

**THE SUPREME COURT**

**IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION  
ACT 1857 AS AMENDED BY SECTION 51 OF THE COURTS  
(SUPPLEMENTAL PROVISIONS) ACT 1961**

*Denham J.*

*Hardiman J.*

*Geoghegan J.*

*Fennelly J.*

*Macken J.*

**BETWEEN/**

**THE EQUALITY AUTHORITY**

**Plaintiff**

**- and -**

**PORTMARNOCK GOLF CLUB, DANIEL LYNCH, COLIN HARNETT,  
T. M. HEALY, JOSEPH LEYDEN, JOSEPH McALEECE, W. P. TWAMLEY  
AND R. C. CUDDY**

**Defendants**

**And Also**

**IN THE MATTER**

**BETWEEN/**

**ROBERT C. CUDDY AND DAVID KEANE**

**Plaintiffs**

**- and -**

**THE EQUALITY AUTHORITY, IRELAND AND THE  
ATTORNEY GENERAL**

**Defendants**

**Judgment delivered the 3<sup>rd</sup> day of November 2009 by Mr Justice Fennelly**

1. Portmarnock Golf Club is a national institution; it is the best known golf club in the country and is renowned internationally. Its membership is restricted to men. The central question on these appeals is whether the principal purpose of the Club is the playing of golf or whether, as the club contends, its principal purpose is to cater only for the needs of men. The answer to this question determines whether Portmarnock is entitled to remain registered as a club.

2. The appeals are taken by the Equality Authority from the High Court judgment and orders of O'Higgins J in two separate proceedings. Firstly, the Equality Authority had applied successfully to the District Court for determinations pursuant to the Equal Status Act, 2000 that Portmarnock is a discriminating club which would have the effect of depriving it of its registration as a club enjoying the right to supply intoxicating liquor to its members. Sale of intoxicating liquor in a club is, of course, not permitted. The learned District Judge held in favour of the Equality Authority but stated a case to the High Court.

3. In parallel, Portmarnock issued proceedings in the High Court seeking declarations that it is not a discriminating club and, alternatively, that the relevant legislation is unconstitutional. Portmarnock also argued that the double construction rule would require the relevant legislation be interpreted so as not to infringe its members' constitutional right to freedom of association. Alternatively, Portmarnock argued that the legislation was unconstitutional.

4. O'Higgins J heard the case stated and the plenary proceedings together. No evidence was called in the High Court. The parties agreed to accept the facts as found in the District Court. O'Higgins J decided in favour of Portmarnock. He held that it is not a discriminating club. He did not resort to the double construction rule. Nonetheless, he went on to consider the constitutional challenge. He found that, if the constitutionality of the Act required to be considered, he would dismiss Portmarnock's claim of unconstitutionality.

5. The Equality Authority has appealed against the judgment of O’Higgins J on the interpretation of the section. Portmarnock has brought an appeal against the dismissal of its constitutional claim. This does not now arise, in view of the decision of the majority of the Court.

6. The Court has decided to deal, firstly, with the appeal of the Equality Authority against the decision of O’Higgins J with regard to the correct interpretation of the relevant sections. That is the sole subject of this judgment. I merely wish to emphasise from the outset that I deal only with the questions of statutory interpretation which arise.

### **The facts**

7. The relevant facts are taken from the judgment of the District Court.

8. Portmarnock was founded in 1894. It had 626 members and 625 associate members at the date of the District Court hearing. The Club is affiliated to the Golfing Union of Ireland.

9. Rule 3 of the Rules provides:

*“The Club shall consist of Members and Associate Members, as defined below, who shall be gentlemen properly elected and who shall conform with the Rules of Amateur Status, for the time being, prescribed by the Royal and Ancient Golf Club of St Andrews.”*

Rule 14.4 refers to the fact that the “Club [is] primarily devoted to golf.”

10. Women are permitted to play golf at Portmarnock either with or without a member on identical terms to those applicable to male non-members. Women may play the course at Portmarnock on seven days of the week upon payment of green fees at the times permitted for such play. At least three competitions are played at Portmarnock Golf Club in each year in which women take part as guests.

11. The club provides changing facilities and locker rooms specifically for women as part of the clubhouse complex. Women have access to the bar and restaurant and all other clubhouse facilities (except the male locker rooms) at Portmarnock on an equal basis with men. Presumably, however, women, not being members, and like male non-members, may not purchase intoxicating liquor, though this was not adverted to at the hearing. A ladies' scorecard is available to women playing the course and the club itself facilitates the playing of golf by women under the rules of the Irish Ladies Golfing Union, the body which regulates golf played by women in Ireland.

12. The club enjoys tax exemption under Section 235 of the Taxes Consolidation Act 1997. That section refers to an approved body of persons who may be granted tax exemptions. An approved body is defined to mean "any body of persons established for and existing for the *sole purpose* of promoting athletic or amateur games or sport..." (emphasis added).

13. Portmarnock has, for many years, been the holder of a Certificate of Registration under the Registration of Clubs Acts, 1904-1999.

14. No other facts have been proved. It has been stated in the written submissions of Portmarnock that it is one of only two among 400 golf clubs in Ireland which restricts its membership to men, though there is no evidence of this fact.

### **The legislation**

15. The Equal Status Act, 2000, according to its long title, is "*an act to promote equality and prohibit types of discrimination, harassment and related behaviour in connection with the provision of services, property and other opportunities to which the public generally or a section of the public has access...*" By that Act, equality policy moved from the area of employment law and entered a number of other areas of economic activity, in particular, the disposal of goods and the provision of services to the public (see section 5). These provisions apply to clubs only to the extent that they supply goods or services to the public. There is even a specific provision to make

it clear that section 5 does not apply where a club supplies services to its own members (see section 5(2)(b)).

**16.** This case is concerned only with the quite distinct and self-contained provisions of sections 8 and 9, although it is necessary, in considering them, to have regard to definitions regarding discrimination which are used generally in the Act.

**17.** These are contained in section 3. Section 3(2) lists what, “as between two persons” are held to be “discriminatory grounds.” Depending on how one counts them, there are nine or more, including gender, marital status, family status, sexual orientation, religious belief, age, race or colour or membership of the Traveller Community. Section 3(1) provides that “*discrimination shall be taken to occur,*” where a person is treated less favourably by reference to membership of any of the categories set out in section 3(2). This simplified account of section 3 sufficiently serves the purpose of this judgment. It is a given that Portmarnock’s membership rule discriminates on the ground of gender. The Club admits only “gentlemen.”

**18.** The provisions designed to deprive certain clubs of their continued registration under the Registration of Clubs Acts are contained in sections 8 and 9. Section 8 defines a “club” as “*a club which has applied for or holds a certificate of registration.*” Section 8(2) (a) provides that “*a club shall be considered to be a discriminating club if...it has any rule, policy or practice which discriminates against a member or an applicant for membership.....*” Portmarnock’s rule restricting membership to gentlemen is caught by that provision, which is reinforced by section 8(2)(b)(i) by virtue of which it is evidence that a club is a discriminating club if it commits the act of “*refusing to admit a person to membership...*”

**19.** Portmarnock, therefore, is a “*discriminating club*” as defined by section 8. However, section 9 provides that a club “*shall not be considered to be a discriminating club,*” if it satisfies one or other of the provisions of section 9(1)(a) and “*refuses membership to other persons.*”

**20.** The entire appeal turns on whether Portmarnock satisfies the first of those statutory requirements.

**21.** The object of these provisions and the consequences of being a discriminating club appear from section 8. The section lays down the procedure. Any person, including the Equality Authority, may apply, pursuant to sub-section 3, to the District Court for “*a determination as to whether a club is a discriminating club.*” There are provisions as to service set out in sub-section 5 so as to enable interested persons “*a reasonable opportunity to make representations.*” The following provisions govern the decision of the District Court:

*(6) After considering the representations, the Court shall—*

*(a) make an order in writing setting out its determination as to whether or not the club is a discriminating club, and*

*(b) cause a copy of the order to be transmitted to the Minister.*

*(7) (a) Where—*

*(i) the Court makes an order under subsection (6)(a) setting out its determination that a club is a discriminating club, and*

*(ii) the order is the first such order in relation to the club,*

*the Court shall include in the order a provision suspending the certificate of registration of the club for a period not exceeding 30 days.*

*(b) Where the Court makes any subsequent such order, section 10 shall apply and have effect in relation to it.*

**22.** Section 8 (7) provides that where a court makes a determination that a club is a discriminating club and that order is the first such order in relation to the club then the court shall include in the order a provision suspending the certificate of registration of the club for a period not exceeding thirty days.

23. Section 10 provides, *inter alia*, that “*while an order under section 8 determining that a club is a discriminating club remains in effect, no certificate of registration under those Acts shall be granted to or renewed for the benefit of the club...*”
24. The net effect of these provisions is to enable a registered club, found to be a discriminating club to suffer, firstly, the temporary and later potentially the permanent loss of its certificate of registration.
25. Section 9 of the Equal Status Act provides, in relevant part:
- 1) *For the purposes of section 8, a club shall not be considered to be a discriminating club by reason only that—*
- (a) *if its principal purpose is to cater only for the needs of—*
- (i) *persons of a particular gender, marital status, family status, sexual orientation, religious belief, age, disability, nationality or ethnic or national origin,*
- (ii) *persons who are members of the Traveller community, or*
- (iii) *persons who have no religious belief,*
- it refuses membership to other persons...*
26. Portmarnock has maintained at all times that, although it comes within the definition of a discriminating club pursuant to section 8, it is “*not to be considered to be*” one, since “*its principal purpose is to cater only for the needs of*” men.
27. That is the case in a nutshell. The principal purpose of Portmarnock Golf Club is not, the Club says, the playing of golf, but rather to “cater only for the needs of” men.

## The District Court Proceedings

28. The Equality Authority applied to the District Court on 10<sup>th</sup> June 2003 for a determination that Portmarnock Golf Club is a discriminating club and that its certificate of registration be suspended for a period not exceeding thirty days. The defendants were Portmarnock and its principal officers.

29. District Judge Mary Collins heard the application on 28<sup>th</sup> November 2003 and 19<sup>th</sup> January 2004. Evidence was given, *inter alia*, by the Secretary Manager and the Captain of the Club. The learned judge made findings of fact, as summarised above. Certain correspondence was agreed.

30. Judge Collins delivered judgment on the 20<sup>th</sup> of February 2004. She made a determination that Portmarnock Golf Club is a discriminating club within the meaning of Section 8 of the Equal Status Act 2000. On the 18<sup>th</sup> of May 2004 she made an order under Section 8 (7) (a) of the Equal Status Act 2000 suspending the Certificate of Registration of Portmarnock Golf Club for a period of seven days. Judge Collins concluded her judgment:

*“The Equal Status Act is an Act to promote equality and prohibit discrimination. I propose attributing to Section 9 the ordinary meaning in the Oxford English Dictionary. The relevant words of Section 9(1) are “principal purpose” and “to cater only for the needs of” that which is in “principal” [sic] is first in importance. The “purpose” is the object towards which one strives. To “cater for” is to provide what is needed or required and “need” is that which is wanted or required. I think the words are clear.*

*The principal purpose of the club is to play golf. The ordinary words of the statute do not ascribe to men’s golf a special need. A literal approach is appropriate in this case and therefore other canons of construction are not needed. I propose to rely on the presumption of constitutionality.*

*Accordingly the Defendants is a discriminating club for the purposes of the Equal Status Act 2000 and does not come within the exemptions provided therein.”*

**31.** The reference by the learned judge to ascribing “*to men’s golf a special need*” seems to arise from an argument attributed in the course of her judgment to the Captain of the Club that the principal purpose of Portmarnock was the “*playing of men’s golf.*” It is not clear whether that argument was advanced by counsel for Portmarnock in the District Court. It is clear, however, that it was not the stance adopted by Portmarnock either in the High Court or in this Court.

**32.** The learned District Judge has stated a case to the High Court pursuant to section 2 of the Summary Jurisdiction Act, 1857 as amended by section 51 of the Courts (Supplemental Provisions) Act, 1961, seeking its opinion as to whether she was correct in law to make the above-mentioned determination and order.

### **The plenary proceedings**

**33.** On 11<sup>th</sup> June 2003, the above-named plaintiffs instituted plenary proceedings on behalf of Portmarnock against the Equality Authority, Ireland and the Attorney General in which they claimed:

(1) *A Declaration that Portmarnock Golf Club is not a discriminating club within the meaning of Section 8 of The Equal Status Act 2000.*

(2) *A Declaration that by reason of the provisions of Section 9 (1) (a) of The Equal Status Act 2000 that the club shall not be considered to be a discriminating club for the purposes of Section 8 of the said Act.*

(3) *Further and in the alternative if the provisions of Section 9 (1) (a) of the 2000 Act do not, on their proper construction, apply to the club and/or the club is considered to be a discriminating club for the purposes of Section 8 of the Act, the provisions of Sections 8, 9 and 10 in so much as they purport to*

*apply to single gender sporting clubs are invalid having regard to the provisions of the Constitution of Ireland.*

*(4) Alternatively a Declaration that Sections 8, 9 and 10 of The Equal Status Act 2000 in so much as they apply or purport to apply the prohibition contained in Section 8 to single gender sporting clubs, are incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms and in particular Article 11 thereof.*

**34.** The first two declarations relate to the subject-matter of the District Court decision. That court is designated by statute as the proper forum for the determination of whether any particular registered club is a discriminating club. The Act assigned that jurisdiction to the District Court, which was the only court having jurisdiction to make the determination in question and any consequential order. The question of whether the learned District Judge was correct in law was appropriately stated by her to the High Court. No evidence was heard in the High Court, where the hearing proceeded on the basis of the facts as found in the District Court. In reality, the entire matter proceeded within the framework of the case stated.

**35.** The third and fourth questions could arise only in the event that the Equality Authority succeeds in its appeal to this Court. In view of the decision of the majority of the Court, they do not now arise.

### **The High Court judgment**

**36.** The High Court judgment and, it seems to me, the entire decision in the case, turns on the question of “principal purpose.”

**37.** O’Higgins J noted the submission of the Equality Authority that the principal purpose of the Club was to play golf and not to cater only for the needs of persons of one gender. He said that the Club had argued that its principal purpose is “*to cater only for the needs of a particular gender, that is male golfers.*” Apart altogether from the obvious difficulty of defining “*male golfers,*” rather than men or women, as a gender, I believe the learned judge was mistaken in attributing this argument to

Portmarnock at all. Mr Donal O’Donnell, Senior Counsel, on behalf of the Club has been quite consistent, subject to one modification to which I will refer, in the way he has put the matter. He submitted both to the High Court and to this Court that the learned District Judge was wrong to determine that the principal purpose of the Club was the playing of golf. He argued that the principal purpose of the Club was to cater only for the needs of men. I have referred to a modification. At one point in oral argument, Mr O’Donnell submitted that “the purpose of the Club is the playing of golf by its members.”

**38.** Subject to the interpolation of the word “golfers,” O’Higgins J accepted Portmarnock’s interpretation of section 9, saying: that its “*principal purpose is to cater only for the needs of male golfers.*” He held that this came within the exceptions to section 8 provided by section 9.

**39.** In reaching this conclusion, the learned judge was influenced by an argument, which has been a constant theme of Portmarnock’s case, namely that he was given no plausible example of any existing club which might, in theory, fall within the exemption provided by section 9. He rejected any notion of a purposive interpretation or any resort to the remedial character of the legislation or the objective of achieving equality. He did not accept that the interpretation of section 9 advanced by Portmarnock would be so broad as to defeat the purpose of the Act. In his opinion the interpretation of section 9 of the Act advanced by Portmarnock “*recognises the fact that there is nothing inherently undesirable with [sic] persons seeking – in a social context – the society of persons of the same gender or the same nationality or the same religion.*” Thus, he considered:

*“In a tolerant and free and increasingly diverse society, it is not surprising that the type of exemptions envisaged in s. 9 were enacted – as a result of which – in terms of registered clubs – it is permissible to have – exclusively – a bridge club for Bulgarians, a chess club for Catholics, a wine club for women and a golf club for gentlemen.”*

**40.** In this way, the learned judge equated the purpose of a club with its membership rather than with its activity, which becomes a merely descriptive term.

## The appeal

41. The issues on the appeal, insofar as the interpretation of the Act is concerned, are effectively the same as those which were considered so extensively by O’Higgins J.

42. O’Higgins J found it unnecessary to consider the double-construction rule, since he thought the interpretation of the section to be clear. I propose to consider the interpretation of the section without resort to the principle of double construction.

43. While the Equal Status Act is aimed generally at the elimination of discrimination, *inter alia*, on grounds of gender, the provisions of sections 8 and 9 are completely self-contained. They address uniquely the private and internal rules of clubs having a certificate of registration under the Registration of Clubs Acts. They do not restrict or limit the right of groups of persons to form associations limited to persons having particular characteristics. They do, however, where they apply, provide for the significant sanction of the termination of the right to supply intoxicating liquor to their members.

44. Section 8 of the Act commences by limiting its scope only to those clubs which hold a certificate of Registration of Clubs Acts, 1904 to 1999. Thus, the legislation applies only to a members’ club having at least one hundred and fifty members and occupying its own premises of which it is “*the tenant and proprietor and occupier.*” In the same way as normal licensed premises, those premises must be shown to be suitable for the supply and consumption of intoxicating liquor. (see section 1 of the Registration of Clubs (Ireland) Act, 1904).

45. It is not in dispute that Portmarnock is a “discriminating club” within the meaning of section 8, because it has a “*rule, policy or practice which discriminates against a member or an applicant for membership.*” In this case, rule 3 limits membership to “gentlemen properly elected.” Part of the argument for Portmarnock is that section 8 (as distinct from section 9) contemplates discriminatory admission rules in the case of clubs not limited to a single gender, for example a quota limiting the

number of members of one gender (or other discriminating category). This is relevant to a point concerning the effect of section 9 in depriving section 8 of meaning and I will refer to it later.

**46.** In any event, the clear effect of section 8 is to make it possible for a discriminating club to be deprived of its certificate of registration, initially for a limited period and potentially permanently so long as it remains a discriminating club. This is indisputably a significant sanction.

**47.** However, the entire focus of the debate has, at all stages, centred not on section 8 but on section 9(1)(a), whose provisions are set out above. A registered club is not to be considered a discriminating club for the purposes of section 8—citing only words relevant to this case— *by reason only that...if its principal purpose is to cater only for the needs of...persons of a particular gender.....it refuses membership to other persons.....*”

**48.** The provision centres around four terms: *principal purpose; caters; only and needs.*

**49.** A registered club will clearly have a purpose or purposes. There may be a principal purpose with subsidiary purposes; there may be no principal purpose. Counsel for the Club consistently argued for a distinction between the purpose or purposes of a club and its activity. On this argument, golf is merely the activity carried on in Portmarnock, but is not its purpose. As I will explain, I am unpersuaded by the notion that the principal purpose of Portmarnock Golf Club is other than the playing of golf. It is unreal and implausible to suggest that the principal purpose of a Golf Club is not the playing of golf.

**50.** There are a number of compelling indications, some of them statutory, of clubs being considered as having a purpose, a primary purpose or a principal purpose.

**51.** Bearing in mind that sections 8 and 9 apply only to registered clubs, it is material that the Registration of Clubs Acts have always contemplated clubs as having a purpose or purposes. Section 2 of the Registration of Clubs Act, 1904 requires an

application for a certificate of registration to state “*the name and object of the club.*” Section 4(k) as amended by section 42 of the Intoxicating Liquor Act, 1988 provides that “*no person under the age of eighteen shall be admitted a member of a club, unless the club is one primarily devoted to some athletic purpose*” (emphasis added).

52. Section 9 contemplates a club which has as “*its principal purpose to cater only for the needs of.....persons of a particular gender...*”

53. Thus, the first and obvious question is: what is the “principal purpose” of Portmarnock Golf Club? That is a question of fact. The relevant finding of fact made by the learned District Judge was: “*The principal purpose of the club is to play golf.*” With great respect to the sophistication of the arguments advanced on behalf of the Club, which criticised the District Court for its “*simple, if not simplistic interpretation,*” it is difficult to find fault with this finding. It is a simple determination of an issue of fact, which was within the jurisdiction of the learned District Judge. It is in any event quite obviously correct.

54. If the Oireachtas in 1988, by amending section 4(k) of the Act of 1904, envisaged a club being “*primarily devoted to some athletic purpose,*” why could a club, not be considered in an Act of 2000, to have an athletic purpose, specifically playing the game of golf, as its principal purpose? The answer, in any event, provided by Rule 14.4 of the Club Rules, which, in compliance with section 4(k) provides:

*“The Club, being primarily devoted to golf, being an athletic purpose, may admit persons under the age of eighteen years.....”*

By its own Rules, therefore, the Club states that golf is a purpose, in its case an athletic purpose, and that it is a purpose to which the Club is “primarily devoted.”

55. This is so obvious a conclusion that one hesitates to labour the point. Portmarnock has quite properly and lawfully adopted a rule permitting it to admit members under the age of eighteen years. But a registered club may do that only if it is primarily devoted to an athletic purpose.

**56.** The District Court also made a finding that Portmarnock is included in a list of sporting bodies maintained by the Revenue Commissioners for the purposes of section 235 of the Taxes Consolidation Act 1997. That section enables “approved bodies” to benefit from exemption from income tax in respect of so much of their income as is shown to the satisfaction of the Revenue Commissioners to be income which has been or will be applied to the “the sole purpose of promoting athletic or amateur games or sports.” In this way, golf becomes not only its “principal” but its “sole” purpose.

**57.** These are two examples of statutory provisions whose benefits have been properly and lawfully invoked by the Club, one of which requires that it be primarily *devoted to an athletic purpose* and the other that it be a “*body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports.*”

**58.** It is, moreover, a matter of simple common sense that the principal purpose of Portmarnock Golf Club is the playing of golf. When the farseeing founding members of Portmarnock came together in 1894 and led to the establishment of what is now the first and greatest of Irish golf clubs, what was their purpose if it was not the establishment of a golf club? Clearly, the answer is “none.” Any other answer would be preposterous.

**59.** In short, the finding of the District Court that the principal purpose of Portmarnock is to play golf is unimpeachable.

**60.** I turn then to address the respectively of the judgment of the learned High Court judge and the arguments of the Club.

**61.** O’Higgins J reached the conclusion that Portmarnock came within the exemption provided by section 9(1)(a) because: its “*principal purpose is to cater only for the needs of male golfers.*” As I have already pointed out, this was not—I would add for good and logical reasons—the argument advanced by Portmarnock either in the High Court or in this Court. With great respect to his careful and considered

judgment, it is clear that O'Higgins J fell into clear error when he treated "male golfers" as a gender. Section 9(1)(a) contemplates a club whose "*principal purpose is to cater only for the needs of*" (*inter alia*) "*persons of a particular gender.*" "Male golfers" are not a gender, though they belong to the male gender.

**62.** It is material to recall, however, that the learned District Judge noted the differently expressed contention of the Captain of Portmarnock Golf Club that "*the principal purpose of Portmarnock Golf Club was the playing of men's golf.*" Presumably, he implied that there are distinct games of men's golf and women's golf. That may be so. I would not wish to debate a matter on which there has been no evidence and on which I have little knowledge and no skill. There was, however, evidence before the District Court to the effect that Portmarnock in fact provides fully for the playing of golf by women. Women play golf at Portmarnock either with or without a (male) member on identical terms to those applicable to male non-members. The Club provides them with changing and locker room facilities and ladies' score cards. Generally, according to the evidence, the Club facilities are available to women as they are to men. The one thing that cannot be done, of course, is to sell intoxicating liquor to non-members.

**63.** It is thus appropriate to consider the matter on the hypothesis that the Club's principal purpose, as argued by its Captain, is the playing of "men's golf." That approach has the merit of relating the purpose (playing men's golf) to "needs" related to that purpose. The "needs" referred to in the section must necessarily serve the principal purpose contemplated by the section. A club has members who have formed it for a purpose and who have needs flowing from that purpose. This is implicit in the trial judge's reference to the "*needs of male golfers.*" Their "needs" relate to the playing of golf and the Club caters for them.

**64.** I appreciate that counsel for the Club has subjected the submissions of the Equality Authority on this point to extensive criticism. That submission was to the effect that, in order for a club to enjoy the exemption provided by section 9, there would have to be a link or nexus between the principal purpose of the Club and the category (here gender) to which membership was limited. It has been suggested that the Attorney General has adopted a different interpretation. In fact, the Attorney

General has made no submissions to this Court on the issue of interpretation, though O’Higgins J records him as having taken a different stand on that issue in the High Court. That position appears to have been that “*a gentlemen’s club or ladies club – and not only those confined to those whose objects had a logical connection with male or female could be exempt from the provisions of section 8 of the Act.*” For reasons which I will explain, I prefer the approach there recorded.

**65.** The entire expression which has to be interpreted is: “*its principal purpose is to cater only for the needs of*” persons in which ever particular category is relevant. In that context, the word “cater” presents the least difficulty. It means to provide for or look after. In context, the word “needs” must of necessity relate to the principal purpose of the club. As to the meaning of the words, “needs,” I find the analysis of Geoghegan J persuasive, while I reach a different conclusion on the issue of “principal purpose.” I agree that “needs” may include subjective, including social or cultural, requirements.

**66.** The difficulty is the word “only.” Portmarnock’s principal purpose is the playing of golf; it caters for the needs of its members, who are, as a matter of fact, male golfers. It also caters, however, extensively, and (except in the matter of membership), on a generally equal basis, for the needs of female golfers. Therefore, Portmarnock does not cater “only” for the golfing needs of its members.

**67.** It follows that Portmarnock does not come within section 9(1)(a) of the Act. It remains a “discriminating club.”

**68.** The Club and the High Court Judge drew attention especially to the undoubted fact that single-gender clubs are recognised by section 9. It is not unfair to say that counsel for the Club very effectively turned the tables on the Equality Authority by insistently demanding that it produce examples of clubs which would satisfy the statutory test if Portmarnock did not.

**69.** In my view, the section provides a clear and simple answer to this question. For reasons I have already given, it is clear—in my view it is clear beyond argument—that the principal purpose of Portmarnock Club is the playing of golf.

**70.** Section 9 permits a registered club to restrict membership, as Portmarnock does, to male persons provided it meets the requirements of the section. Those requirements are comprised in the three words “cater,” “needs” and “only.” If a club has, as its principal purpose, to cater for the needs only of men, then it may restrict membership to men.

**71.** Thus, if it had been the fact that the principal purpose of Portmarnock was to cater for the needs *only* of male golfers, it would not be a discriminating club within the statutory definition. But, on the facts as found by the District Court, which are binding for the purposes of the case stated, it is patently not the case that Portmarnock caters only for male golfers. Thus, it fails to meet the statutory test laid down in section 9(1)(a). It is true that, while the Club could limit membership to males, it could not restrict the facility of green fees to male non-members, without infringing section 5 of the Act.

**72.** The Equality Authority submitted that the interpretation by of section 9 adopted by O’Higgins J. is such as to empty section 8 entirely of its content and effect. The breadth of the exemption available on the interpretation adopted by the High Court and by the majority of this Court was such that it would apply to virtually any club whose membership is limited to one of the categories of persons set out in section 9(1). This argument proceeds from the position adopted on behalf of the Club, namely that its principal purpose was to cater for the needs of its members. The playing of golf was not its purpose, but merely its activity. Hence, the words “cater” and “needs” are used merely as links between the purpose and the membership. The principal purpose and the members coincide. On this interpretation, the argument goes, there is little if any scope for the application of section 8. Mr O’Donnell, as mentioned above, in an attempted response to this point, submitted that section 8 has a different scope from section 9. He argued that it contemplates discriminatory admission rules in the case of clubs whose membership is not limited to a single gender or category He gave the example of a quota limiting the number of members of one gender (or other discriminating category). While that submission is technically correct, it lacks reality. At no other point in the proceedings was it suggested that any such clubs have existed. As a matter of common sense, they must be extremely rare.

This point does not, therefore, diminish the force of the argument that the interpretation of section 9 propounded by the Club would empty section 8 of almost all meaning.

**73.** I would like finally to refer briefly to two criticisms of the Equality Authority which figured to some extent in the submissions of counsel for the Club both in written and oral submissions.

**74.** Counsel drew the attention of the Court to certain correspondence between the Minister and the Equality Authority. On 23<sup>rd</sup> June 2000, the Minister wrote to the Equality Authority requesting that it to draw up a Code of Practice pursuant to section 56 of the Employment Equality Act as applied to the Act of 2000 by section 39 and the Schedule to the latter statute. Such a code could relate to issues of discrimination pursuant to the latter Act. The Club complains that no such Code has been produced and states that this constitutes a breach of statutory duty by the Equality Authority. I confess to being at a complete loss to understand how that fact has any bearing on the present appeal. The point does not appear to have been raised in the District Court. It is not mentioned in the Case Stated. It is not mentioned in the judgment of the High Court. Even if it had been, it is utterly irrelevant to the question before the Court, namely whether Portmarnock is a discriminating club. The operation of section 8 is not dependant on the existence of a code of practice.

**75.** Another issue raised by the Club and canvassed at the hearing of the appeal was the position of the Masonic Order under the legislation. I find it objectionable that the interests of a body which is not before the Court and not represented should be debated at all. In any event, whether that or any other club or body is treated correctly under the legislation is, to my mind, also utterly irrelevant to the legal issue before the Court.

**76.** In my view, the meaning of the section is clear. It is certainly clear in its application to this case. The principal purpose of Portmarnock Golf Club is the playing of golf. To serve that purpose it caters for the needs of its members, who are, according to the rules of the Club, gentlemen. However, it is equally clear that its purpose is not to cater *only* for the needs of its gentlemen members. It also caters, so

far as the playing of golf is concerned, equally for women, who have equal access to the club, except in the matter of membership. Thus, it does not satisfy the requirements

**77.** I would, therefore, allow the appeal and answer the case stated by saying that the District Court was correct to make the declaration which it did.

**78.** Like Denham J, I do not believe that there is any ambiguity in the section. For the reasons she has given in her judgment I am satisfied that the principle of double construction does not apply. It is also clear that the learned High Court judge was mistaken in entering on the issue of the constitutionality of the legislation, by reason of the authorities which he cited in his judgment, notably *McDaid v Sheehy* [1991] 1 I.R. 1.