

KITZINGER & WILKINSON

BRIEFING NOTE

September 2005

Liberty is assisting Susan (Sue) Wilkinson and Celia Kitzinger in their legal challenge. Celia has been a Professor at the Sociology Department at the University of York since 2000, and is also a Fellow of the British Psychological Society and the American Psychological Association. Sue is an academic psychologist, and holds the posts of Professor of Feminist and Health Studies, and Director of the Social Psychology degree programme, at Loughborough University.

Sue and Celia married in Vancouver, British Columbia, Canada, on 26 August 2003. Sue was living and working in Canada at the time, and British Columbia had recently extended the right to marry to same-sex couples.

Celia and Sue decided to marry for a number of reasons. They had already been a couple for 13 years. They loved each other and wanted to make a formal lifelong commitment to one another. As a matter of principle, they believed that they should be able to marry in the same way as heterosexual couples. British Columbia was one of the first places in the world to allow same-sex citizens, and non-citizens such as Celia and Sue, to marry (Ontario, Canada was in fact the first place). Until recently same sex marriage was only legal in eight out of the ten Canadian provinces, and one out of Canada's three territories, but on 29 June 2005 the Canadian Parliament approved a Bill which will legalise same sex marriage throughout Canada. Elsewhere, on 30 June 2005, Spanish MP's approved a bill which has legalised same sex marriage throughout Spain. Spain is the third European country, after the Netherlands (2001) and Belgium (2003), to grant same sex couples the right to marry.

A further and more practical point is that marriage automatically grants a couple important legal and financial rights, such as rights in respect of each other's property, rights of access in the event of hospitalisation, the right to manage each other's affairs in the case of mental incapacity, rights to the other's pension, the right to refuse to give evidence against one's partner in court, the right to claim one's partner's body in the event of death and the right to claim bereavement benefits. Over the 15 years of their relationship, Celia and Sue have had to put a number of piecemeal legal arrangements into place in the UK to ensure that they have the benefit of these safeguards, and continue to need them despite the fact that they married in Canada.

The civil partnerships introduced by the Civil Partnership Act 2004 ("CPA") will allow same-sex couples the benefit of many of these rights as "civil partners" when the CPA comes into force on 5 December 2005, with partnerships being registrable from 21 December 2005 onwards in England and Wales. However, Celia and Sue see civil partnerships as a lesser substitute for marriage. Such partnerships are neither equal to marriages symbolically nor practically, since they are not recognised by all countries outside the UK.

In addition, Celia and Sue have already been legally married in Canada for more than 2 years, and wish their marriage to be recognised in the UK in the same way as any heterosexual couple who marry abroad would have their marriage recognised. It is

their contention that not recognising same-sex couples' marriages in the same way as those of heterosexual couples is both unjustifiable and inherently discriminatory.

In order for an overseas marriage to be recognised in the UK, it must be shown that the marriage was a legal one, recognised by the country in which the marriage was executed, and that nothing in the country's law restricted either party's freedom to marry. Celia and Sue will argue that their marriage fulfills these requirements, despite the fact that such marriages are not legal in the UK.

Celia and Sue are seeking a declaration that their marriage is valid under section 55 of the Family Law Act 1986. They will argue that any failure to recognise the validity of their marriage constitutes a breach of their rights under Articles 8 (right to respect for privacy and family life), 12 (right to marry) and 14 (prohibition of discrimination) (taken together with Article 8 and/or 12) of the European Convention on Human Rights. This case is expected to be heard by the High Court in 2006.

Legal Procedure Timeline

- **21 September 2005, 10.30am** - Directions hearing in the Principal Registry of the Family Division
- **Anticipated 2006** – Substantive hearing expected to be timetabled during this period.