

26 April 2014

Hon IP Kwok-him, GBS, JP

Chairman, Bills Committee on Marriage (Amendment) Bill 2014

Room 619, Legislative Council Complex,

1 Legislative Council Road, Central, Hong Kong

Dear Ip,

Re : Marriage (Amendment) Bill 2014

Although I am sympathetic to the problems facing transsexuals, I oppose the Marriage (Amendment) Bill 2014 which is being considered by the Legislative Council based on the following reasons :-

1. The captioned Bill may result in same sex marriage happening. The Court of Final Appeal (CFA) made it clear that nothing in the W Case judgment was intended to address the question of same sex marriage. The legislative proposal above, which is intended to implement the CFA's Order made in the W Case, will not affect the existing heterosexual nature of marriage in Hong Kong. However, the CFA may not be aware that its judgment may result in same sex marriage . For instance, a man becomes a "woman" after receiving SRS and then marries a man. They become a legally married heterosexual couple. What happens if the man also undergoes SRS after marriage and becomes a "woman" ? In this situation, the marriage would have become a same sex marriage.

2. It will have many unforeseeable consequences that require a wider debate on the values of society in Hong Kong and careful study of the experiences of other countries. Gender Dysphonia will commence a whole new range of sexual identities (asexual, transsexual); and with incomplete surgery (as in the US and UK), men are now having babies. Further, I understand there is growing body of evidence of individuals seeking reversals of surgery.

3. The main issue is jurisprudential; in that discrimination law is a political lifestyle choice that is enforced against those who have different values. Once transsexual marriage is legal, it must be taught; and once taught a whole new range of legal issues and cases will be brought. A whole range of people such as teachers, social workers, marriage registrars and parents will be affected. I would give three examples :-

On November 18 2003, the Massachusetts Supreme Judicial Court in the USA announced its Goodrich opinion declaring that it was unconstitutional not to allow same sex-marriage. Six months later, despite public outrage, homosexual weddings began to take place. And that was just the beginning. Almost immediately after the

gay marriage ruling in Massachusetts, things started happening in high schools across the state. Starting in early December 2003 there were school wide assemblies to celebrate same-sex marriage. Kids were given literature from national homosexual groups telling them how it was now to be considered a normal part of society. Children in schools were given this sheet on "Marriage Myths" by the Gay & Lesbian Advocates & Defenders". One of their "myths" is that the purpose of marriage is procreation. Another "myth" is that children are better off when raised by a mother and a father. And lots of other things were handed out. Within months it was brought into the middle schools. An exhibit called "Love Makes a Family" meant to normalize the concept of homosexual marriage in kids' minds, was going through schools across the state. In September of 2004 an 8th grade teacher in Brookline Massachusetts told National Public Radio that the gay marriage ruling had opened up the door to teaching homosexuality in her class. She told NPR "Give me a break, it's legal now". The following year it was in Elementary School curricula -- with hostility towards parents who disagreed. Kindergarteners in Lexington, Massachusetts were given copies of a picture book, "Who's in a Family?", telling them that same-sex couples are just another kind of family , just like their own parents. The book made a point of showing two mothers and two fathers to the children.

One Lexington parent, David Parker, demanded to be notified when this was happening and to be able to opt-out his son in kindergarten. But rather than work with him, the arrogant school officials had him arrested and put him in jail overnight when he wouldn't cease his demand. The case outraged parents cross the state. But the school officials refused to relent. The next year, second graders at the same school were read a book, "King & King", about two men who fall in love and marry each other, ending with a picture of them kissing. When parents, Rob & Robyn Wirthlin complained, they were told that the school had no obligation to notify them or allow them to opt their child out. So the Parkers and the Wirthlins filed a federal lawsuit against the town and the school system. Parents rallied to their side; but in 2007 a panel of federal judges ruled that because same-sex marriage is legal in Massachusetts, schools actually have a duty to normalize homosexual relationships to children, and schools have no obligation to notify parents or let them opt out their children even in elementary school. In fact, according to the Court's ruling, acceptance of homosexuality is now a matter of good citizenship.

On the other hand, any disagreement with sex change would be regarded as discrimination. In August 2013, an 18-year-old "transsexual" man in Edinburgh is filing hate crime charges against a shopping centre guard after

being told that he could not use women's lavatories. It was reported that the young man, River Song, whom the paper referred to as a "woman waiting for a sex-change," complained to police on Monday when a security guard at St. James shopping centre allegedly told him, "You are a male and always will be." Describing the incident, Song said, "He pulled me aside and asked if I'd had a sex change. I couldn't quite believe what I was hearing but I answered him, saying no. "He then asked me, 'Why have you used the female bathrooms if you haven't had a sex change?' He asked for my ID, which I showed him. As he glanced at it, he said, 'This is a male. You are a male and always will be a male.'" He added, "I have never been treated so badly and felt so humiliated." A spokesman for the Edinburgh police confirmed that they had been called to investigate the incident under the provisions of the Equality Act 2010 and that the police normally "work with partner agencies to provide support, advice and guidance to anyone who believes they have been a victim." Legal experts have criticised the Equality Act 2010, which leaves the determination of a "hate crime" up to the subjective feelings of those who complain to police. The Sexual Orientation Regulations section of the Act were used by activists to shut down or force the secularisation of nearly all faith-based adoption agencies in Britain.

Finally, a senior judge in the UK suffered severe reverse discrimination which was reported by the newspapers in Nov. 2013. This senior judge decided to retire early due to pressure as a result of standing up for traditional marriage :-

<http://www.telegraph.co.uk/news/uknews/law-and-order/10485276/Judge-Sir-Paul-Coleridge-quit-because-of-lack-of-support-over-marriage-stance.html>

It is very alarming to learn from Sir Coleridge that "hundreds" of judges in the UK were too afraid to voice support for his foundation publicly on traditional marriage because they thought it might harm their careers. The reason is clearly due to the impact of the Equality Act (Sexual Orientation Regulations 2007).

4. A liberal law will not improve the situation for a balance of human rights in our society but would result in serious reverse discrimination according to the experiences in some western countries. Please visit the following link to read the booklet " Religious Freedom" produced by Christian Concern in the UK which tells how freedoms of religion, speech, education and conscience have been undermined in the UK in recent years due to enactment of liberal laws :-

<http://www.christianconcern.com/sites/default/files/Religious%20Freedom-proof.pdf>

This booklet has mentioned a Christian couple, Owen and Eunice Johns, who were rejected as potential foster parents by Derby Council after admitting that they would not promote homosexuality to a young child in their care. The High Court upheld the right of Derby Council to stop the Johnses from fostering children as their beliefs allegedly contravened the Council's 'equality and diversity' policy. The Equalities and Human Rights Commission intervened against the Johnses in their case and said that children were at risk of being "infected" by Christian moral teachings. I believe parents in Hong Kong, whether we have religious beliefs or not, would not be willing to promote homosexuality to our young children. If we live in the UK today, we would not be allowed to foster children which is ridiculous !

5. I agree with the Dissenting judgment of Chan PJ of the CFA :--

Chan PJ held that recognition of transsexual marriages is a radical change of the traditional concept of marriage and marriage is an important social institution which has its basis in the social attitudes of the community. Changes in the laws of overseas jurisdictions to allow transsexuals to marry in their post-operative sex have been informed by social consultation which indicated changes in social attitudes towards marriage. There is no evidence whether social attitudes in Hong Kong have changed to the extent of abandoning or fundamentally altering the traditional concept of marriage. The Court should not invoke its power of constitutional interpretation to recognize transsexual marriages in the absence of such evidence. To do so would amount to making a new policy on a social issue which has far-reaching ramifications and which can only be made after public consultation. This is not the business of the Court.

If this Bill is rushed through without proper and comprehensive public consultation and legislative review, it would cause serious and unforeseeable consequences on Hong Kong.

Yours sincerely,

Thomas Chan