



Law Society - Opening Statement

The Society welcomes the opportunity to contribute to the consideration by the Committee on this Bill.

The Bill comes at an important time for Ireland, having just ratified the Istanbul Convention – that is the Council of Europe Convention on preventing and combating violence against women and domestic violence. Our obligations under that Convention must be matched by clear actions, structural changes as well as necessary resourcing.

It also arises in the eve of the publication of Professor Tom O'Malley's Review of the conduct of investigations and prosecutions of sexual offences. The Society, practitioners and others await the recommendations of that review, which we anticipate will further support the victim in these circumstances, while not compromising the rights of the accused.

My name is Robert Purcell, and I'm joined with my colleague Aine Bhreathnach. Both of us practice in this area and are members of the Society's Human Rights and Equality and Criminal Law Committee, respectively.

Where things currently stand

As of today, the right to legal aid and representation for victims of sexual and gender based violence is ad hoc and piecemeal. This Bill provides an opportunity for the State to develop a comprehensive legal advice and aid service to Victims of sexual violence and GBV in a way that will support them throughout the criminal justice process.

The prosecution and successful conviction of sexual offences are necessary in a society that wants to protect and vindicate the rights of all victims of sexual/gender based violence including women, girls, boys and men. It is in the public interest for victims to be supported through the legal process as the victim is the primary and often only witness of these crimes which by their very nature strike at the core of their dignity. It is also important that victims are aware of their rights to privacy on issues of disclosure of counselling/phone records and other personal information.

The witness or complainant or victim –depending on the circumstances - is key to a successful prosecution, and as such should be afforded comprehensive and continuous representation.

For the avoidance of doubt, it is the DPP that prosecutes cases; the victim is not the plaintiff, nor is treated as such, as may be the case in other court cases.

Currently, victims

- have no right to legal representation before making a complaint to An Garda Síochána.
- have no right to legal representation where the DPP decides not to prosecute
- have limited rights to legal representation in terms of disclosing counselling and medical notes

This Bill represents a lifeline and important public service, to those affected. Deputy O'Callaghan is to be commended for advancing it.

Government Issues

The Government support for this Bill is welcome. Their endorsement of the Istanbul Convention and the Domestic Violence Act in recent years, provides practitioners with hope that their interest in criminal justice issues is genuine and sincere.

They have raised a number of issues which we will now turn to

1. Clarity as to what type of legal advice should be provided.

There are many stages within a criminal complaint and prosecution and the Bill provides an opportunity for victims to make informed decisions throughout the process. A solicitor - qualified and proficient in court procedures and criminal law – is vital in navigating these boundaries.

By way of example:

1. Pre complaint to An Garda Síochána: Process led information of what is involved in a criminal complaint; what is required from the complainant; time frame; privacy and protection in the context of family and community.
2. Investigation Stage; Role of complainant; Decision to Prosecute; what are the considerations; criteria; review.
3. Prosecution Stage: What evidence the State has; statements and information; what the role of a witness is; the legal parameters of cross examination and examination in chief; role of Jury; access to counselling/phone sexual history information; explaining legal principles such as presumption of innocence and reasonable doubt, etc.
4. Decision of Jury /Court
5. Sentencing Stage: Issues around victim impact, principles and norms applied by the Judge, leniency and so forth

This Bill is an important step in supporting victims of sexual violence through the very complex and gruelling process of a criminal justice trial. It is submitted that a Bill such as this, provides very necessary legal and technical support to victims of sexual violence and gender based violence.

Wider reform is needed in this area, undoubtedly; particularly in disclosure of sensitive details predating or unrelated to the prosecution; and the rights of the victim associated with that.

2. How a new scheme for legal aid and representation may sit with the current policy of providing support services.

The work and advocacy of supports services, such as the Rape Crisis Network, Rape Crisis Centre and 1 in 4, as well as the genuine interest taken by the Gardai and other agencies, in the victims of sexual and gender based violence must be commended and is vital.

There will always be a need for comprehensive, timely and appropriately communicated information services.

However, legal aid and representation is distinct and particular to aiding a victim of sexual and gender based violence through the complexity of the criminal justice process. These cases are highly sensitive, legally complex, unique to the parties and with so much at stake –demand a specific and bespoke representational role, that generalised information, however helpful, will not compare to.

In the life cycle of a case, from reporting to sentencing, a range of issues arise that demand a legal and qualified perspective, in order to protect the interests of the victim, and the credibility of the legal process.

3. The structure as to how advice could be managed and delivered.

There are a number of avenues the State could adopt to provide this service. To date the Legal Aid Board manages a number of ad hoc and specialised schemes in areas such as the Garda Station Legal Advice Scheme, and the International Protection Applicant Legal Aid Scheme.

It is likely that the provision of legal advice and aid as proposed under this Bill will require a blending of approaches in other schemes, however models exist and are operational that provide immediate and effective services in other areas that could be adapted for this service.

Most importantly when designing this scheme continuity of service should be of primary concern to ensure that the Victim does not have to repeat her account on a number of occasions to different lawyers and thus increase the risk of re-traumatization.

Where there is political will, there is a way.

4. Delays on providing advice may impact on criminal proceedings

Not so. In fact criminal proceedings are likely to be more secure where the victim has representation and support and has an understanding of the process what is involved in the process.

A well-considered scheme, such as those already in place by the Legal Aid Board, and that safeguard continuous legal representation are likely to speed up, rather than delay proceedings.

Our vision of an appropriate scheme for the victim, is one that runs in tandem with the case; rather than part of the proceedings. It is important to acknowledge that the accused's rights are no way diminished by improving the victims understanding of the process. To be clear also; it is not a case that the victim would be coached, but assisted and aided.

In our submission to the O'Malley Review we identified a number of reforms that hopefully will be reflected in the final report. These reforms are more likely to reduce delays, and include

- Introduction of pre-trial hearings
- Specialist training for the Judiciary, An Garda Siochana and other agencies
- Supports and information to victims throughout the process
- Adequate resourcing of the aid and the Courts
- Case management by the Courts

5. Scope of the Bill – The Government have expressed concern that the scope of the Bill and the challenge of defining the offences

In reply to that issue we say that current Sexual Offences legislation, in particular the 2017 Act, as well as the Domestic Violence Act 2018 provide assistance in identifying classes or categories of victims that would benefit from this Bill.

Broadly legal aid is limited to those who are victims of aggravated sexual assault, rape, incest and child defilement.

A question arises; and one that relates to our values as a society; is whether all people who claim that their personal dignity and privacy and safety has been violated should be afforded legal aid and representation.

What we would like the Committee to do

The Society urges the Committee to

- Appreciate our obligations under EU and International Law; and how this Bill plays an important part in it.
- Fully engage with the O'Malley Report that is due to be published – these reforms impact on your constituents, and your families
- Resourcing and specialisation are vital building blocks. State agencies, including the Garda; alongside the Society, Bar Council and NGO's such as the Rape Crises Network; all have a part to play – a collaborative approach will be doing the State some service.

To conclude, the victim must be put front and centre, and how their interests are best protected, forms part of that obligation.

Aine and myself look forward to engaging with you this issue.

For additional information and queries, please contact

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