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NEWS REPORT

Country:	Ireland
Title:	Carroll v Gruaig Barbers ¹ DEC-S2015-005 Carroll v Short Cuts DEC-S2015-007
Date:	20 July 2015
Expert:	Frances Meenan
<u>Context</u>	
Issue at stake:	Gender discrimination in access to access to services
Ground of discrimination:	Sex
Source:	Decision of the Equality Tribunal no. DEC-S2015-005 Decision of the Equality Tribunal no. DEC-S2015-007
Field:	Goods and services
Applicable law:	Directive 2004/113/EC; Equal Status Acts 2000-2012

Content

Case law: The claimant in Carroll v Gruaig Barbers maintained that she was discriminated against on the ground of gender when she was refused a haircut because she is a women. The claimant asked the female barber for an 'undercut' (i.e. to shave the side of her hair). The female stated that she could not perform the required action as the client was female. The claimant stated that she previously had her hair cut at that particular barbers shop. The claimant also stated that the female barber said that she could not do it as she would be on camera and would get into trouble. The claimant stated that the owner of the barbers had said that they are not qualified to cut women's hair and that they could not cut it for insurance reasons.

The respondent party, the owner of the barbers, maintained that as it is a barbers shop it provides a service to male customers, and is therefore insured specifically for cutting the hair of male customers. The respondent party backed this by stating that the lease with the shopping centre is as a barbers shop. The respondent relied on Section 5 of the Equal Status Act 2000, which provides that

- (1) A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public.
- (2) subsection (1) does not apply in respect of—.....
- (c) differences in the treatment of persons on the gender ground in relation to services of an aesthetic, cosmetic or similar nature, where the services require physical contact between the service provider and the recipient...

¹ *Gruaig* is the Irish for 'hair'.

The respondent argued that the barbers shop is providing services of 'an aesthetic, cosmetic or similar nature' and that therefore the service can be provided exclusively to the male gender, i.e. boy's or men's haircuts. The equality officer considered that the claimant had a prima facie case of discrimination. The respondent said that to their knowledge no woman had her hair cut on the premises and that the claimant has never had her hair cut in the respondent barber shop. All the staff are trained as barbers and are not trained to cut women's hair. The respondent also said that under the terms of the lease of the shop which is in a shopping centre that they are not permitted to have a ladies' hair salon as there is a well-known women's hairdressers in another premises in the shopping centre and so the barber's shop is not permitted to provide the same services. It refers any women seeking services to the women's hairdressers.

The second case (*Carroll v Short Cuts*), brought by the same claimant, had similar facts as the respondent barber had a similar lease in a shopping centre which contained a women's hairdresser. The respondent stated that it would be profitable for him to provide women's hairdressing services, but if he did so he would be in breach of his lease and that he could lose his shop. The respondent advised the hearing that under the terms of his lease, the premises is not '[t]o be used for any other purpose other than the business of cutting men's hair with no ancillary services offered'.

Decision of the Equality Tribunal: The Equality Officer of the Tribunal decided in both cases that the claimants were not discriminated against. The respondents were entitled to rely on the exemption in Section 5(2) of the Equal Status Act.

Key points of analysis: There was no reference to Directive 2004/113/EC in the two decisions. Article 4.4 of that Directive provides that instruction to direct or indirect discrimination on the ground of sex shall be considered discrimination within the meaning of the Directive. In addition in the decisions, there is no reference to Section 13(1) of the Equal Status Act of 2000 which provides that '[A] person shall not procure or attempt to procure another person to engage in prohibited conduct', nor to Section 6 of the Act that in summary provides that a person shall not discriminate in the 'disposing of any estate or interest in premises...'. In the view of the expert, it should be questioned why this Section was not raised in the second case in relation to the granting of the lease for a barber shop that only provides barber services to males. Arguably the reliance on Section 5(2) in respect of privacy is tenuous.

Internet link sources:

(all accessed 20 July 2015)

<http://www.workplacerelations.ie/en/Cases/2015/April/DEC-S2015-005.html>

<http://www.workplacerelations.ie/en/Cases/2015/May/DEC-S2015-007.html>

Equal Status Acts 2000-2012 – consolidated and updated text as prepared by the Law Reform Commission available at:

http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/HTML/EN_ACT_2000_0008.HTM