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THE DAWNING OF A NEW ERA IN FAMILY LAW

One could say that the signing into law of the Civil Partnership Act, 2010 marks the end of an era in Ireland where only married couples of the opposite sex were afforded rights and duties under our legislation. The signing into law of the Civil Partnership Act 2010 marks a milestone in family law for this country expanding rights and duties to couples of the same sex and also offering a redress scheme to those persons who are in a co-habiting arrangement.

Family Law Solicitors all over the country will be very familiar with the client who has been living with a partner for a number of years, they may or may not have children and they consult their solicitor because their partner has left them or has died. The solicitor up until now has had to tell them that they have no rights by reason of the fact that they are unmarried. Recently I encountered a situation where a lady who had been living with her partner for upwards of 15 years had separated from him due to domestic abuse. The house that they had lived in together was in his name only. I had to explain to her that notwithstanding that she had contributed to the house and had lived in it with her partner as if they were man and wife she was not entitled to a share of the house. The law governing this area has now changed fundamentally with the coming in to law of the Civil Partnership Act.

After a couple (same sex or off the opposite sex) meet certain qualifying criteria they will be able to avail of redress from the courts in the event of separation or death. The qualifying criteria include being over the age of 18 years, they must have lived together for three years or more in an intimate and committed relationship or two years or more if there are children. It is open to either party in the relationship to apply to court for orders such as maintenance, property orders, succession rights and reliefs under the Domestic Violence Acts. Moreover couples who meet the qualifying criteria will be treated as married couples for tax purposes.

Significantly, the Act also recognises the rights of co-habitants to regularise their affairs through a Co-Habitant Agreement. Thus, if for example, a couple decide they wish to live together but they do not wish for whatever reason that the act should apply to them then they can set this in writing provided that always both parties obtain independent legal advice.

In relation to same sex couples, a same sex couple can now register themselves as a partnership (not marriage) by opting into a public register. For years homosexuals have campaigned for recognition of their right to cement their

union in law and whilst the law does not go as far as giving them the right to get married, the rights and obligations conferred under the Civil Partnership Act goes along way towards this goal.

The Civil Partnership Act and cases such as the Lydia Foy case in regard to gender re-assignment mark the Irish Governments willingness to bring the law into the 21st Century. Obviously there are significant portions of Family Law that are yet to be reformed such as the rights of unmarried fathers that have yet to be addressed and one can only hope that this area will be reviewed by our legislature in the near future.

Martina Murphy
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