

**THE HIGH COURT**  
**Record No: 2006/33SP**

**IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 60 (8) OF THE  
CIVIL REGISTRATION ACT, 2004**

**BETWEEN/**

**LYDIA ANICE FOY**

**APPLICANT/RESPONDENT**

**-AND-**

**AN t-ARD CHLARAITHEIOR,**

**IRELAND**

**-AND-**

**THE ATTORNEY GENERAL**

**DEFENDANTS/APPELLANTS**

**-AND-**

**ANNE FOY**

**JENNIFER FOY**

**AND**

**CLAIRE FOY**

**(Joined by Order)**

**NOTICE PARTIES**

**NOTICE OF APPEAL**

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**TAKE NOTICE** that at the expiration of ten days from the service hereof, or as soon as may be thereafter, Counsel on behalf of the Defendants/Appellants will apply to this Honourable Court by way of Appeal from the Judgment of the High Court (the Honourable Mr Justice McKechnie delivered on 19 October 2007 and the Order perfected on the 10<sup>th</sup> of March, 2008) whereby the Court granted a declaration pursuant to Section 5 of the European Convention of Human Rights Act, 2003, that Sections 25, 63 and 64 of the Civil Registration Act, 2004 are incompatible with the obligations of the State under the European Convention of Human Rights by reason of their failure to respect the private life of the Applicant/Respondent as required by Article 8 of the said Convention in that there are no provisions which would enable the acquired gender identity of the Applicant/Respondent to be legally recognised in this jurisdiction and whereby the Applicant/Respondent was granted an Order allowing her to recover her costs of the second set of proceedings against the Defendants/Appellants to be taxed in default of agreement.

**AND TAKE NOTICE** that the Defendants/Appellants will apply for an Order reversing the said Judgment and Order of the High Court in lieu thereof, for an Order dismissing the Applicant/Respondent's claim, for an Order providing for the costs of and incidental to this application; and for an Order for the costs of the High Court proceedings in favour of the Defendants/Appellants.

**AND TAKE NOTICE** that the Appeal will be grounded upon the following grounds namely, that the learned Trial Judge erred in law or in fact or on a mixed question of law and fact as follows:-

1. That the learned Trial Judge erred in granting a declaration of incompatibility under Section 5 of the 2003 Act, that Sections 25, 63 and 64 of the Civil Registration Act, 2004 are incompatible with the obligations of the State under the European Convention on Human Rights by reason of their failure to respect the private life of the Applicant /Respondent as required by Article 8 of the said Convention in that there are no provisions which would enable the

acquired gender identity of the Applicant to be legally recognised in this jurisdiction;

2. That the learned Trial Judge erred in holding that the Civil Registration Act 2004 fails to respect the private life of the Applicant/Respondent and constitutes a breach of Article 8 of the European Convention on Human Rights;
3. That the learned Trial Judge erred in holding that the State has positive obligations under Article 8 of the European Convention on Human Rights to the Applicant/Respondent, which are breached by Sections 25, 63 and 64 of the Civil Registration Act, 2004;
4. That the learned Trial Judge failed to take any adequate account of the competing rights of the Applicant/Respondent's wife and children;
5. That the learned Trial Judge erred in applying the decision of the European Court of Human Rights in *Goodwin v. UK* delivered on 11 July 2002 to the facts of the Applicant/Respondent's claim herein;
6. That the learned Trial Judge erred in failing to take adequate account of the factors distinguishing the *Goodwin* decision, where the European Court of Human Rights had not dealt with the necessity to balance rights as between a transsexual and the transsexual's wife and children, from the different factual circumstances applicable in the Applicant /Respondent's case where such competing rights arise;
7. That the learned Trial Judge erred in failing to take adequate account of the constitutional provisions applicable to and underpinning the Civil Registration Act 2004;

8. That the learned Trial Judge erred in holding that by reason of the absence of any provision which would enable the acquired identity of the Applicant/Respondent to be legally recognized in this jurisdiction that the State was in breach of its positive obligations under Article 8;
9. That the learned Trial Judge erred in holding that the ss.25, 63 and 64 of the Civil Registration Act 2004 constitute a barrier to the Applicant/Respondent to the legal recognition of her Article 8 rights;
10. That the learned Trial Judge erred in failing to hold that the margin of appreciation continues to apply particularly in Ireland where there are constitutional rights underpinning the institution of marriage and the rights of the family based on marriage;
11. That the learned Trial Judge erred in holding that the margin of appreciation of the State has been thoroughly exhausted save as regards the appropriate means of achieving recognition of the Applicant's article 8 rights;
12. That the learned Trial Judge erred in holding that the Applicant/Respondent was entitled to the relief granted in circumstances where the Applicant/Respondent was unable to identify any provision(s) of the Civil Registration Act 2004 which prohibited the exercise of her rights;
13. That the learned Trial Judge erred in law in granting a declaration of incompatibility under Section 5 of the European Convention on Human Rights Act 2004 in respect of Sections 25, 63 and 64 of the Civil Registration Act, 2004, where the said sections do not prohibit the exercise of or infringe the exercise of the Applicant/Respondent's rights;
14. That the learned Trial Judge erred in granting a declaration of incompatibility based on the State's failure to enact appropriate legislation;

15. That the learned Trial Judge erred in granting the declaration of incompatibility in circumstances where it is of no or no significant value to the Applicant/Respondent, as it does not affect the validity of the relevant sections;
16. That the learned Trial Judge erred in awarding costs to the Applicant/Respondent;
17. Such further grounds as may be advanced at the hearing of the Appeal herein.

**AND TAKE NOTICE** that the Defendants/Appellants' Appeal will be grounded upon the proceedings already had herein, the transcript of the evidence of the High Court, the outline legal submissions on behalf of the Defendants/Appellants and the Applicant/Respondent and the Notice Parties, the Judgment of Mr Justice McKechnie delivered on 19 October 2007, the Order of the High Court dated 14 February 2008 and perfected on 10 March 2008, the nature of the case and the reasons to be offered.

**Dated this 28<sup>th</sup> day of March 2008.**

**SIGNED:** David J. O'Hagan  
**The Chief State Solicitor**  
**Solicitor for the Defendants/Appellants**  
**Osmond House**  
**Little Ship Street**  
**DUBLIN 8**

**TO: The Registrar**  
**The Supreme Court**  
**Four Courts**  
**DUBLIN 7**

**TO: Michael Farrell**  
**Solicitor for the Plaintiff/Respondent**  
**Free Legal Advice Centre**  
**13 Lower Dorset Street**  
**DUBLIN 1**

**TO: Phil O'Laoide,  
Solicitor for the Notice Parties  
Free Legal Advice Centre,  
Law Centre  
Paynes Lane  
Irishtown  
Athlone  
County Westmeath**