The Tenth Countess Markievicz Memorial Lecture

Women, Work and Equality

Senator Mary Robinson, S.C.

First Lecture 1976
Industrial Relations and Creativity - The Irish Case
Professor Michael P. Fogarty

Second Lecture 1977
The Individual, The Trade Union and The State — some Contemporary Issues
Professor George F. Thomason

Third Lecture 1978
Problems in the Field of Dispute Resolution
Professor Charles McCarthy

Fourth Lecture 1979
Irish Labour Law: Sword or Shield?
Dr. Paul O'Higgins

Fifth Lecture 1980
Conflict and Consensus in Industrial Relations in Some OECD Countries
R. O. Clarke

Sixth Lecture 1981
Unemployment: Crisis for Industrial Relations
Dr. Richard Hyman

Seventh Lecture 1982
Reform of Industrial Relations in a Changing Society
Dr. Eric Batstone

Eighth Lecture 1983
The Changing Nature of Industrial Relations in an Economy Experiencing Deep Recession
Hugh Mac Neill

Ninth Lecture 1984
Strategies of State Mobilization in Irish Industrial Relations
Michel Peillon, D.Soc.

Tenth Lecture 1985 Women, Work and Equality
Senator Mary Robinson, S.C.

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The Countess Markievicz Memorial Lecture has been established by the Irish Association for Industrial Relations with the support of the Department of Labour. Countess Markievicz was appointed Minister for Labour in the Executive of the first Dáil Eireann in 1919. The object of the Memorial Lecture is to provide an occasion for a substantive contribution to discussion in the Industrial Relations area by a distinguished practitioner or academic.

The Tenth Lecture was given by Senator Mary Robinson, S.C, at the Royal College of Surgeons, Dublin, on November 4, 1985. Senator Robinson is a practising Senior Counsel and a noted constitutional lawyer. She has been active for many years in the cause of women's rights. In Seanad Eireann debates she has made numerous contributions on issues of public importance.

Published by the Irish Association
for Industrial Relations
c/o College of Industrial Relations
Sandford Road, Dublin 6.

TENTH COUNTESS MARKIEVICZ MEMORIAL LECTURE

"Women, Work and Equality"

SENATOR MARY ROBINSON, S.C.

AT THE INAUGURAL LECTURE of this distinguished series delivered in November 1976,[1] Professor Michael Fogarty began by remarking that he kept reminding his British friends that Countess Markievicz was the first woman to be elected to the parliament of Britain as well as Ireland, and of course, the first woman Cabinet Minister. He than commented that his British friends had the disconcerting habit of asking which Irish woman Cabinet Minister came next? In 1976 that was definitely an embarrassing question.

Since then, three women have served in Cabinet positions — including the present Minister for Education — but there has not yet been a female successor to the first Minister for Labour, whose memory we honour this evening. Indeed, I am aware that many people would not regard the Department of Labour as being an obvious post for a woman politician. Health, Social Welfare, or Education, yes — but Labour, no.[2] It would still be regarded as essentially a male preserve. Is it purely a coincidence, too, that the nine previous Memorial Lectures were delivered by men, who chose different aspects of industrial relations but did not select the subject of equality at work? Or is equality, in fact, ranked at about tenth on the equivalent of the Richter scale for industrial relations? I leave you with that introductory thought, which can be set against the background of the latest census figures available, which show that females make up almost half of the population of the country, but only about 28.4% of the total workforce.

I turn now to the subject matter of my talk this evening: women, work and equality. Lawyers have an inherent tendency to focus on legislation, and to concentrate their attention on an analysis of the case law interpreting such legislation. That, after all, is our familiar environment. I fully intend to spend some time there this evening, but I would also like to attempt a broader approach to this subject. I propose, therefore, to begin by outlining the existing equality legislation which has created a detailed legal framework. I then want to stand back a little from the small print, and to examine some constitutional issues which arise from the respective roles of the Labour Court, the Employment Equality Agency, and the High Court. Thirdly, I want to consider another dimension, which is the

differing perceptions of law itself, and the attitudes towards those institutions held by different parties — by women workers, by the trade union movement, by the employers' side and also by lawyers and judges. Finally, I will try to draw the threads together and indicate where changes might be made both in the legislation and in attitudes towards it which could mark a significant step forward.

It will be evident by now that I do not propose to deal directly with the broader cultural influences and attitudes which have resulted in the bulk of women workers being confined largely to areas of low pay, to suffering from lack of real opportunity, and to continuing — despite some exceptions — to have an inferior status to men. Suffice it to say that, after almost a decade of equal pay legislation, women's weekly earnings in manufacturing industry are on average only about 60% of male earnings; women are still largely grouped in low status and often part-time jobs which are characterised as "female only" work, and women still carry the major burden in relation to child care and home-centered responsibilities.

Were Countess Markievicz here in my place, I have no doubt she would concentrate with passionate intensity on these issues. I, for my part, will try to bear in mind these basic realities in turning to the particular areas I have selected for examination.

Outline of Legislative Provisions

In outlining the legislative provisions it is appropriate to begin with the relevant portions of the Constitution. That basic framework has a subtle conditioning effect on our society generally, including legislators, lawyers, judges and law enforcers. Although Article 40.1 begins with the guarantee that "All citizens shall, as human persons, be held equal before the law" that guarantee is immediately qualified by a proviso that the State may "in its enactments have due regard to differences of capacity, physical and moral, and of social function." Furthermore, judicial interpretation of the guarantee of equality has further restricted its scope by emphasising that equality is confined to an attribute of human personality, and does not extend to external factors such as pursuing a trade or profession. Indeed, the case law interpreting the constitutional guarantee of equality before the law has led one judge, Mr. Justice Barrington, to observe: "The concept of equality before the law is probably the most difficult and elusive concept contained in the Constitution. "[3]

This may be contrasted with the unequivocal approach of the Court of Justice of the European Communities in the *Third Defrenne Case:*

> "The Court has repeatedly stated that respect for fundamental personal human rights is one of the general principles of Community law, the observance of which it has a duty to ensure.

There can be no doubt that the elimination of discrimination based on sex forms part of those fundamental rights."[4]

Apart from the restrictive interpretation of the guarantee of equality before the law, the Constitution also contains another provision which gives clear support to role conditioning between the sexes. Article 41.2 recognises the support which woman gives to the State "by her life within the home" and requires the State to "endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home." In a recent High Court decision[5] these two sub-sections were considered by Mr. Justice Barron to provide justification for the provision in the Social Welfare code for an allowance and/or benefit for a deserted wife caring for young children, but no comparable allowance or beneit for a deserted husband in similar circumstances. Those constitutional provisions were derived from Catholic social thinking in the late 1930s, but until comparatively recently they were still regarded as reflecting a broad ethos or consensus in our society.

It is possible to envisage a different constitutional framework — guaranteeing equal rights as between the sexes and eliminating all forms of discrimination in the workplace and elsewhere, but such provisions would not have reflected the cultural values actually held in 1937 or even perhaps today. We are not a country with a long established commitment to the principle of sexual equality, and therefore any laws enacted in this field are likely to be *promoting* social change rather than *reflecting* strongly held existing values.

EEC Membership

Ireland's membership of the European Communities provided a significant impetus for the achievement of equality at work. It was by no means the only influence, in that the Commission on the Status of Women had already brought out an Interim Report on Equal Pay[6] and the Irish Congress of Trade Unions had established an Equal Pay Committee in the mid-sixties to campaign actively on the subject. Nonetheless, membership of the EEC has compelled Ireland to comply with European norms, and at a European pace, in the achievement of equality at work. This was evident in December 1975 when the Anti-Discrimination (Pay) (Amendment) Bill was tabled proposing to postpone the coming into operation of the provisions of the 1974 Act — due to come into general effect on 31 December 1975 — in certain vulnerable sectors such as the clothing and footwear industry. However, to postpone the implementation of equal pay in any sector would have required a derogation from the Equal Pay Directive which Member States were obliged to have implemented by February 1976 at the latest. The EEC Commission

refused to allow a derogation, not least because it was aware that the judgment of the European Court was pending in the *Second Defrenne*[7] case in which the Court held that Article 119 had direct effect in the domestic law of Member States, so that employees could rely on it directly in a court action. Therefore, if the Irish Government had ignored the refusal of the Commission to grant a derogation, and had persisted with the Bill seeking to postpone the principle of equal pay in certain sectors, women workers in those sectors could have brought actions against their employers in the Irish courts claiming an entitlement to equal pay relying on Article 119. The right might have been only theoretical, in that it pre-supposes on the part of women workers both an awareness of their legal rights and the willingness and capacity to go to court to assert those rights. Nonetheless, the example illustrates the significance of the legal framework, which at this stage is both a European and an Irish legal framework.

The 1974 and 1977 Acts

I propose to consider the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977 together, in that they form one code to be construed together, and they implement Ireland's obligations under the first and second equality directives. The 1974 Act prohibits discrimination in remuneration based on sex, and — within its terms — provides an effective means whereby a person can claim a contractual entitlement to equal pay. The approach, which is also the approach reflected in Article 119 and the equal pay directive, is to require a claimant — usually a woman — to establish comparability under the Act with a suitable man. The woman must satisfy four requirements: (1) that both she and the man with whom she is comparing herself are employed; (2) that they both work in the same place, meaning city, town or locality; (3) that they are both employed by the same employer, or by an associated employer in certain circumstances, and (4) that they are employed on like work. Each of these criteria can give rise, and indeed has given rise, to difficult questions of interpretation, which are determined by the Labour Court, and possibly the Supreme Court, on an appeal on a point of law.

The problem with this 1974 Act — which as I have said is effective and comprehensive in its terms — is that it fails to address the real basis of inequality at work: the job segregation which results in the majority of women workers being grouped in "female only" jobs which are excluded from the scope of this legislation. In essence, the equal pay legislation benefited only the white collar and higher skilled woman worker who was in a position to draw comparison with a suitable man, and hence to widen the gap between herself and her less fortunate sisters.

The legalistic and technical nature of this requirement of comparability with a man was emphasised in two recent decisions of the Labour Court.[8] These upheld a recommendation of the equality officer denying a claim for equal pay because the applicant woman, who was receiving lower pay, was assessed as performing work of higher value than the man with whom she had sought comparison. This issue is now on appeal to the High Court,[9] but it does serve to illustrate the limitations on the scope of the legislation.

The Employment Equality Act 1977 prohibits other types of discrimination arising out of the employment relationship, whether based on a person's sex or marital status. The Act covers both what has been described as direct discrimination, and indirect discrimination, and it protects an employee from being victimised for having pursued a claim under that Act or the 1974 Act.

The 1977 Act also established the Employment Equality Agency, with wide statutory functions and powers, and provided the remedy of reinstatement for a person dismissed for pursuing a claim under either the 1974 or 1977 Acts. This reflected an interesting change of legal opinion between 1974 and 1977. When the 1974 Act was being debated the prevailing legal view was that there could not be reinstatement of an employee for a wrongful dismissal. However, this view had altered by 1977, and the Unfair Dismissals Act passed earlier in the same year as the Employment Equality Act had provided for the remedy of reinstatement for unfair dismissal. Interestingly, the body which would deal with claims for reinstatement following unfair dismissal was the Employment Appeal Tribunal, whereas it is the Labour Court which has jurisdiction to hear claims of dismissal of an employee who opts to pursue a claim either under the 1974 or 1977 Acts.

It will be clear from this very brief outline that the 1974 and 1977 Acts created a detailed framework for securing the legal rights and entitlements of individual workers. Equality was not a matter of negotiation in the arena of industrial relations, but had been converted into an entitlement to a legal right. These Acts also established machinery for the enforcement of those rights which in the case of the 1974 Act involved a complaint in the first instance to an equality officer, and a possible appeal to the Labour Court by either the employee or employer from the recommendation of the equality officer. Under the 1977 Act the dispute is first referred to the Labour Court, which may decide to seek settlement of it through an industrial relations officer of the Court or refer it to an equality officer for investigation and recommendation, after which there can be an appeal to the Labour Court from such recommendation.

Other Equality Legislation

Apart from the two Acts to implement the first and second equality directives, the Oireachtas has also passed the Maternity (Protection of Employees) Act 1981, and passed but not implemented the Social Welfare (No. 2) Act 1985. Both Acts again create legal entitlements which can be enforced. Under the 1981 Act, women are entitled to a period of maternity leave of at least 14 weeks, provided notice is given to the employer at least four weeks before the expected confinement, supported by a medical certificate. The employee is guaranteed a right to return to work, and strict compliance with the requirements of the Act are assured by the possibility of appeal to the Employment Appeals Tribunal.

The Social Welfare (No. 2) Act 1985, which was passed on the 16th July 1985, has not yet been brought into operation.[10] This Act comes within the general subject matter for this evening because it concerns the removal of discrimination in unemployment benefit, unemployment assistance and disability payments. The background to this Bill crystalises in the most telling manner my opening comments about priorities in industrial relations and perceptions of law. The legal position is quite staggering. Since 22nd December 1984 married women have had a legal entitlement to be paid the same amount in unemployment assistance, unemployment benefit and disability benefit as the standard rate for other categories, namely, married and single men and single women. Married women have also had the legal entitlement to be paid for the same period of duration, namely, for the full period of 390 days rather than the shorter period of 312 days. Putting it another way, the State has in effect deprived thousands of married women of approximately £5 per week in the level of unemployment benefit to which they were legally entitled, and has deprived an unknown number of married women of a full duration of payment of that benefit which has resulted in a loss to the individual married woman of several hundred pounds. Futhermore, an unknown number of married women have been refused access to unemployment assistance to which they are legally entitled, and have been deprived of access to a social employment scheme which is based on the existing illegal provisions for unemployment assistance which effectively exclude all married women. Whether these women have an enforceable claim before the Irish courts is a matter which is now before the European Court of Justice and is therefore sub judice.[11]

Institutional Issues

I propose, now, to move from an outline of the legislation on equality to a consideration of some institutional issues arising from that legislation. As is clear from the brief outline of the legislation, it is concerned not only with statutory legal rights, but with what the

European Court of Justice has characterised as fundamental human rights. Therefore, we must be concerned about how any claims to such rights are processed and adjudicated upon. Another factor which emerges from an analysis of the legislation is the range of highly sophisticated legal concepts and problems of interpretation contained in the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977. The first and second directives require in similar terms that any persons who consider themselves wronged by failure to apply the principle of equal pay or of equal treatment should be able to "pursue their claims by judicial process, possibly after recourse to other competent authorities."

The method of adjudication established under the 1974 and 1977 Acts lays priority on the informality and accessibility of the process. The function of the equality officer in investigating a dispute referred by a party under the 1974 Act or by the Labour Court under the 1977 Act allows for an effective examination of the factual circumstances surrounding the particular claim. However, the onus of proof still rests with the employee making the claim. Just as the onus of proof has been shifted in the case of the dismissal of an employee, whether under the Unfair Dismissals Act 1977 or under the relevant provisions of the 1974 and 1977 Acts themselves, so it would appear appropriate that where *a prima facie* case had been made, the onus should shift to the employer to justify any difference in pay or other conditions of employment.

Under the 1974 and 1977 Acts the Labour Court has been vested with an entirely new type of jurisdiction, the adjudication on statutory legal rights which have been identified as fundamental human rights. Prior to that the jurisdiction of the Labour Court was exclusively concerned with conciliation and arbitration in the industrial relations field. The composition of the Labour Court reflects this primary jurisdiction, in that the members are representative of both sides of industry, but are not required to have any legal qualification.

The Court can and does seek legal advice on problems which may arise in the course of a hearing, but nonetheless it is appropriate to question whether this is adequate to satisfy the requirement in the Directives of a "judicial process."

I turn now to the role of the Employment Equality Agency under the 1974 and 1977 Acts. The Agency is a unique statutory body, which has been given very important functions and powers under the Acts, but which is consistently under-funded so that it cannot properly discharge its statutory functions. [(12)] It was established for three main purposes: to work towards the elimination of discrimination in employment, to promote equality of opportunity in employment and to review the working of the 1974 and 1977 Acts. To carry out these

general functions the Agency has been given a number of specific powers. For example, the Agency has a discretion to provide assistance to any party to a dispute before the equality officer or the Labour Court who applies to the Agency and that assistance "shall be in such form as the Agency at its discretion thinks fit". However, unlike its counterpart in Britain, the Equal Opportunities Commission, the Agency has neither the statutory authority nor the budget to retain legal representation as part of that assistance. It would be interesting to see the results of a comparative analysis of the effectiveness of the two sister organisations in assisting individual claimants. My bet would be that the Equal Opportunities Commission would be able to demonstrate that its effectiveness in discharging its role of assisting individual claimants depended largely on its capacity to retain legal representation on their behalf.

The other functions and powers of the Agency under the Acts — to refer certain disputes to the equality officer or Labour Court, to conduct investigations, to obtain information and summon witnesses, to issue non-discrimination notices and if necessary to seek injunctions in the High Court — all presume that the Agency itself has available to it adequate legal advice and expertise.

Both the 1974 and 1977 Acts expressly provide for an appeal on a point of law to the High Court. A number of problems have already surfaced in relation to this procedure, and these may be summarised as follows: there is no time limit in the Acts for lodging an appeal on a point of law; if an appeal is brought there may be a delay of many months before the matter is listed for hearing in the High Court, and finally, the cost of pursuing an appeal to the High Court may be prohibitive. It is somewhat contradictory that the earlier part of the procedure for adjudication of rights is designed to be accessible and cheap — but no provision is made to ensure that a party will in fact be able to avail of the right of appeal on a point of law to the High Court. Even where an employee is supported by a trade union, that trade union is understandably wary of incurring High Court costs in the event of the appeal being unsuccessful.

Apart from the express appeal on a point of law under both Acts, there is also power in the Labour Court to stay the hearing of any case before it under either Act and refer a question of interpretation to the European Court of Justice under Article 177. The counterpart to the Labour Court in Britain, the Employment Appeal Tribunal, has availed of this facility in appropriate cases,[3] but the Labour Court has not yet done so, and until recently appeared to doubt whether it had the power to make a reference for a preliminary ruling. One reason for encouraging the Labour Court to make a reference in an appropriate case is that issues do arise before it which require

interpretation of particular concepts which also arise under the relevant EEC directive, and therefore should be interpreted in accordance with a European norm or standard to ensure uniform application throughout the European Community. An example of an instance where it would have been appropriate for the Labour Court to have made a reference to the Court of Justice was in relation to the cases concerning lower pay for work of higher value. Clearly, there would some delay involved in making a reference to the European Court of Justice, but probably no more than the normal timescale for an appeal on a point of law to the High Court. Also, it is worth noting that it is possible to apply to the European Court of Justice for legal aid in order to make written submissions and be represented before that Court at the oral hearing on any such reference.[4]

Perceptions of the Law

Given that we are concerned here not only with statutory legal rights, but — in the language of the European Court of Justice — with fundamental human rights, the perceptions and attitudes in this area appear to be in a very unhealthy state. Any assessment of something as intangible as perceptions and attitudes is bound to be subjective and even speculative. Furthermore, I am a lawyer and not a sociologist or a psychologist. Nonetheless, I regard this whole area as so important — indeed so crucial to the attainment of equality — that I have felt it necessary to attempt to identify some of the differences in perceptions and attitudes which have stultified the potential for progress.

Let me begin with the perceptions of women workers themselves. If a group of women claim equal pay at this stage it is likely that they will do so on the basis of a job evaluation: that their work although different is equal in value to that of male employees who are paid more. The women's first concern will probably be to gain the support of their union. If the union is already involved in a pay claim on behalf of the male employees that support may not be unequivocal. It is not difficult to envisage areas of potential conflict as between workers, and it is a reasonable assumption that the priorities of male employees would be likely to prevail, at least in the short term.

Another possible source of support for this group of women is the Employment Equality Agency, which can assist by advising on the way the claim should be pursued and even by helping with the drafting of the written submission. How is such help, when provided by the Agency, perceived on the shop floor, both by the union side and the employer side? Is every encouragement given to the Agency to fulfil its statutory task, or is it more likely to be regarded as interfering in the internal industrial relations problems in a particular factory or office?

Clearly, it is of major assistance to women workers to have a union representative argue their claim for them before the Labour Court. I recall that when I brought my own claim before the Labour Court, alleging discrimination in remuneration in relation to the pension scheme for members of the Oireachtas, I had the good sense to seek support from my union, the Irish Transport and General Workers Union, and the claim was argued successfully on my behalf by Pat Rabbitte.[15] That system works well for the majority of cases which are relatively straightforward and depend on an examination of the particular facts. But in a minority of cases quite complex and sophisticated points of law and of interpretation arise for determination by the Labour Court. In some of these cases, involving disputes under the 1974 and 1977 Acts, lawyers have been retained either to present the claim or to argue on behalf of the employer's side before the Labour Court, or both. I want to consider in this context the perception held by the trade union movement of the role of the Labour Court, and its attitude towards lawyers appearing before the Labour Court in equality cases.

It would be an understatement to say that the presence of lawyers is resented by the trade union movement. Formal representations have in fact been made to the Labour Court seeking to have lawyers kept out of that area. A major factor influencing this approach is the perception by the trade union movement that lawyers have "taken over" the Employment Appeals Tribunal. There have been criticisms of the complexity introduced into that code, and of the delays and the expense which the presence of lawyers and the expense which the presence of lawyers is regarded as having caused. I am not here this evening to engage in special pleading on behalf of lawyers. Indeed, I am prepared to concede that there is a fair grain of truth in much of the criticism made of the way legal services are provided. What I do want to emphasise and affirm is that when you have a statutory code of considerable complexity it must be allowed to develop through analysis and interpretation of the legal concepts involved, and lawyers have an expertise to offer which should not be denied. If the full potential of the equality legislation is to be realised, a better relationship must be established between the trade union movement and lawyers with an interest in the field.

I turn now, briefly, to the perception of the equality legislation held by the employer side. It appears to view these Acts as simply inflicting a further burden on employers, rather than as legislation securing fundamental legal rights. A high proportion of recommendations favourable to workers are appealed to the Labour Court, and employers appear to be suspicious of the role of the Employment Equality Agency in this area. Indeed, the FUE went so far as to issue a

statement following the recent decision of the Labour Court on the sexual harrassment case as follows:[16]

> "It would be a mistake for the Employment Equality Agency to encourage employees to go to law about these problems. Unfortunately, this could give rise to frivolous or vexatious claims which do not serve the interests of either employer or employee."

One comment that could be made of the employer side is that they have never been slow to use the services of lawyers if they considered it would help their case! But that only creates its own imbalance in the system unless the employee has similar access to legal advice and services in making the claim.

I have ventured to discuss the perceptions of the equality law held by women workers, by the trade union movement and by the employer side. I feel obliged to complete the analysis by considering the perception of lawyers and judges. There is a danger that if lawyers only handle a minute proportion of equality cases, which go to the High Court on an appeal on a point of law, their approach will be narrow and legalistic. They may lack sensitivity to the values and norms in the legislation, and possibly remain blissfully unaware of the developments which have occurred in earlier cases heard and determined by the Labour Court.

Similarly, there is a risk that a High Court judge faced with an isolated case, in which an appeal on a point of law has been lodged, may adopt a narrow and insensitive approach to the interpretation of that point of law. It is important, therefore, that lawyers and judges are made aware of the developing jurisprudence in this area. They need easy access to the determinations of the Labour Court, with up-to-date indexes to these determinations, and informed legal commentary on the more important ones. This would ensure that legal practitioners and judges kept abreast of this important body of law.

Conclusion

My conclusion must be brief, and will seek to draw the strands of this paper together.

Firstly, as regards the legislative framework: the discussion document on industrial relations, published recently by the present Minister for Labour, makes it clear that there will be reform of the 1974 and 1977 Acts, but that the Labour Court will retain its present functions under these Acts. I welcome the intention to introduce the specific amendments which have been advocated for some time by the Employment Equality Agency and also by ICTU, but I would hope that the opportunity will also be taken to extend the scope of the

equality legislation into the areas of education and the provisions of services. In particular, the extension of the principles of equality into the service areas would rule out the present discriminatory practices operated by a number of banking institutions and building societies in relation to loans and mortgage facilities for women.

Secondly, in view of the Government commitment to retain the equality officers and Labour Court for the implementation and enforcement of equality legislation, it will be important to ensure that employees have full access to that machinery. One practical reform would be to enable the Employment Equality Agency to assist claimants, in appropriate cases, by providing for legal representation on their behalf. In addition, the Agency itself must be provided with an adequate budget to enable it to discharge its important statutory functions in relation to investigations, research and the general discharge of its responsibilities of a legal nature, such as the referral of matters to the Labour Court where the employee is not in a position to do so.

Thirdly, and clearly linked with this second point, there is an urgent need on all sides to take stock of the equality legislation and of the perceptions and attitudes which have grown up around it. In particular, lawyers must be prepared to accept that they are often their own worst enemies in the manner in which they provide legal services, and the trade union movement must accept that if you have a complex legal code, which not only contains statutory rights but in effect gives expression to fundamental human rights, it cannot achieve its full potential without the assistance — at least from time to time — of legal experts.

FOOTNOTES

1. *"Industrial Relations and Creativity—The Irish Case"*, Professor Michael P. Fogarty. Published by the Irish Association for Industrial Relations.
2. By coincidence, in a Cabinet reshuffle shortly after this lecture was delivered the only woman in the Cabinet, Mrs. Gemma Hussey, was moved from Education to Social Welfare.
3. *Brennan v A.G.* (1983) ILRM 499 at 479.
4. Case 149/77 *Defrenne v Sabena* (1978) ECR 1365 at 1378.
5. *Dennehy & Others v Min. for Social Welfare & A.G.* Barron, J., Unreported, 26 July, 1984.
6. Interim Report on Equal Pay, presented to Minister for Finance, August 1971 (Prl. 1959).
7. Case 43/75 *Defrenne v Sabena* (1976) ECR 455.
8. *Arthur Guinness Son & Co. Ltd. v Federated Workers' Union of Ireland* DEP 11.83.
   An Bord Telecom v Irish Women Workers' Union DEP. 6.84.
9. *Murphy & Others v Bord Telecom* Judgment of Keane,J. Unreported, 4 March, 1986, in which he decided to refer questions to the Court of Justice of EEC under Article 177.
10. A partial implementation was effected by the Social Welfare Act 1986, s. 2 of which provided for equality of payment of unemployment benefit as and from 15 May, 1986.
11. Case 286/85 *TheState (McDermott & Cotter) v Minister for Social Welfare & A.G.*
12. See Annual Reports of Employment Equality Agency.
13. For example:
    Case 96/80 *Jenkins v Kingsgate Ltd.* (1981) ECR 248.
    Case 19/81 *Burton v British Railways Board* (1982) ECR 280.
14. Legal aid has been granted in Case 286/85 *McDermott & Cotter* by the Court of Justice to enable the two married women concerned to be legally represented before the Court.
15. *Department of the Public Service v Senator Mary Robinson* DEP 7.79.
16. Published in Irish Times of November 1, 1985.