



SUBMISSION BY

NORTHSIDE COMMUNITY LAW CENTRE

In collaboration with

NORTHSIDE CITIZENS INFORMATION SERVICE

ON THE

LAW REFORM COMMISSION'S

CONSULTATION PAPER ON

LEGAL ASPECTS OF FAMILY RELATIONSHIPS

**Northside Community Law Centre &
Northside Citizen Information Service
Northside Civic Centre
Bunratty Road
Coolock
Dublin 17**

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Northside Community Law Centre

In conjunction with Northside Citizens Information Service

Submission to the Law Reform Commission

On the Consultation Paper on Legal Aspects of Family Relationship

Introduction

Northside Community Law Centres (NCLC) and Northside Citizens Information Service (NCIS) wishes to take this opportunity to make a submission to the Law Reform Commission on the recommendations made in their recent consultation paper on legal aspects of family law.

Northside Community Law Centre is an independent law centre, which offers free legal advice and representation to individuals and groups in the community who otherwise would not be able to get legal services.

NCLC works to protect and develop the legal, social and economic rights of individuals and groups. The law centre currently has 3 solicitors who specialise in the areas of Employment, Local Authority Housing, Debt, Consumer, Social Welfare Appeals and Family Law. NCLC provides services to people that live within the electoral constituencies of Dublin North-Central and Dublin North-East. Northside Community Law Centre works extensively in many areas of family law including offering advice to clients through our legal information clinic, offering representation to clients in emergency situations and giving 'know your rights' talks on family law to local community organisations.

Northside Citizens Information Service (NCIS) has been serving the community for the past 10 years. NCIS was first opened in April 1999 and since then the number of people using the service has steadily increased. NCIS now deals with an average of 20,000 queries a year through outreach clinics, presentations and on-site information provisions from the full-time clinic in Northside Civic Information Centre Coolock and the part-time centre in Beaumont. Northside Citizen Information Service strives to provide relevant information to all citizens in

a caring and dedicated high quality service that is free, independent, accessible and confidential. NCIS aims to set out all available options and advocate on behalf of all citizens when necessary to enable them to realise their due rights and entitlements.

Both Northside Community Law Centre and Northside Citizens Information Service in general welcome the proposed changes to family law as recommended by the Law Reform Commission in their recent consultation report. NCLC in particular welcomes the proposed changes to make family law equal and agrees with the Commission that unmarried fathers should be given the same rights as their married counterparts and as the mothers of the children. NCLC and NCIS are basing this submission on a recent community consultation, which the law centre and the Citizen Information Service organised in order to make an accurate representation to the Commission on the views of those who will be directly affected by the proposed changes to the law. As part of this community consultation the law centre and Citizen Information Service invited members of the local community to partake in a focus group. The centres also targeted local community groups who worked with and on behalf of un-married fathers, mothers and children to discuss the proposed changes with the groups and to give them a platform to address their concerns and express their opinions. At this focus group a presentation was given on the proposed changes to family law as recommended by the Law Reform Commission. After this presentation a focus group was held on the 4 main areas of family law where changes were recommended by the Commission. A number of different questions were posed to those in attendance for discussion. The subsequent debate on the proposed changes forms the basis of this submission to the Law Reform Commission. The Community Consultation was organised by Northside Community Law Centre and representatives from the following groups were in attendance

- Unmarried and separated parents of Ireland (USPI)
- Treoir
- Amen
- Family resource centres

- Local members of the legal profession and
- Members of the general public

In this submission Northside Community Law Centre and Northside Citizen Information Service will look at the different areas of the law where the Commission have recommended change. In this submission NCLC and NCIS have documented the views and opinions raised by the different organisations present at the focus group and these opinions are the basis upon which our submission is grounded.

In this submission NCLC will look at the Commission's proposals for reform to the areas of

- Legal terminology
- Birth Registration
- Guardianship and unmarried fathers and
- The rights of extended family members

Legal Terminology

NCLC agrees with the recommendations of the Law Reform Commission that the current legal terminology ought to be updated and replaced with terms that are in line with European and International standards. The Law centre agrees that the current legal terminology of guardianship should be replaced with the term 'parental responsibility'. The term custody should be replaced with the term 'day to day care' and that the term access should be replaced with 'contact'.

Specifically NCLC agrees that the term guardianship can be confusing and misleading and agrees that a term such as parental responsibility or joint responsibility would be more beneficial to parents as it better explains the rights and responsibilities associated with being a guardian of a child. NCLC notes that the term parental responsibility has been introduced into Irish law through the 2003 EU Council Regulation EC NO 2201/2003 more commonly known as Brussels II. NCLC agrees with the definition of the term parental responsibility as stated in the Brussels II regulation namely

“All the rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and access.”

The term Parental responsibility is also referred to in the United Nations Convention on the rights of the child. NCLC agrees that the term parental responsibility has gained wide-spread recognition and believe that the term parental responsibility is the correct term to describe the modern view of a parent’s position in relation to their children.

NCLC in making this submission also refers to Raymond Arthurs’s¹ article on Reformulating Irish Family law in the Irish Law times (2002). In this article Arthur’s states that reformulating the parent’s position in law as one of ‘responsibility’ rather than rights would bring Irish law into line with the recommendations on parental responsibility adopted in 1984 by the Committee members of the Council of Europe. Arthurs continues by stating that this new terminology would more accurately reflect the nature of the rights, duties and responsibilities that the law accords to parents and correlatively expects parents to fulfil.

NCLC agrees with Arthurs that the current terminology needs to be updated and more modern terminology would replace any ambiguity or confusion associated with the previous terminology.

At the Focus Group the Community organisations present were in agreement that the current terminology was outdated and in particular it was stated that the term ‘guardianship’ should be replaced with a clearer phrase as the term guardianship was causing significant confusion as to peoples rights and responsibilities. In particular the focus group held that guardianship should be replaced with the term parental responsibility or joint responsibility as this better reflects the rights and responsibilities conferred by a declaration of guardianship.

¹ 2002 (20 Irish Law Times 39): Article: North Western Health Board v. H.W. and C.W.— Reformulating Irish Family Law: Raymond Arthur

The members present at the focus group held that it is essential to change the current terminology, and in particular it is necessary to emphasise responsibility in family law from the start and this can be best done through updating the terminology.

NCLC also agree with the Commission that the definition of parental responsibility should be broad in nature and based on the definition of parental responsibility outlined in the United Nations Convention on the Rights of the Child.

NCLC also submit that the new terminology namely 'parental responsibility', 'day to day care' and 'contact' should be placed on a statutory footing.

Birth Registration

NCLC agree with the Commission that every effort should be made to encourage both parents to register their details on a child's birth certificate. NCLC submit that it is a fundamental right of a child to know their identity and part of this right includes the right to know the details of both their parents.

NCLC agree with the Commission that the current system in place for registering the birth of a child born to un-married parents is very complicated and in particular this system is more complicated than the registration of married parents details on a birth certificate. NCLC submit that in updating and modernising family law the emphasis must be on ensuring equality between the children of un-married parents and married parents. The law should also be reformed to ensure equality between married parents and un-married parents. NCLC however submit that in reforming family law in Ireland the emphasis should be on what is in the best interests of the child. NCLC note that the current birth registration process is not in the best interests of the child. In particular the Commission state in their report that 30% of children born in Ireland are born to un-married parents and the Commission further states that it is estimated that the father's name is not registered in 20% of these cases. NCLC therefore note that there is currently a problem in Ireland with un-married fathers not being registered on birth certificates and that this is affecting a child's right to know their identity, culture, history and background.

NCLC discussed the issue of birth registration at the community consultation on reforming family law. The community members present at the focus group were of the opinion that it is in the best interests of the child to have their father's details registered on the birth certificate. It was held by the focus group that the difference in procedures in registering the details of married and un-married fathers on birth certificates discriminated against un-married fathers and in particular children born to un-married fathers. With regard to birth registration the focus group were of the opinion that birth registration was connected to the rights of the child and should not be concerned with the rights of parents. It was held that it was the right of the child to know his/her identity and the current law was concerned with the rights of mothers and not with the rights of children. The members of the focus group were united in their belief that it is in the best interests of a child to know the identity of both their parents. The focus group believed that every effort should be made to encourage joint registration on birth certificates. The representatives present at the focus group were in general agreement that the only way to protect a child's right to know their identity was to introduce automatic joint registration on birth certificates. The focus group held that it should be the norm for children to be registered with both their parents details on their birth certificate and the only way to ensure this happens is to introduce automatic joint registration. It was held by the focus group that children's births should be registered at the hospital where they are born. The focus group held that a registration system or database of births should be introduced into every hospital in the country. Certain members of the focus group raised issues over whether automatic registration would be in the best interests of mothers who may for certain reasons not want to release the identity of their child's father. There were also issues raised over circumstances where fathers may lack capacity to be registered on the birth certificate. The focus group discussed these issues and held that they were of the general opinion that both parents should be automatically registered on birth certificates in the hospital when the child was born. The focus group held that there should

be a statutory duty on both parents to register their details on birth certificates however there should be a statutory procedure in place to allow a mother to apply for the court to have the fathers name removed from the birth certificate in certain circumstances. In such a situation the mother must show that removing the fathers name is in the best interests of the child. A mother should only be able to remove the father's name where she fears for the child's safety, her own safety or where the mother shows that the father lacks the capacity to be registered on a birth certificate and to carry out his duties as a father. It was held that a father may lack capacity due to a mental illness or a substance dependence. It was also held that a mother should be able to have the fathers name removed from the birth certificate where there has been a failure in duty on the part of the father. In this circumstance it was agreed that the mother must prove to the court that the father had failed in his duty to the child by having no interest in the child or by possessing a 'don't want to know' attitude or through alcohol or drug addiction. However where a fathers name is to be removed from a birth certificate it was held that the mother must bring such an action before the court and the father must be informed and given an opportunity to address the issue before the court. However it was the general view of the focus group that birth certificates should not be altered or changed and that the father's name should only be removed in these exceptional circumstances.

The Commission in their report noted that there remains great confusion over the consequences of registering both parents' details on birth certificates. In particular the Commission note that there is a belief that putting the fathers name on the birth certificate will effect social welfare payments in relation to the child. In particular there is a mistaken belief that putting both parents details on a birth certificate will affect a mothers eligibility to the one-parent family allowance The focus group agreed with the Commission that there is an issue regarding mothers being reluctant to register father's details on birth certificates because of a misplaced belief that registration affects a mother's allowance or benefits from the State. It was held by the focus group that in order to encourage joint registration both parents should be informed that birth registration does not affect

social welfare payments. The focus group held that it should be clearly stated in statute that joint registration of both parents on a birth certificate does not weaken a mother's guardianship rights in regard to her children and secondly that joint registration does not affect a mother's social welfare entitlements or eligibility to State benefits in relation to the child.

The issue of linking birth registration with guardianship and parental responsibility was discussed by the focus group. The consequences of linking guardianship with birth registration generated a great amount of debate between those present at the community consultation. In particular representatives from the organisation Treoir stated that they did not agree that guardianship rights should be linked to birth registration, they felt that linking guardianship rights with birth registration would not be in the best interests of mothers.

However the other representatives present at the community consultation felt that linking guardianship rights with birth registration is a necessary reform. It was held by the focus group that an automatic grant of guardianship should be conferred on fathers at the same time as registering the birth of the child. It was held that the birth certificate and grant of guardianship rights should be registered on a central database. It was also held by the focus group that the registrar should notify the other party when the child's birth is registered. The other party should also be informed at this time that they will be granted guardianship rights in respect to their child.

NCLC submit that it is an essential right of every child in Ireland to know their identity and to know their parents. NCLC submit that measures must be taken to encourage an increase in joint registration. NCLC submit that to ensure children's rights are protected and enshrined, automatic registration of both parents should be introduced into Irish law. NCLC submit that there must be a statutory duty on both parents to register their details on birth certificates. NCLC agree with the findings of the focus group that a mother should be entitled to apply to the courts to remove the father's details from the birth certificate if there is a substantial

reason to believe that having the fathers name on the birth certificate is not in the best interest of the child.

NCLC also agree with the opinions raised by the focus group that there needs to be a national campaign of awareness organised to educate people on the importance of joint registration on birth certificates. In particular the focus group held that there is a need to educate people regarding family law and in particular regarding the importance of birth registration.

The responsibilities and rights of non-married fathers

NCLC agree with the Law Reform Commission that the retention of the distinction between marital and non-marital fathers is a fundamental issue in the context of family relationships. NCLC welcomes the recommendation by the Law Reform Commission that automatic guardianship rights should be granted to unmarried fathers. NCLC submit that family law should be reformed to ensure equality amongst all parents in Ireland. At present the only right a non-married father has in respect of his children is the right to apply for guardianship. NCLC submit that the current law discriminates against un-married fathers and as a result un-married father's fundamental rights are not being protected adequately by the Irish state.

In particular NCLC refers to the recent judgment of Justice McKenchie in the High Court case of GT v KAO ² on the 10th September 2007 where the High Court Judge found the removal from this jurisdiction of the children of an unmarried father to be unlawful. McKenchie J also addressed broader issues concerning the status and rights of natural fathers in Ireland. In his judgment McKenchie J stated " For my part I am of course bound by the majority judgments of the Supreme Court in both of the above cases. Without in any way questioning that principle, I would like however to make some very brief observations of my own on the issue. The vast majority of people might readily agree, that parenthood, by itself and no more may give very little rights, if any to an unmarried father. Examples of circumstances at this end of the spectrum are numerous and very definitely include casual incounters, rape, incest etc. But what about a person who fathers

² GT-V- KAO unreported, High Court, McKenchie J 10/09/2007

a child within an established relationship, and who from the moment of birth, nurtures, protects and safeguards his child: sometimes to a standard all too frequently married fathers fail to live up to.”

McKenchie J then referred to the comments of Murphy J in the case of O.R. (1996) where the learned judge stated that long term relationships having many of the characteristics of a family based on marriage have become commonplace in Ireland. McKenchie J in the High Court developed on the current growth in defacto type family situations stating

“ If as I respectfully suggest, that our society, which is governed by a Constitution which declares the principals of prudence, justice, charity and human dignity might in its maturity so agree, should there not be a greater recognition of the type of father whom I mention? At a minimum should there not be a means readily available so that a father whose children had been removed without forewarning or knowledge can assert and vindicate his rights. I strongly believe there should be.”

NCLC refer to the judgment of McKenchie J in the high court which was upheld by the Supreme Court on appeal in November 2007³ in submitting that unmarried fathers are currently being treated unfairly by the Irish family law system. NCLC submit that unmarried fathers should be granted automatic guardianship rights to their children to ensure that they are treated on an equal basis as married fathers and as mothers.

In stating that unmarried fathers should be granted automatic rights to their children NCLC refer to Article 8 of the European Convention on Human Rights⁴ which was incorporated into Irish law by the European Convention on Human Rights Act 2003.

Article 8 of the Convention states

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

³ T-V-O, unreported, Supreme Court, November 22, 2007

⁴ www.ihrc.ie

2. There shall be no interference by a public authority with the exercise of this right except such as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The European Court of Human Rights (ECtHR) has had regard to Article 8 of the convention in a number of cases and has held that Article 8 also offers protection to de facto families. In the case of *Lebbink V the Netherlands*⁵ the ECtHR reaffirmed that under Article 8 of the Convention the notion of a family may include what is referred to as a non- marital family or de facto family. The Court also held that cohabitation is generally a requirement for the recognition of such a de facto relationship but other factors may exist which demonstrate a sufficient commitment to create such de facto family ties.

The European Court hold that de facto families are offered protection under Article 8 and such protection extends to protecting and vindicating the rights of unmarried fathers in relation to their children.

McKenchie J in *GT v KAO* referred to Article 8 of the Convention and upheld that Article 8 offered protection to de facto families which included protecting the rights of un-married fathers.

NCLC submits that the decision of McKenchie J and the judgment of the learned High Court Judge is authority for holding that unmarried fathers have rights to their children under Article 8 of the European Convention of Human Rights and that the current family laws in Ireland are contravening the Convention rights of unmarried fathers.

The issue of the rights and responsibilities of unmarried fathers was the main concern of those present at the Community Consultation on reform to family law. The community representatives present were unanimous in their belief that unmarried fathers should be granted automatic guardianship rights in respect of their children. The Community representatives stated that reform to

⁵ *Lebbink v the Netherlands*, (ECHR 45582/99) 1st June 2004

family law should be focused on ensuring that the law treats everyone equally. At present unmarried fathers and their children are not treated equally, the focus group held that the only way to ensure equality was to grant automatic guardianship rights to unmarried fathers.

The focus group held that in order to ensure automatic guardianship is welcomed by all members of society there needs to be an awareness campaign regarding parental responsibility introduced. It was held that in order to remove any fear regarding granting automatic guardianship to unmarried fathers there needs to be greater education. It was held that parents should be given information packs during the antenatal stage of pregnancy which would set out the rights and responsibilities of guardianship. NCLC submit that the law should be changed as a matter of urgency to grant automatic guardianship rights to un-married fathers. Guardianship rights should be automatic however NCLC submit that a provision should be introduced which would allow mothers to apply to the court to have the father removed as joint guardian in exceptional circumstances. Such circumstances would include situations where the safety and well being of the child or mother is at risk; however NCLC submit that where a mother applies to have the father removed as guardian, the father should be entitled to appear before the court and have their case heard fairly a judge before any decision is made.

The role of the courts in family law disputes

The focus group also discussed the current role of the courts and judges in family law. The focus group held that at present family law is a court based system and this system is not in the best interests of anyone involved in family disputes. It was held that at present parties are too eager to go to court to have family law disputes resolved and it was held that the courts are not the ideal place for such sensitive issues to be discussed. It was held that judges are not adequately trained in family psychology and it was also held that due to the long court list, judges are often not in a position to give family issues the amount of time and attention they require. It was held that the current system of bringing families disputes to the courts can often result in

rushed decisions and unfortunately can add to the hostility between the parties which is not in anyone's best interests. The focus group held that family law must be reformed to ensure that it is in the best interests of the child and the current court based system is not in the welfare and interests of the child.

The members present at the focus group held that family law disputes should be resolved through mediation. The community consultation submits that compulsory mediation should be introduced in all family cases where relations break down between parties. The members of the focus group held that there should be a much greater emphasis put on alternative dispute resolutions, and that judges must be encouraged to use such alternative methods in resolving disputes rather than simply issuing court orders. It was held by the community consultation that the court's role should only come into play as a final resort when there is conflict between the parties.

It was also held by the members of the community consultation that in family disputes where mediation is required, any mediation agreements between the parties should be legal documents and especially with regards to guardianship and custody rights of unmarried fathers such mediation agreements should be relied upon by the courts. However the focus group did raise concerns over the role of mediators in family law disputes. The group raised concerns over the fact that mediation agreements granting legal rights such as custody or guardianship are very technical documents. Treoir in particular raised concerns over the fact that the role of a mediator is to facilitate discussion between the parties and that mediators are not legal advisors. It was agreed by the focus group that in order for mediation to work effectively and for mediation agreements to be legally viable documents, the agreements should be checked by a solicitor before being signed off by the parties.

NCLC submit that compulsory mediation should be put on a statutory footing for all parties involved in family disputes. The courts should be involved in family disputes as a last resort and greater resources should be put into mediation and alternative dispute resolutions.

Central register for guardianship declarations

NCLC submit that it is essential that a central registry be introduced to protect statutory declarations granting guardianship to unmarried fathers. The members of the focus group were unanimous in their belief that a central registry is essential to ensure that the rights of children of unmarried parents are protected. Whilst the focus group were unanimous in their belief that a central registry for guardianship declaration was needed, issues were raised over whether such a registry should be open to the public to search.

It was held that as birth certificates are public documents and are available to the public, declarations of guardianship should be treated the same and so too should be open to the public. Issues were raised over the privacy of children if the documents were available to the public; in particular issues were raised over whether the media would abuse the registry by invading people's privacy.

However the group in general held that the benefits of making the documents available to the public outweighed any concerns regarding privacy issues. In particular the focus group held that making the registry public would be in the best interests of the child particularly in emergency circumstances where the HSE or the Garda Siochana needed to find out the details of the child's next of kin.

The focus group held that the central registry should be made available to the public or at the very least a provision granting permission to statutory organisations should be included in legislation allowing such organisations access to the register.

NCLC submit that it is in the best interest of the child to have a central registry of guardianship declarations. NCLC also submit that such a registry should be made open to the public as greater transparency in family law is in the best interests of the child.

The rights and responsibilities of members of the extended family

NCLC agree with the Law Reform commission that families have changed greatly in recent years. NCLC submit that the traditional meaning of a family has changed significantly and the law must also change to reflect the transitions in society. In particular NCLC note that grandparents are playing a much greater role in the lives of their grandchildren and in many cases grandparents are the primary carers of children. NCLC submit that in situations where grandparents are the primary carers of children and have their grandchildren living with them, such grandparents should be granted guardianship rights. NCLC submit that the law should be changed to allow a wider category of carers apply for guardianship rights in respect of children. NCLC submit that grandparents, step parents, long term partners of the child's birth parents and foster parents should all be entitled to apply to the courts for guardianship rights in relation to children in their care.

In submitting this opinion NCLC have regard to the opinions of the focus group that also held that greater emphasis should be put on the role grandparents in particular play in children's lives.

The focus group in particular held that children should be kept at all times in the care of their family, in the rare situations where children's parents are unable to look after them and it is in the best interests of the child to be removed from their parents care, the best place for a child to be is in the care of their extended families. The focus group held that foster care should be a last resort and it is in the best interests of a child to ensure they have a link with their family when they are in a very vulnerable and difficult position.

The focus group also held that greater rights should be extended to de facto parents. The group held that where an adult is involved in a child life and in particular is playing the role of de facto parent, the adult concerned should be entitled to apply for guardianship. The focus group held that the law should be changed to reflect the best interests of children. The group stated that the most important aspect is protecting the interests of the child and this involves ensuring that a child can maintain contact with people who the child relies on

and has a relationship with. The focus group also discussed situations where the parents of children have been in relationships with partners, and these relationships have since broken down. The group held that where children have built relations with such adults while they were in the child's life then such adults should be entitled to apply to the courts for access/ custody rights in relation to the child.

The focus group also held that particular attention must be paid to the position of foster parents. The focus group agreed that foster parents play a vital role in the lives of children and that foster parents should be entitled to have their rights and responsibilities upheld by the court. In particular it was held that foster parents should be entitled to apply for a passport for a child and to make decisions regarding medical treatment. However the focus group held that foster parents should be granted temporary guardianship rights only. The focus group held that the guardianship rights of foster parents should only be limited to the time when they are the permanent carers of the children and that the natural parent's rights should be also protected.

NCLC submit that in relation to access and custody rights of extended family members and defacto parents the right to custody and access is a right of the child and should be guarded in statute as the child's right. NCLC submit that in order to properly protect the rights of a child it is necessary to ensure the adequate frameworks are put in place to allow adults who play a role in a child's life to apply to the courts for access and custody. NCLC also submit that family relationships have changed greatly in recent years and that the law should be reformed to reflect the changes in family structures. In particular NCLC hold that the law should reflect the important role grandparents, foster parents and de facto parents play in a child's life. NCLC therefore hold that people who are actively involved in raising children should be entitled to apply to the courts for guardianship and custody rights.

Children applying to the courts to access and contact with adults

The members present at the community consultation felt that in order to ensure family law adequately protects the rights of the child; it is essential that the child's voice is clearly heard and protected. In this regard the focus group held that in certain situations a child should be entitled to apply to the courts to have contact or access with extended family members or certain adults. However the focus group did hold that any changes to the law on this area must protect the interests and rights of the child. In particular concern was raised by the group over ensuring that a child is not placed in the middle of a conflict situation between adults.

In order to ensure such a situation does not take place the group held that an age of maturity should be applied before allowing a child to apply to the courts for access to an adult. The group held that the age of maturity should be placed at 12, the same age of criminal responsibility. The focus group members held that the main issue regarding allowing children to apply to the courts for access is capacity. The court held that even when a child is over 12 it is necessary to ensure that they have the requisite capacity to understand the situation they are in and to make an independent decision.

The focus group also held in order for such a process to be successful, it would be necessary to clearly set out in statute the logistics of such a process. It is therefore necessary to lay out in statute how the process would work, including how the child would apply to the courts, who could apply on the child's behalf, and how the child would enforce their rights and become aware of enforcing such rights.

NCLC submit that children should always be consented regarding any decisions, which affect their lives. NCLC therefore submit that a child should be entitled to apply to the courts for access in relation to adults who have played a role in their lives. NCLC however submits that there is a need to formulate the practical issues regarding children applying to the courts. These practical issues should be clearly set out in statute. NCLC also submit that children applying to the courts must have the requisite capacity and

understanding to make such an important decision and to ensure the child's rights are protected an age of maturity of 12 should be brought into law.

Conclusion

In conclusion Northside Community Law Centre and Northside Citizen Information Service submit that society in Ireland has changed greatly in recent years and in particular family relationships have altered significantly. In order to reflect and protect such changes the current family law system must be reformed. NCLC in conjunction with NCIS submit that any changes in the law must take into account the best interests of the child and must first and foremost protect the rights of the child.

In reforming family law all changes must ensure equality between all parties involved in family relationships. Creating an equal and just family law system must be at the centre of any proposed reforms to family law in Ireland.

NCLC and NCIS firstly submit that in order to ensure greater transparency and clarity in family law, family law should be consolidated and all reforms to family law should be put into one Children's Act as recommended by the Law Reform Commission.

NCLC and NCIS also submit that it is essential that a child's right to know their identity is protected and therefore submit that automatic registration of both parents on birth certificates be introduced into Irish law.

In relation to the rights and responsibilities of unmarried fathers NCLC submits that automatic guardianship rights should be introduced into Irish law.

In agreeing to the introduction of automatic guardianship rights, NCLC had regard to the opinions of the representative present at the community consultation. NCLC also had regard to Article 8 of the European Convention on Human Rights, which protects the rights of de facto families. NCLC also had regard to the recent judgment of McKenchie J in the High Court case of GT v KAO, where the learned High Court Judge expressed the opinion that unmarried fathers did have certain rights in relation to their children. NCLC also submit that in certain situations a parent may apply to the Courts to have the other parent removed as guardian of the child where the safety and

welfare of the child is in question. However it is submitted that the removal of a parent's guardianship rights should only occur in extreme circumstances and the other party must be informed and must be given the opportunity to have their voice heard by a court.

Finally it is submitted that greater rights should be extended to members of the child's extended family. In particular it is submitted that where a child is living with and under the primary care of a grandparent, foster parent, step parent or defacto parent then such adults should be entitled to apply to the courts for guardianship rights in respect of the child. However in relation to foster parents and de-facto parents a provision should be introduced into statute ensuring that such rights are temporary in nature and may be revoked where a natural parent is once more in a position to take over full care of the child and wishes to enforce their rights in relation to the child. It is also submitted in relation to custody and access rights, that such rights must be seen as the right of a child and a child therefore should have a say regarding any custody or access arrangements. In particular it is submitted that children over a certain age and with the requisite capacity should be entitled to apply to the courts themselves to apply for access in relation to adults with whom they have built up a relationship with.

Northside Community Law Centre in collaboration with Northside Citizen Information Centre welcomes an overhaul of the current family law system. NCLC and NCIS ask that the Law Reform Commission take into account this submission when writing their final report on the reforming family law in Ireland and when proposing changes to the current family law system.

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