

Community Care at NCLC

Northside Community Law Centre has expanded into a new area of law and now offers advice in respect of Community Care.

Community Care can be loosely defined as the provision of both social and health care. Community Care can further be defined as services which are or should be provided by the Department for Health and Children and the Health Services Executive, however it may not be restricted to services which are or ought to be provided by the Department for Health and Children and the Health Services Executive, other governmental departments which may have responsibility are the Department of Social and Family Affairs; and the Department of Education and Science.

What are the types of the services provided?

- Health care
- Home help
- Public health nursing care
- Access to respite & day care
- Physiotherapy services
- Occupational therapy
- Family placements
- Provision of sheltered accommodation
- Residential care
- Nursing home care.

Who may fall under the provision of Community Care?

- People with disabilities & their families
- People with mental illness & their families
- People with addictions & their families
- People with mental difficulties
- Families experiencing emotional or social difficulties
- Children considered to be 'at risk'
- Patients in hospitals
- Outpatients
- Elderly people
- Young people
- Single parent families.

Any persons or organisations interested in finding out more should contact Northside Community Law Centre.

Dave Ellis Internship

Dave Ellis, a founder member and driving force behind Community Legal Resource and formerly Community Law Officer with Northside Community Law Centre for over twenty years, died last year after a short illness.

Dave was also an artist in his free time and to celebrate his art and his life and to commemorate the first anniversary of his death the Law Centre together with his wife Sarah Flynn and the



Above: Colin Daly (Solicitor In Charge, NCLC), Dave Ellis' wife, Sarah Flynn & Tom Brennan (Chairperson, NCLC). Below: The Ellis Family.



Ellis family held an exhibition of his art work in the Northside Civic Centre from the 4th to 11th of February.

Some of Dave's pieces were donated by Sarah for sale by bequest to fund a new internship project in Dave's name 'The Dave Ellis Internship'. The internship is a opportunity for law, social science or advocacy graduates to gain experience working for social justice. Aisling Flynn is the fist Ellis Intern at the Law Centre and she is currently working on a research project tacking the experiences of clients we refer to legal aid.



'Jazz Man' by Dave Ellis.

Minister Sean Haughey launches Northside Community Law Centre's Annual Report 2006

Sean Haughey, TD, Minister of State with responsibility for Lifelong Learning, Youth Work and School Transport launched the Annual Report 2006 of the Northside Community Law Centre at the Northside Civic Centre, in January 2008.

Editorial Note: Welcome to the 12th issue of the Northside Community Law Centre Newsletter. The last six months have been a very busy time for the Law Centre. This issue will bring you up to date on all the work of the NCLC together with articles on Health and Welfare at Work Act 2005, the new section set up by NCLC 'Community Care' to name but a few. There is also a full list of our community education courses for the next six months. If there is a particular issue you would like us to raise in the Newsletter please contact the Law Centre.



Tom Brennan (Chairperson, NCLC) with Sean Haughey, TD, Minister of State.

The Report provides a description of the information, advice and representation services provided by the Centre in 2006, details the community education and support activities of the Centre and sets out the law reform work undertaken by the Centre that year. For a copy of the report go to www.nclc.ie under publications.

Health, Safety & Welfare at Work Update

The Health and Safety Authority has recently reaffirmed its commitment to pursue Company Directors and Senior Managers in respect of health and safety offences in the workplace. With 67 fatal and over 7,000 non fatal accidents in the workplace in 2007, The Authority has stressed that improving health and safety in the workplace requires the input of senior personnel namely directors, managers and officers and any person who assumes such a role.

What are the relevant provisions?

Section 80 of the Safety, Health and Welfare at Work Act 2005 introduced the concept of personal liability for Directors and Senior Officers of an organisation for breaches of health and safety legislation. Both the Company and any director, Manager or other officer may be prosecuted. Furthermore there is a presumption which arises pursuant to Section 80(2) that the act of the Company constituting the offence was consented to / authorised by the by the Directors/Managers and this substantially eases the burden of proof on the prosecution making convictions more likely.

There are summary and indictable offences. The latter are more serious offences which are punishable by a fine of up to €3,000,000.00 and or imprisonment up to a period of two years. The largest fine to date was €1,000,000.00 imposed on a Company in 2004 arising out of two serious accidents at its workplace.

Other weapons in the HSA armoury include naming and shaming provisions whereby identities and other information may be published concerning Companies/Persons convicted and fined.

Coming up the line are on the spot fines provided for at Section 79 of the act. These can amount to anything up to €1,000.00 and can be applied to Employers, Employees, Managers, Persons in control of workplaces or others where the Inspector has reasonable grounds to believe that certain prescribed offences under health and safety legislation have been committed. Work on this area is ongoing.

Health & Safety Authority Inspectors have been given wide powers of enforcement including powers to enter premises where there are reasonable grounds to believe that a premises is used as a place of work. There are wide powers of inspection and searches. An Inspector of the Health and Safety Authority is also authorised to issue and serve a direction for an improvement plan requiring the submission within one month of an improvement plan setting out the steps to be taken by the employer to remedy a specified risk. A Prohibition notice might also be issued and served and this requires immediate cessation of the particular activity specified. The Inspector may also apply to the High Court for an order injunction or prohibiting/restricting the use of a premises as a place of work. Some critics of the act believe the obligations placed on employers are too onerous although the same opponents will readily agree that there are substantial benefits to employers from proactive safety and health management including lower insurance premia, lower administration costs, lower levels of absenteeism and improved relations with employees who feel that they are valued as a resource by their employers.

There are also specific duties imposed on employees including amongst others duties to have regard for their own and others safety and welfare, to use protective clothing provided, to report dangerous risks in work practices of which he becomes aware, not to be under the influence of an intoxicant at the place of work to the extent that he is likely to constitute a danger to himself or any other person at the workplace and not to engage in improper conduct or behaviour that is likely to endanger his own safety or that of any other person.

The provisions regarding tests by a medical practitioner in cases of alleged intoxication have not yet been fully developed and remains a work in progress for the time being. There are duties imposed on other persons including Manufacturers, Importers and Suppliers of Equipment, Machinery or article or substances used at work and concerning the use of the materials that they produce or supply including the provision of information on the correct use of the materials to ensure safety and health at work.

There is no doubt that the new provisions are extremely onerous however there is no reason why the vast majority of enterprises should fall short of compliance with proactive and robust health and safety policies. There is evidence that numerous businesses excel at quality standards and adaptation of a similar mindset towards a health and safety culture with preparation of a formal adequate risk assessment with a view to eliminating altogether unnecessary risks and or taking appropriate preventative measures against any unavoidable risk, regular updating of risk assessments, safety

statements and appropriate training and staff consultation and involvement in health and safety matters should go some way towards achieving compliance status. The Authority has recently stated its commitment to working with Employer and Employee organisations with the aim of making workplace safety, health and welfare an integral part of doing business in every workplace. The statistics for 2007 also reveal that the most common causative factors in Fatal Accidents were fall, collapse or breakage of materials (16%) and falls from heights (10%) respectively. In relation to non fatal accidents, the main factors were manual handling/lifting accidents (34%) and Slips/Trips and falls (18%) and indeed both of these latter accident types have been most common every year since 2000.

Other developments in this area include the Law Reform Commission's report in respect of Corporate Killing which was published in October 2005. Referring to a number of disasters including that which took place at the Stardust Disco in Artane on the 14th February 1981, the Commission formed the view that negligent management and organisation within a corporate entity can be substantial factors in the causation of death. It was recommended that Criminal Liability for manslaughter was an appropriate means of dealing with death caused by Corporate Wrongdoing. The draft legislation has not yet been passed into law.

Article by David Mack from T.J. Brabazon & Co., Solicitors.

Substantial Settlement Secured by the Northside Community Law Centre for Ex Employee of Patrick Butterlys & Sons

The Northside Community Law Centre took various cases on behalf of a client Mr Oliver Ryan who had been employed by a well known local employer Patrick Butterly & Sons who previously owned the Stardust Nightclub. Our client was employed for 23 years by the Butterlys and ran the snooker hall in the Silver Swan snooker hall located behind Skelly's Bar in Artane. Mr Ryan was never furnished with a contract of employment. Mr Ryan worked seven days a week from Monday through to Sunday for up to at least 11.5 hours per day, totally an average of approximately 77-80 hours weekly. In the 23 years that Mr Ryan worked for the Butterlys he was never given any bank holidays off nor did he receive any annual leave with the exception of the odd week off during the 1990's. Mr Ryan was paid £200 or €253 gross wages per week which did not alter from the date of employment in 1983/84 until the date of termination in June 2006.

Mr Ryan attended the Law Centre seeking legal advice regarding his employment after he was dismissed in June 2006. The Law Centre instituted proceedings under four different pieces of employment rights legislation seeking redress for various breaches such as the failure to pay Mr Ryan the basic minimum wage under the National Minimum Wage Act 2000 and sought compensation for arrears for wages from the commencement of the Act in 2000 and also commenced proceedings under the Unfair Dismissals Acts 1977-2001. We also issued claims under the Minimum

Notice and Terms of Employment Acts 1973-2001 as Mr Ryan was not paid any money in lieu of notice despite his length of service (23 years) and also a complaint under the Organisation of Working Time Act 1997 for arrears of holiday pay. Proceedings were issued before the Rights Commissioner in respect of the complaint under the National Minimum Wage Act 2000 and another set of proceedings were issued before the Employment Appeals Tribunal regarding Mr Ryan's claims for unfair dismissal, minimum notice and arrears of holiday pay and public holidays.

The case before the Rights Commissioner was heard on the 15th May 2007 and a decision was issued on the 23rd August 2007 upholding Mr Ryan's claim for arrears of wages dating back to 2000 when the Act came into force. The Rights Commissioner awarded Mr. Ryan a total of €60,294.44 plus €1000 expenses. Mr Ryan also had his case part heard before the Employment Appeals Tribunal which was adjourned pending the hearing before the Rights Commissioner to determine his proper wages. At that hearing Mr Ryan gave evidence that he was working in "appalling conditions" being paid €3.30 per hour. He also described how his family either his son or daughter had to cover for him while he took breaks for his dinner and how he worked all bank holidays and rarely took any annual leave as there was no one to cover for him while on leave.

The decision of the Rights Commissioner was appealed by the Butterlys to the Labour Court and was scheduled for hearing on the 10th December last. Mr Ryan was represented by the Law Centre and Aideen Collard BL who had agreed to act pro bono in the case. The case was settled before the Labour Court for a very substantial sum which the Law Centre understands would be particularly large settlement for a case under the National Minimum Wage Act 2000. All other proceedings were also settled resulting in a substantial settlement for Mr Ryan.

At the hearing before the Labour Court the Butterlys had instructed a firm of solicitors who also instructed a Senior Counsel to represent them at the hearing of the case. This case would have been extremely difficult for Mr Ryan to take on himself and represent himself before the various forums given the multiple claims that his case involved, the complex nature of the case and the arrears that were due to him under various statutes in addition to the difficulties in presenting the case himself before two different employment forums particularly given the fact that he would have had to contend with a Senior Counsel presenting the case against him before the Labour Court.

The case highlights for the Law Centre the blatant gap and in the present legal aid scheme which does not provide for any form of representation before Tribunals and the resulting injustice for those who cannot afford to pay a private solicitor. The Law Centre would argue through our experience of representing clients before various employment tribunals that there is no equality of arms in such a scenario when an employee is required to represent themselves against an employer who will more than likely be represented by

a solicitor and at times a barrister or Senior Counsel. Given the increasing complexity of employment claims, the multiple pieces of legislation that claims can be pursued under and forums for taking claims it is an extremely onerous task for anyone to represent themselves. However many employees particularly those most in need of representation for instance those who are on low incomes,

may have language or literacy problems and are most likely to be intimidated by the legal system and by the thought of challenging their employers have no other option or forgo taking a claim in view of the present failure of the legal aid scheme. The Law Centre views the present gap in the legal aid scheme as a significant barrier in preventing those most in need in accessing justice.

NCLC Community Education Programme 2008

Northside Community Law Centre is pleased to offer a schedule of community education courses, featuring several legal courses aimed at all organisations that work within communities, there are several one and two-day courses on various legal topics. All of the courses will take place in Northside Civic Centre. For all application forms contact the Law Centre on 8477804 or email Ros on rpalmer@nclc.ie

INTRODUCTION TO THE IRISH LEGAL SYSTEM

This one day course provides an introduction to the workings of the Irish legal system, including an explanation of what each different court does, information on civil actions and criminal prosecutions, and an explanation of the workings of the various semi-judicial bodies (i.e. the PIAB, EAT, etc). The course also gives an explanation of the various roles played by the various legal professionals (i.e. judge, solicitor, barrister). Because the course will be given by solicitors and barristers who work with the Northside Community Law Centre, there will be an emphasis on common legal issues that arise within the local community and voluntary sector.

Date: Thurs 28th Feb 2008 Fee: €250 per person

MENTAL HEALTH, CAPACITY & WARDSHIPS

This one day course is designed to provide participants with information about mental health legislation, as well as give an overview of legal issues surrounding capacity issues, such as powers of attorney, wardships, and guardianship within the context of people with disabilities and the elderly.

Date: Thurs 6th Mar 2008 Fee: €250 per person

SOCIAL WELFARE LAW

This one day course deals with social welfare law in Ireland giving participants a brief overview of the origins of the social welfare system. Participants will gain a basic understanding of the various social welfare benefits available, and qualifying criteria for each. The course will explain the mechanism of the social welfare appeals system, with an emphasis on advocacy in appeals cases. The course will also delve into social welfare policy issues.

Date: Wed 2nd Apr 2008 Fee: €250 per person

PRACTICAL ADVOCACY SKILLS I

This course is part of a series of three one-day courses on the topic of Advocacy. The courses are designed to fit together; however, each course may be taken separately. This course specifically deals with the beginning stages of advocacy: the principles of advocacy and the role of an advocate. The course will focus on boundaries between

the client and the advocate during these stages of advocacy. For example students who participate in this course will be able to:

- Accurately identify the issues in each case
- Decide what is relevant to each case and what is not
- Collect necessary information
- Determine if there is a complaint to be made & if so to whom it should be made
- Identify possible alternative solutions to the problem

Date: Wed 7th May 2008 Fee: €250 per person*

PRACTICAL ADVOCACY SKILLS II

This course specifically deals with the middle stages of advocacy: taking instructions from a client, arranging meetings for a client, representing a client as an advocate, etc. The course will continue to focus on boundaries between the client and the advocate during these stages of advocacy.

Date: Wed 14th May 2008 Fee: €250 per person*

PRACTICAL ADVOCACY SKILLS III

This course specifically deals with the final stages of advocacy, specifically representation and the closure of files. The course will feature speakers from several complaint agencies, such as the Equality Tribunal, the Office of the Ombudsman, etc.) who will guide participants through making complaints, focusing on their remit, and the complaint process at their particular agency. The course will continue to focus on boundaries between the client & the advocate during these stages of advocacy.

Date: Wed 21st May 2008 Fee: €250 per person*

***PLEASE NOTE: A special rate of €600 applies if you book all three Practical Advocacy courses.**

DISABILITY LAW

This two day course provides a legal outlook on current issues pertaining to people with disabilities. The course aims to give participants a basic understanding of disability law, with an emphasis on recent legislation & case law. This course offers an overview of the implementation of various legal protections for people with disabilities.

Dates: Wed 11th & Thurs 12th June 2008 Fee: €400 per person.