

STREET RIGHTS

NEWSLETTER OF THE PILCH HOMELESS PERSONS' LEGAL CLINIC

Edition 32 – October 2007

NEWS AND EVENTS

Equal Service: Business to Business

The Clinic invites you to join us for the official launch of the Homelessness Guidelines a premiere screening of the Business to Business DVD. As you may be aware, the Clinic has been working with the Department of Justice and the Council to Homeless Persons over the last 8 months to develop the Equal Service Guidelines. Through these Guidelines, we hope to encourage businesses and services to provide service that is fair, consistent and respectful of consumers experiencing homelessness.

The launch will be held at 10:15 for a 10:30am start on Wednesday 31 October at Salvation Army's City Temple, 69 Bourke st Melbourne. RSVP is essential by Friday 26 October to nick.dyason@justice.gov.au or 8684 0839. Light refreshments will be provided.

Stankova v Slovakia: Human Rights and Unlawful Evictions

By Sarah Bury, PILCH Volunteer

On 9 October 2007 the European Court of Human Rights handed down its decision in the case of *Stankova v Slovakia*. The Court held that the eviction of a woman from public housing in circumstances where the public authority had not ensured that she had adequate alternative housing constituted a violation of the right to respect for private life and home under the European Convention on Human Rights (article 8).

Facts

The applicant, Milota Stankova, resided in a public housing flat originally leased by her father in 1992. After his death, she applied (along with her young daughter) to the Proprad Municipality to become registered as the permanent tenant of the flat. The Municipality refused to transfer the tenancy, and suggested that she move to her son's one-roomed flat instead. The Municipality sought and obtained an eviction order and placed Ms Stankova on a public housing waiting list. The Municipality eventually evicted her in 1996.

The applicant challenged the Municipality's decision in domestic courts in Slovakia, including the Constitutional Court. The Constitutional Court held that in order for interference in Ms Stankova's family and private life to be permissible, there must be a pressing social need for the interference, and it must be proportionate to the legitimate aim pursued. The Constitutional Court also stated that the Municipality's ownership rights in the flat 'could not be disassociated from its obligation to assist citizens of Proprad in having their basic needs satisfied'. Ultimately it found that given the likely impact of evicting Ms Stankova and her daughter, the interference could not be considered necessary in a democratic society. Notwithstanding this, because the Slovakian Constitutional Court only has declaratory powers, Ms Stankova filed a complaint with the European Court of Human Rights in order to achieve an effective remedy.

Decision at the European Court

At the European Court, the applicant argued that the Municipality had violated article 8(1) of the European Convention, which states that 'everyone has the right to respect for private and family life, the home and correspondence'. Limitations on this right are only permissible if they are lawful and necessary in democratic society.

The European Court upheld the decision of the Slovakian Constitutional Court and found that alternative accommodation should have been provided to the applicant and her daughter, especially as the Municipality was found to have acknowledged the gravity of her situation – the risk of homelessness – through placing her on the public housing waiting list. The European Court further found that there was no compelling reason or social need to evict the applicant immediately in circumstances where there was no alternative accommodation available. According to the Court, this situation produced 'effects that were incompatible with her right to respect for her private and family life and for home, regard also being had to the special protection of children and juveniles', and, as a result, a violation of art 8 of the European Convention.

The Victorian Charter

This decision is relevant to the HPLC and its practice because it concerns a person's access to, and eviction from, public housing. The decision is also significant because it may have implications for the interpretation and application of section 13(a) of the *Victorian Charter of Rights and Responsibilities*, which states that 'a person has the right not to have his/her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'. If a similar factual scenario to that of the Stankova case occurred in Victoria, it may be possible to argue that the proposed or actual eviction from public housing constituted an interference with section 13(a) of the *Charter*.

HPLC GOOD NEWS STORIES

* Names have been changed

Housing: While he was applying for housing of his own, Robert moved in with his Uncle who was living in public housing. During this time his uncle died suddenly. Soon after, Robert received a letter from the Office of Housing (OOH) addressed to his Uncle stating that the OOH was conducting a rent review and required updated details from his Uncle, including his income and details of any other people who have moved into the household and their income. The letter warned that, if updated details were not received, the OOH would cease to apply a rebate to the rent payable on the property, and the rent payable would be charged as 'market rent' calculated at \$296.00 per week - an impossible sum for Robert to afford. Clinic lawyers assisted Robert to negotiate with the OOH, who subsequently assessed the case and agreed to allow Robert to remain at the property and take on the tenancy. Co-incidentally Robert signed up to the property on his 50th birthday – he said it was the best birthday present he could wish for.

Fines/Debt: Clinic lawyers assisted Frank on a range of matters over three years. Among other things, the lawyers appeared before a Magistrate and successfully obtained revocation of numerous Infringements Court Enforcement Orders. As a result of another appearance by HPLC lawyers on behalf of Frank, the Magistrates' Court revoked 12 fines on the condition of a good behaviour undertaking. Frank was also assisted to enter into instalment plans for other debts.

A QUICK GUIDE TO GUARDIANSHIP ORDERS

What is a Guardianship Order?

The Guardianship and Administration Act 1986 ('Act') provides that if you are:

- 18 years of age or over; and
- have a disability; and
- that disability prevents you from making reasonable judgments about all or any matters relating to your circumstances and day to day living (such as living arrangements and medical treatment),

then the Victorian Civil and Administrative Tribunal ('VCAT') can make an Order appointing a guardian to make those decisions you.

Guardianship Orders can be plenary (all powers and duties under the Order), limited (one or more powers under the Order, or temporary (21 days).

Who can apply for a Guardianship Order?

Any person can apply to VCAT for an Order appointing a plenary or limited guardian for a person with a disability.

How soon will the matter be listed?

VCAT must begin hearing the guardianship application within 30 days of receiving the application.

What factors does the Tribunal consider?

VCAT considers the following factors:

- whether a less restrictive approach is possible to meet your needs;
- your wishes;
- the wishes of any nearest relatives or other family members; and
- the desirability of preserving family relationships.

Ultimately, VCAT must decide what is in your best interests.

Who can be made a Guardian?

Any person over 18 years of age if the Tribunal is satisfied that:

- they will act in your best interests;
- there is no conflict of interest with you; and
- they are suitable – i.e. compatible, easily available, 'suitable' when considering your wishes.

In many instances family members are appointed Guardian, but the Office of the Public Advocate can also be appointed.

Can the Guardian seek advice?

A Guardian can seek advice from the VCAT about matter relating to the scope of the Order or the exercise of any power they have under the Order.

How can I revoke an existing Order?

You can apply to have your Guardianship Order revoked. To succeed, you will need to show that you no longer have a disability or that the disability no longer impedes your ability to make informed/reasonable decisions about your day-to-day living and care. Medical evidence from your treating physician or an independent assessment by a physician demonstrating that your disability does not impede your ability to make decisions about your affairs will assist your application to have the Order revoked. Your lawyer can help you to gather this evidence.

If you still require a guardian but you think your current guardian is not acting in your best interests, you can apply to have the Order amended or varied by VCAT to appoint a different guardian. Guardianship Orders can also be reassessed. The reassessment can be conducted on VCAT's own initiative or on application by any person. VCAT has the power to amend, vary, continue, replace, or revoke the Order following such a reassessment.

Who can I ask for assistance?

If you need general advice about Guardianship and Administration Orders or you want to challenge an existing or proposed Order you can contact us at the PILCH Homeless Persons' Legal Clinic. Please see the panel for HPLC locations and times.

The following organizations may also be able to assist you:

Mental Health Legal Centre
Ph. 9629 4422

Victoria Legal Aid
Ph. 9269 0120

Villamanta Legal Service
Ph. 1800 014 111

Note: When someone says they are on a Guardianship Order they may mean an Administration Order or vice versa, and sometimes people can be placed on both.

Next month: A Quick Guide to *Administration Orders*

THE CLINIC PROVIDES FREE LEGAL ADVICE AT THESE LOCATIONS AND TIMES:

The Big Issue

148 Lonsdale Street
Melbourne 3000
Mon: 10:00am - 11:00am

Melbourne Citymission

214 Nicholson Street
Footscray 3011
Mon: 10:30am - 1:00pm
*Footscray train station
Tram 82 (Droop St)*

Ozanam House

179 Flemington Rd
North Melbourne 3051
Tues: 10:00am - 12:00pm
*Flemington Bridge train station
Trams 55, 59, 68 (Flemington Rd)*

Urban Seed (Credo Café)

174 Collins St, Melb 3000
Tues: 12:00pm - 1:00pm

Flagstaff Crisis Accommodation

9 Roden St,
West Melbourne 3003
Tues: 1:00pm - 2:30pm
*North Melbourne train station
Tram 57 (Victoria St)*

Salvation Army Life Centre

69 Bourke Street
Melbourne 3000
Tues: 12:30pm - 2:00pm

The Lazarus Centre

203 Flinders Lane
Melbourne 3000
By appointment - call 9639 8510

St Peter's Eastern Hill

15 Gisborne Street
East Melbourne 3002
Wed: 7:30am - 9:00am
*Parliament train station
Trams 24, 42, 109 (Victoria Pde)*

Hanover Southbank

52 Haig St, Southbank 3205
Wed: 1:15pm - 3:00pm
*Spencer Street train station
Tram 112 (Clarendon St)*

HomeGround Housing

1A/68 Oxford Street
Collingwood 3066
Thurs: 12:00pm - 2:00pm
*Collingwood train station
Tram 86 (Smith St)*

VACRO

116 Hardware Street
Melbourne 3000
Thurs: 1.00 - 3.00pm
*Melbourne central station
Tram 19, 57 and 59 (Elizabeth St)*

Koonung Mental Health Clinic

Operating fortnightly from 31 Aug 07
Friday 1pm - 3pm
Level 1, 43 Carrington Rd
Box Hill 3128
Ph: (03) 9843 5800

PILCH

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Melbourne VIC 3000
1800 606 313
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