



**IRISH TRAVELLER MOVEMENT  
INDEPENDENT LAW CENTRE**



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## **Submission to the Consultation Process on New Human Rights and Equality Body**

### ***Overview***

This document is written in response to the call for submissions to the Working Group by the Minister for Justice, Equality and Defence.

### ***Irish Traveller Movement independent law centre***

The Irish Traveller Movement is an independent law centre under the terms of the Solicitors Acts 1954-2002 (Independent Law Centres) Regulations 2006, SI 103/2006. The Law Centre was established in June 2009 and its aim is to advance the rights of Travellers through strategic litigation, legal education and policy work. The Law Centre is attached to the Irish Traveller Movement, which is a non-governmental organisation and membership organisation seeking full equality for Travellers established in 1990.

The Law Centre represented Mary Stokes in her complaint to the Equality Tribunal against Christian Brothers' High School Clonmel in November 2010. In her complaint Ms Stokes alleged that the part of the school's admissions policy that gave priority to the sons of past pupils indirectly discriminated against her son as a member of the Traveller community under the Equal Status Act 2000-2008. The Equality Tribunal found in favour of Mary Stokes in December 2010. That decision was appealed by the School to the Circuit Court where it was overturned in July 2010. The Circuit Court's decision was

appealed by both parties to the High Court and the Equality Authority intervened as *amicus curiae* in September of this year. We await the judgment of the High Court. This intervention by the Equality Authority informs much of this submission.

### ***a. What do people want the new body to do?***

The Irish Traveller Movement Law Centre wants the new body to be active in the area of litigation. In particular we would like to see the new body:

1. intervening as *amicus curiae* in cases of strategic importance taken by other lawyers and
2. represent its own clients in cases of importance to human rights and equality generally.

#### **1. *Amicus Curiae* interventions**

The Equality Authority intervened as *amicus curiae* in the case of Christian Brothers' High School v Stokes (High Court Record No. 2011 15/CAT) in which the Law Centre represented Mary Stokes. The intervention was made pursuant to an Order of the High Court made on the 7<sup>th</sup> of September, 2011. It is a testament to the high quality legal work carried out by the Equality Authority's litigation department that the court recognized the body and made the order allowing the body to intervene almost as a matter of course.

As *amicus curiae* the Equality Authority introduced relevant jurisprudence and interpretative principles to assist the Court's determination of the substantive matters before it in respect of two key areas. First, the proper interpretation of the prohibition on indirect discrimination contained in section 3(1)(c) of the Equal Status Act, 2000 (as amended) and: second, the remedies available under the Equal Status Act, 2000 (as amended). The *amicus curiae* ensured that its submissions were as brief as possible consistent with its role and duty to the Court and it ensured that it did not duplicate the arguments of the parties unnecessarily or to entrench upon matters of factual dispute.

The High Court in this case was ruling for the first time on the proper interpretation of “indirect discrimination” under section 3(1)(c) of the Equal Status Acts. It almost goes without saying that the contribution of the Equality Authority was immeasurable given its expertise and experience in this *niche* area, which is of such great importance to the people of this state.

The *amicus* demystifies the law and assists the court in its interpretation of the law in a neutral manner. The importance of this to the judiciary cannot be underestimated. In its role as *amicus* the new body could also assist in redressing the imbalance that may arise between an impecunious plaintiff represented by Law Centres operating on a shoe string budget on the one side and a state body often represented by the largest profit making firms in the country on the other side. This goes to the important issue of equality of arms.

***The intervention of the new body in these types of cases will offer Irish Courts access to expertise on the cutting edge of equality and human rights law.***

## 2. Legal Representation

As an independent law centre, the Irish Traveller Movement offers legal representation to Traveller clients in cases of strategic importance to Travellers in the areas of education, equality, accommodation, ethnicity and human rights. Our Law Centre, like other Law Centres, is funded from year to year and such funding is entirely dependent on philanthropic donations. It is essential that there exists a well-funded body with sufficient longevity to ensure that this important litigation work may be carried out.

Even with the continued existence of Law Centres as an expert body the new body must be litigating cases and is be familiar with the legal infrastructure in order to hold itself out as relevant and current.

***This body must be on the coalface; representing clients and litigating the equality legislation before the courts in order to truly be an expert body.***

***b. What features and functions does it need to do these things?***

***c. How should it be structured and what working methods should it use to achieve the above?***

1. A separate litigation department with a realistic budget that will allow it to do its work.
2. A designated litigation unit staffed by solicitors and legal officers.
3. More solicitors (there are currently only 5 employees holding practicing certificates between the two bodies)
4. Answer equality and human rights queries by phone and email and give expert advice to the public.
5. Offer representation to members of the public with cases of strategic importance.
6. Be staffed by legal officers whose work is overseen by qualified solicitors.

***Conclusion***

Strategic litigation is one of the most effective tools in shaping an equal society. In the last three years we have seen this efficacy in practice with case such as *Stokes* (Travellers, equality in access to education), *Zappone* (gay marriage), *McCann* (imprisonment for debt). It is imperative that we do not lose this momentum and that we continue to have a free and equal society where legislation can be tested and challenged through a properly funded body staffed with expert legal practitioners.