



CHRISTIANS AT THE BAR

1003A Far East Finance Centre, Admiralty, Hong Kong. Tel: 2529 8229 Fax: 2528 8383

10 April 2014

Hon IP Kwok-him GBS JP,
Chairman to Bills Committee on Marriage (Amendment) Bill 2014,
c/o Clerk to Bills Committee on Marriage (Amendment) Bill 2014,
Legislative Council Secretariat,
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong.

By registered post

Dear Mr. Ip,

Re: Marriage (Amendment) Bill 2014

We are a body of Christian barristers registered under the Societies Ordinance Cap. 151, and we write in relation to the captioned Bill, which is being studied by your Committee.

After the passage of the captioned Bill, a person who has received a full sex re-assignment surgery (“transgendered person”) will be treated as being of the sex to which the person is re-assigned after the surgery, for the purpose of, inter alia, section 40(2) of the Marriage Ordinance Cap. 181 (“the Ordinance”).

We fully support the present legislative proposal requiring a full sex re-assignment surgery. In the absence of full public consultation, debate, and consensus, the amendment to the Ordinance should not go beyond that strictly required in order to comply with the *ratio decidendi* of *W v. Registrar of Marriages* [2013] 3 HKC 375.

On the other hand, we note that, after the passage of the captioned Bill, a transgendered person may ask for his/her marriage to be celebrated under section 19 of the Ordinance (celebration of marriage in licensed place of worship).

It is our grave concern that should a Christian Church, because of its religious doctrine or belief, finds itself unable to accept and celebrate the marriage of a transgendered person on its premises, it would be under a risk of being accused of contravention of section 28(1) of the Sex Discrimination Ordinance Cap. 480, and/or section 26 of the Disability Discrimination Ordinance Cap. 487.

We are aware of the exception under section 34(1)(b) of the Sex Discrimination Ordinance. The exception is however inapt to protect a Church that refuses to celebrate the marriage of a transgendered person, as the facilities or services of the Church are not “restricted to men”. The Australian cases of *OW & OV v. Members of the Board of the Wesley Mission Council* [2010] NSWADT 293, and *Cobaw Community Health Services v. Christian Youth Camps Ltd.* [2010] VCAT 1613 also illustrate the controversies that may arise from similar religious exception provisions. There is no similar exception under the Disability Discrimination Ordinance.

In order to avoid Christian Churches being dragged into unnecessary and expensive litigations, we would urge that reference be made to section 202(4) of the Equality Act 2010 of the United Kingdom, which inserted a section 6A(3A) to the Civil Partnership Act 2004. It is suggested that, similarly, a sub-section (3) should be inserted into section 40 of the Ordinance, as follows:

“For the avoidance of doubt, nothing in this Ordinance places an obligation on religious organisations to celebrate marriage for a person who has received a full sex-reassignment surgery if they do not wish to do so.”

Alternatively, reference may be made to section 5B of the Gender Recognition Act 2004 (also of the United Kingdom). The new section 40(3) to be inserted into the Ordinance may read as follows:

“For the avoidance of doubt, a religious organisation is not obliged to celebrate the marriage of a person if the organisation reasonably believes that the person has received a sex-reassignment surgery.”

We respect the spirit of the law enshrined in the Sex Discrimination Ordinance and Disability Discrimination Ordinance, which are important pieces of equality legislations in our society. At the same time, we take the view that Christian doctrines should also be respected, and Churches should not be obliged to do what they find unacceptable according to their doctrine and belief. Churches should be given a choice as to whether or not to opt-in celebrating marriages of transgendered persons, and they should not be coerced into doing so. We have no doubt that, in a multivariate city such as Hong Kong, transgendered persons will find plenty of options to celebrate their marriages, without having to coerce unwilling Churches into doing so. Such coercion, in our respectful submission, would constitute breach of Article 141 of The Basic Law of the HKSAR.

Thank you for your kind attention and consideration in the matter.

Yours faithfully,



Simon K.C. Lam
Co-Convenor

c.c. Secretary for Security
10th Floor, East Wing,
Central Government Offices,
2 Tim Mei Avenue,
Tamar,
Hong Kong
(Attn: Mr Billy Woo)
(By Registered Post)