



COLM KEAVENY, TD GALWAY EAST

Ms. Emily Logan,
Chief Commissioner,
Irish Human Rights and Equality Commission,
4th Floor,
Jervis Street,
Dublin 1.

March 3rd, 2015



Dear Ms. Logan,

I refer to the Policy Statement on access to civil marriage for same-sex couples issued by the Irish Human Rights and Equality Commission (IHREC) in the context of the forthcoming Marriage Referendum, on February 12th last.

It was stated that the Commission: "believes that the opening out of civil marriage to two persons without distinction as to their sex is a matter of equality and human rights".

This opinion has been contested, most recently in the Irish Catholic newspaper (19/02/15), and in the Irish Times (28/02/15). The Irish Catholic of 26/02/15 reported that your Commission informed them that it would not be commenting on the matter, a position I find questionable for a publicly-funded body on such an important and contentious matter.

Accountability, particularly in the context of a referendum campaign, by a statutory body must go beyond the mere requirements of the law and extend to responses to the free press, an essential pillar of a democratic society.

Opposition to the IHREC's opinion that same-sex marriage is a human right is also noted on the website of the Public Interest Law Alliance in its coverage of your policy statement (<http://www.pila.ie/bulletin/2015/february-2015/25-february/irish-human-rights-and-equality-commission-issues-its-policy-position-on-access-to-civil-marriage/>).

I have received a number of requests from constituents and other interested parties to seek to have this issue clarified as a matter of urgency, and for this reason I have already tabled a Parliamentary Question on it.

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My particular concern is to protect the integrity of the referendum process. The recent 'Children's Rights' referendum campaign was marred by the behaviour of the government in contravening the constitutional principle laid down in the *McKenna* judgement. The ratification of the amendment is still awaiting a judgement of the Supreme Court.

It is essential that the government and all public bodies, including the IHREC, obey both the letter and the spirit of *McKenna*.

In addition, there are a number of specific issues that I would ask you to clarify in your role as IHREC Commissioner:

1. Is it still the view of the IHREC that same-sex marriage is a human right, and clearly established internationally as such?
2. Can you explain why the case of *Hämäläinen v. Finland*, in which judgment was given by the ECtHR on July 16th 2014, is not referred to in the policy statement of the Commission? The Grand Chamber of this Court reaffirmed that the European Convention on Human Rights cannot be interpreted "as imposing an obligation on Contracting States to grant same-sex couples access to marriage". The Court went further and explicitly stated that Article 12 of the Convention (dealing with marriage) "... enshrines the traditional concept of marriage as being between a man and a woman ... While it is true that some Contracting States have extended marriage to same-sex partners, Article 12 cannot be construed as imposing an obligation on the Contracting States to grant access to marriage to same-sex couples."

In the statement issued by the Irish Council for Civil Liberties (ICCL), the Gay and Lesbian Equality Network (GLEN) and Marriage Equality (ME), they state that the IHREC has reviewed "human rights and equality standards and case-law from other countries". It is clear, therefore, that the public perception is that the IHREC has reached its conclusion in regard to same-sex marriage as a human right following detailed and thorough study of case-law, as indeed the Policy Statement itself claims. Yet the omission of any reference to *Hämäläinen v. Finland* seems to belie this fact.

It seems to me that in order to sustain its view credibly that same-sex marriage is a human right, the Commission needs to deal with this judgment and clarify its position in regard to *Hämäläinen v. Finland*.

3. The Commission is required by section 9 (2) of the Irish Human Rights and Equality Commission Act 2014 to be independent in the performance of its functions. It has been brought to my attention that the Commission's membership includes leading representatives from the ICCL and GLEN. The policy statement does not indicate that these representatives recused themselves from having any role in the policy statement's formulation despite the fact that these organisations are front-line campaigners for a 'Yes' vote.

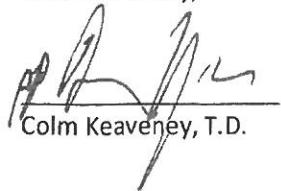
In order to protect the credibility of the Commission, and the integrity of the advice given by the IHREC to Government in regard to the referendum, it seems to me that the role of the representatives of these organisations, who are also members of the IHREC, in the preparation and/or endorsement of this policy statement, if any, needs to clarified by the Commission.

4. There is concern that because the work of the IHREC is funded by the taxpayer, there may well be a breach of the *McKenna* principles and in particular, the principle of equality, in relation to the IHREC's intervention in this referendum, and that High Court Judicial Review proceedings in regard to the Commission's intervention in the debate are being actively considered by parties opposed to

same-sex marriage. I think this would be both inopportune and unfortunate, and that the Commission needs to act now to allay fears that it has been in any way partisan in exercising its statutory responsibilities. It would be unfortunate if the result of a second referendum in only a few years was to have its ratification delayed by challenges in the superior courts.

An immediate response to these queries will allow for it to be communicated to the parties who have expressed their concern about the conduct of the IHREC in this regard.

Yours Sincerely,



Colm Keaveney, T.D.

CC Ms Frances Fitzgerald, T.D., Minister for Justice and Equality, Department of Justice and Equality,
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