

Rights of Cohabitants clarified in recent case

In the recent Court of Appeal decision in *M.W v D.W* the Court of Appeal clarified that in order for a claimant to prove a claim under the Cohabitants legislation (The Civil Partnership and Certain Rights and Duties of Cohabitants Act, 2010) he/she must be able to demonstrate that the two year period (in circumstances where the couple had a child/children together) or five year period (in circumstances where they had no children together) was an unbroken period of time i.e. not for a number of periods amounting to two/five years.

At this juncture, it might be useful to make a number of points for anybody that is seeking advice about making a claim under this legislation-

- a. A claim must be made within two years of the ending of the relationship.
- b. In order to apply one must be able to demonstrate that he/she was in an intimate and committed relationship so as to qualify as a 'qualified cohabitant'.
- c. In order to claim financial relief i.e. by way of maintenance (ongoing maintenance or lump sum, pension or property adjustment order) the claimant must be able to prove that he/she was financially dependent and that this financial dependency resulted as a result of the ending of the relationship. The ending of the relationship may be the death of the other party. It would appear to be the case that if a claimant has an income and is financially independent that a Court is unlikely to grant relief.
- d. If the claim is being made as the result of the death of the other partner the application must be lodged in court no later than six months after the grant of probate/administration has issued in respect of the other partner. It is also important to know that the executor/administrator of the deceased's estate has no obligation to advise the potential claimant of his or her rights in this regard.
- e. If it is the case that a maintenance/pension adjustment order was previously made then there is no time limit for reviewing these.

If you require any further information in relation to making a claim under the Cohabitants legislation please do not hesitate to contact Brendan Dillon on 01 296 0666.