types are: Judicial Separation, Divorce and District Court Appeals where the case has been dealt with under the District Court private practitioner scheme. Ten law centres will take part in the project, which will last for one year with a separate budget of £500,000. A predetermined number of cases will be distributed and allocated to each participating law centre. This project will be systematically reviewed with a view to the scheme operating on a permanent basis once the pilot project has been concluded.

7. The services of counsel are provided under a revised Agreement entered into in 1998 between the Bar Council and the Minister for Justice. Barristers, whose names are on a panel drawn up by the Board with the assistance of the Bar Council, are briefed by solicitors in the normal way.

8. Refugee Legal Service:

The Civil Legal Aid Act, 1995 provides that the Minister for Justice, Equality and Law Reform may, by Order, extend the Board's jurisdiction to include any tribunal prescribed by him. In a major development of the civil legal aid service, the Board and the Minister reached agreement for the Minister to utilise this power to enable the Board to represent asylum applicants before appeals authorities. The Ministerial Orders extending the Board's jurisdiction were made in April and August, 1999.

Since the introduction of the Immigration Act 2000, the appeals authority is now called the Refugee Appeals Tribunal. These tribunals hear appeals of decisions taken by the Minister for Justice, Equality and Law Reform refusing applications for asylum.

The Board established the Refugee Legal Service as a separate office to provide a professional and independent legal service to asylum seekers at all stages of the asylum process, which are as follows:

- (a) advice and assistance to asylum seekers at all stages of the first instance process;

- (b) advice, assistance and representation at all stages of the appeal process;
- (c) humanitarian leave to remain; and
- (d) Judicial Review

The Board was allocated 30 staff and £1 million funding and the service opened in February, 1999.

The RLS was initially located in the “one stop shop” complex in Lower Mount Street set up by the Minister to provide a comprehensive service to asylum applicants. The building also housed the office of the United Nations High Commissioner for Refugees (UNHCR), the Appeals Authorities and Health Board personnel, in addition to staff of the Department of Justice, Equality and Law Reform.

However, due to the increase in demand new premises have been located. The RLS retains a presence in Lower Mount Street but has since moved the majority of its staff to another premises. In November 2000, the Legal Aid Board received sanction to increase the number of staff in the Refugee Legal Service to 140, and this additional complement is currently being recruited. The RLS moved to a new premises in December 2000 to facilitate the additional staff. Additional premises are currently being fitted out to facilitate the full expansion of the service. New offices will also open shortly in Galway and Cork, and premises are currently being sought in Athlone and in the South East. The budget for the RLS increased from £1 million in 1999 to £7.9m in 2001 to facilitate this expanded service.

The RLS provided legal services to 1,600 asylum seekers in 1999, 3,419 asylum seekers in 2000 and up until the end of March 2001 legal services had been provided to 833 persons.

9. Legal Advice:

Legal Advice is available to natural 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).

10. Legal Aid:

Legal Aid (representation in Court) is available to natural persons in civil proceedings (other than certain excluded matters) in any Irish court of law. With the exception of representation of asylum applicants before Appeal Authorities, 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. The Minister for Justice, Equality and Law Reform does have enabling powers under the Act to extend the scope of legal aid to tribunals and to remove the statutory prohibition on the provision of legal aid in relation to designated matters. These designated matters are outlined in S. 28 (9) of the Civil Legal Aid Act and are as follows:

- (i) defamation;
- (ii) disputes concerning rights and interests over land,
- (iii) civil matters within the jurisdiction of the District Court (Small claims procedure) Rules

1993; (iv) licensing; (v) conveyancing; (vi) election petitions. Conveyancing services may be granted on foot of a court order in proceedings where legal aid has already been granted.

11. Applications for Legal Advice:

An application for legal advice is made on a prescribed form at one of the Board's Law Centres. The solicitor dealing with the case is responsible for deciding on the eligibility of the applicant by reference to the criteria specified in the Act and for determining and collecting the appropriate advice contribution payable.

12. Applications for Legal Aid:

An application for legal aid, which almost invariably has been preceded by legal advice, is made at the same Law Centre. The solicitor concerned forwards the application to the Board together with particulars of the nature of the case, an opinion as to whether legal aid should be granted and a financial assessment of the applicant's means. In the case of certain District Court family law cases, the Board has delegated the power to grant legal aid to the Solicitor-in-Charge of a Law Centre.

13. Initial decisions on all other applications for legal aid are made by deciding officers in the Board's Head Office who have delegated authority to determine applications.

14. Eligibility:

There are two basic tests of eligibility: (a) a financial test and, (b) a test of merits

15. 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 £7,350 per annum. Capital resources are treated separately. An applicant whose disposable capital exceeds £200,000 is ineligible for legal services. The monetary value to an applicant of the family home is excluded from consideration where it is the subject matter of the dispute. In all other cases the value of the family home up to £45,000 is disregarded. The first £2,000 of disposable capital is also disregarded. In practice the capital provisions of the scheme only apply in a minority of cases as the majority of applicants tend not to have significant capital resources.

16. 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.

17. 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.

18. The general principle is that a person will not be allowed representation at public expense in the type of case in which a person of modest means who has to pay for the legal services from his/her own pocket would be unlikely to proceed. This is not simply a matter of protecting the taxpayer; another very important purpose is to bring about some measure of parity between the situation of an individual who happens to qualify for legal aid (at perhaps a maximum cost to him/her of £23) and an individual just outside the legal aid financial limits who would have to defend, at his/her own expense, proceedings instituted by a legally aided party.

19. The Act provides that the prospects of success and cost/benefit criteria shall not apply where the proceedings, the subject matter of the application, concern the welfare of a child.

20. Contributions:

Persons granted legal services pay contributions unlike the Criminal Legal Aid Scheme it is not free.

21. The level of contribution payable by an applicant for legal services depends, for the most part, on "disposable" income. If the applicant's disposable income is £5,060 per annum or less, a fee of £4 is payable for advice and a further £19 for representation in Court, irrespective of the cost to the Board of running the case. If "disposable" income is between £5,060 and £7,350 per annum, a higher contribution is payable which is graduated by reference to the actual level of disposable income.

22. Persons depending on Social Welfare payments generally qualify for legal aid on payment of the minimum contribution (i.e. £23).

23. Contributions may be waived in whole or in part in cases of severe hardship. There is provision also for payment of contributions by instalments.

24. Additional contributions are payable by a person who has reckonable capital resources, e.g. over £2,000 in savings or a second house.

25. It is open to any applicant who is aggrieved by a decision to submit such further information to the Board as he/she deems appropriate with a view to having the decision reviewed. If, following a decision or a review of any decision, the

applicant continues to be aggrieved, it is open to him/her to appeal to an Appeals Committee consisting of a Chairman and four ordinary members of the Board of whom two must be practising lawyers.

26. Costs and Damages:

The Act provides for the payment to the fund of any costs, general damages or other moneys recovered as a result of court proceedings or a settlement reached out of court. The Board is entitled to deduct the costs it has incurred from any moneys obtained subject to certain limited exceptions.

27. The underlying principle is to put the legally aided person in the same position as the fee-paying client. This serves to prevent unreasonable behaviour by a legally aided person in relation to what is publicly funded litigation and, also, to prevent legally aided persons from making a profit from costs.

28. If costs are awarded against a legally aided party, the individual concerned and not the Legal Aid Board is liable for them. However the Board may make an ex gratia contribution towards the costs of the opposing party where certain conditions are fulfilled.

International aspects of Legal Aid:

29. CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT, 1991.

The purpose of this Act (which came into operation on 1 October, 1991) was to enable the State to ratify-

- (a) the Hague Convention on the Civil Aspects of International Child Abduction (1980) and,
- (b) the Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children (1980), Luxembourg Convention.

These Conventions contain administrative and judicial measures designed to secure the return of children who are removed (usually, but not necessarily, by a parent) in defiance of a court order or against the wishes of a parent with custody rights. Persons seeking the return of children under the Conventions are entitled to legal aid without undergoing means tests and are given access to legal services without any delay.

The Minister for Justice, Equality and Law Reform is the designated Central Authority for the transmission of incoming and outgoing applications for the return of children who have been abducted to any contracting state. Where a child is abducted into the State, the Central Authority, on receipt of an application, will take or cause to be taken the following actions:-

- (a) initiate steps to trace the child;
- (b) seek the child's return or secure access to the child;
- (c) arrange, if necessary, for Court proceedings to return the child.

When the child is found, the Board is asked to take action in the event of the child not being returned voluntarily.

Where outgoing applications arise i.e. where a child is removed from this State, the Central Authority transmits an application to the Central Authority of the country to which the child has been taken which, in turn, sets in train the procedures necessary to take action in that country.

### 30. EUROPEAN AGREEMENT ON THE TRANSMISSION OF APPLICATIONS FOR LEGAL AID:

In December, 1988 Ireland ratified the European Agreement on the Transmission of Applications for Legal Aid, The purpose of this Agreement is to allow a person, who resides in the territory of a Council of Europe Member State, who wishes to apply for legal aid in a civil matter in another Member State, to apply to the authorities in his/her resident country, who will transmit his/her request to the authorities of the other State and who will also generally assist him/her with this application.

The Agreement provides for the establishment of administrative machinery through which applications may be transmitted and received in contracting states. The Legal Aid Board is the "transmitting authority" and the "receiving authority" in Ireland.

Applications for legal services are received from persons resident abroad, especially in Britain, who are involved in proceedings in this country. If such persons satisfy the eligibility requirements of the Civil Legal Aid Act, they are provided with legal services. The Board also becomes involved in securing legal services in other jurisdictions for persons resident in Ireland and who have business before foreign courts.

### 31. JURISDICTION OF COURTS AND ENFORCEMENT OF JUDGEMENTS ACTS, 1988 AND 1993:

The Jurisdiction of Courts and Enforcement of Judgements Act, 1988 gave effect to the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters. The Convention, provides uniform rules for the jurisdiction of courts in civil and commercial matters, and, the mutual recognition and enforcement of foreign judgements (including maintenance orders). The 1993 Act enabled the ratification of the Lugano Convention, 1988, which extended the Brussels Convention to the Member States of EFTA. The Acts are construed together.

The Brussels Convention provides for the granting of legal aid to persons who seek to enforce foreign judgements. Article 44 of the Convention provides that an applicant who was afforded "complete or partial" legal aid in the state in which the judgement



was obtained, shall be entitled to benefit from the “most favourable” legal aid in the State addressed. For the purposes of complying with this obligation, the Government decided to exclude the means and merits test and contribution conditions that would otherwise apply under the Civil Legal Aid Act, 1995.

Accordingly, legal services are made available to applicants on this basis in relation to the initial ex-parte enforcement proceedings provided for under Articles 32 to 35 of the Convention, i.e. up to and including the decision authorising or refusing enforcement. However, if there is an appeal from that decision, the applicant has to bear his/her costs of the appeal or apply for such legal aid as would otherwise be available in the State addressed i.e. subject in this jurisdiction to the means and merits tests provided in the Civil Legal Aid Act, 1995.

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#### CRIMINAL LEGAL AID

Under the 1962 Criminal Justice Act (“the Act”) and the Regulations (“the Regulations”) made thereunder, free legal aid may be granted by a court in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. At present this scheme is administered by the Department of Justice, Equality and Law Reform. A proposal was made in May 2000 by the Minister of Justice that the Legal Aid Board take over from the Department as administrators of this scheme. The Board are currently in discussion with the Department in relation to this transfer of responsibility.

Under the Act, the Courts are responsible for the grant of legal aid. An application is made to the court and the applicant must establish, to the court’s satisfaction, that his/her means are insufficient to enable him/her to pay for legal services. The grant of legal aid in criminal matters is at the court’s discretion, and is not regulated by financial eligibility criteria. When granting legal aid the court must also be satisfied such a grant is necessary in the interest of justice, by reason of “exceptional circumstances” and/or the “gravity of the charge” against the applicant.

Legal services under the scheme are provided entirely by private practitioners who have notified the County Registrars of the Courts and the Minister for Justice of their willingness to undertake criminal legal aid work. The cost of the Criminal Legal Aid Scheme was £17.681m in 1999 and the projected cost for 2000 was £19.053m. In the year 1997-1998 a total of 26,960 criminal legal aid certificates were granted.

In order for the transfer of this responsibility to take place a number of changes to the current legislation will be required. It is considered, at present, that the Civil Legal Aid Act, 1995 will be amended to incorporate criminal legal aid and that a separate set of Regulations for Criminal Legal Aid will be issued.

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