EQUAL CIVIL MARRIAGE

From: jeffreydudgeon@hotmail.com
To: director@rainbow-project.org
Subject: RE: Legal challenge to Northern Ireland's ban on same-sex marriage
Date: Mon, 8 Jun 2015 12:44:16 +0100

Thanks John
Below are two of the legal views I mentioned, obviously still in an initial stage.
They are relatively similar.
Robert Wintemute is probably one of the lawyers that NIHRC mentions.
Austen's most recent NI involvement in case terms has been on abortion and the NHS charging women from here in England.

He argues - against others - that the ECHR wording in Article 12 is sufficiently ambiguous to allow a case reckoning the specific mention of women was to make a stand on their rights.

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

I take your point about addressing the civil partnership and religious premises issue at present. It would be difficult for Mike Nesbitt to pick it out for action just at present as it might be seen as the thin end of the wedge regarding churches being forced to conduct same-sex ceremonies. Perhaps it is best left to Chris Hudson to progress politically.
The UUP is in discussion as late as Friday on the matter, but will not advance beyond the conscience issue/free vote position.
The key change in the Assembly would be UUP MLAs with a different view being elected in 2016 and or the departure of Peter Robinson/fewer DUP MLAs. This might mean the lifting of the veto/petition of concern.
Robbo now has the body of a teenager but still the mind of an anti-sodomite.
Austen will be here on Monday 15 June and we would like to take up your offer of the opportunity to meet and talk these issues over.
Best
Jeff

Austen Morgan: "A case would comprise first: article 12 ECHR; and second: articles 8 and 14 together. Article 12 reads: Right to marry: ‘Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.’ 'Men and women' was heterosexual in 1950.  However, under the ‘living instrument’ doctrine, Strasbourg could construe this as also homosexual. The national laws is more problematic.  It represents the totality of the UK’s laws.  These include devolution, giving powers to the NI assembly.   But the Northern Ireland Act 1998 section 5(6) reads: ‘This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland…’. Thus, one could argue in NI, and then the supreme court, and then Strasbourg, that the UK should rely upon section 5(6) to override the NI assembly’s opposition to gay marriage. Article 8 is respect for private and family life.  Article 14 is the non-discrimination provision. Gay marriage would come under article 8 easily.  The case would then be discrimination by the UK in access to gay marriage in a part of the UK."

From: robert.wintemute@kcl.ac.uk
To: info@nigra.org.uk
CC: jeffreydudgeon@hotmail.com; information@nihrc.org; michael.oflaherty@nuigalway.ie
Subject: Marriage case under the Human Rights Act 1998 in the Northern Ireland High Court?
Date: Sun, 24 May 2015 13:14:07 +0000

Dear NIGRA and Jeff,

Since the Marriage (Same Sex Couples) Act 2013 for England and Wales, I’ve been expecting someone to start a case in the Northern Ireland High Court under ss. 6(1) and 7(1)(a) of the Human Rights Act 1998, challenging article 6(6)(e) of the Marriage (Northern Ireland) Order 2003:

“article 6(6) For the purposes of this Article and Article 7 there is a legal impediment to a marriage if—

(a)that marriage would be void by virtue of Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (NI 14) (prohibited degrees of relationship); .

(b)one of the parties is, or both are, already married[F1 or a civil partner]; .

(c)one or both of the parties will be under the age of 16 on the date of solemnisation of the intended marriage; .

(d)one or both of the parties is or are incapable of understanding the nature of a marriage ceremony or of consenting to marriage; or .

(e)both parties are of the same sex.”

Under section 6(1) (read with section 10(4)) of the Human Rights Act 1998, the Northern Ireland High Court has the power to quash article 6(6)(e), as incompatible with Articles 8 and 12 of the European Convention on Human Rights, taken alone or together with Article 14.  Under section 2(1) of the 1998 Act, the High Court can be more generous than the European Court of Human Rights in Schalk & Kopf v. Austria (2010), and can interpret the Convention rights in the UK as requiring equal access to marriage for same-sex couples in the UK (even though the European Court has not interpreted the Convention rights in Strasbourg as requiring equal access in 47 European countries).  Once the Court’s order took effect, same-sex couples would be able to marry in Northern Ireland.  No action by the Northern Ireland Assembly would be required.

The Northern Ireland Assembly seems unwilling or unable to vote to change the law.  I think it’s time to go to court!  Especially after the referendum in the Republic of Ireland.  I’d be glad to help in any way I can.

The case should be started as soon as possible, before the UK Government has time to repeal the Human Rights Act 1998.

The Northern Ireland Human Rights Commission could bring the case, with or without a victim (a same-sex couple who wish to marry), as they did with regard to adoption by same-sex couples.

[2013] NICA 37:  “[18]      Since C is clearly a victim it is strictly unnecessary to reach a conclusion on the alternative argument which has, however, considerable weight.  For example, a law forbidding all homosexuals entering particular establishments [or legal institutions, eg, marriage] would inevitably create victims even if none wished to come forward to identify himself in proceedings.  The very purpose of allowing the Commission to bring such proceedings is to protect unpopular minorities.  The law would impact on all homosexuals.  By the same token Articles 14 and 15 as interpreted and applied by the Department impact on all gay couples and on all gay individuals who are considering entering into or actually in a co‑habitational or a civil partnership relationship who wish to adopt at a future date.”

Best wishes,

Rob

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From: director@rainbow-project.org

To: jeffreydudgeon@hotmail.com
Date: Fri, 5 Jun 2015 10:59:06 +0100
Subject: RE: Legal challenge to Northern Ireland's ban on same-sex marriage

Hi Jeff,

We met with the NIHRC yesterday who have agreed that we are taking the right course of action. They are also putting us in touch with some English based constitutional and HR lawyers and Barristers and we have been in touch with a number ourselves. Happy to meet or engage with anyone who might be able to support or who has an insight.

In relation to the Civil Partnerships and faith issue, as you know this is one we have been working on for years. It is a bit more awkward for us now as it would look like we are moving away from marriage equality but we have spoke to Mike Nesbitt about this and I think it would be great to see this coming forward, particularly from a Unionist party. I agree that it is a freedom of religion point. When Arlene Foster was asked about the faith and CP issue on Nolan she had no idea that this was the case. We wrote to her a number of times about it but she didn’t even respond. I have been planning to meet with Chris Hudson to see if he would make a public call for it but haven’t got a chance yet.

Kind regards,

John O’Doherty

Director

**From:** Jeffrey Dudgeon [mailto:jeffreydudgeon@hotmail.com]
**Sent:** 05 June 2015 08:58
**To:** John O'Doherty
**Subject:** Legal challenge to Northern Ireland's ban on same-sex marriage

Thanks John. That is interesting.
One of the lawyers I spoke of, Austen Morgan, is due in Belfast on Monday 15 June and would like to have a talk on these matters if that were possible?
I'll send you his ideas and those of Robert Wintemute in advance. They are both London-based. Robert has approached NIHRC on the matter as well.
The other item I would like to progress is that relating to changing the regulations on civil partnership ceremonies in religious premises here. That could perhaps be argued usefully as a freedom of religion right.
Best
Jeff

From: director@rainbow-project.org
To: jeffreydudgeon@hotmail.com
Date: Wed, 3 Jun 2015 13:08:31 +0100
Subject: RE: Legal challenge to Northern Ireland's ban on same-sex marriage

Hi Jeff,

Hope you are well. The case is scheduled to be heard in November. We had to get an anonymity order in place for the folks taking the case. The Department of Finance, the Attorney General and the Equalities Department at Westminster have all intervened in the case. This case is around recognition of marriage which is the first stage in our legal approach. We are currently working on a right to marry case as well. Hope that is helpful. Happy to chat through further.

John

John O’Doherty

Director

**From:** Jeffrey Dudgeon [mailto:jeffreydudgeon@hotmail.com]
**Sent:** 03 June 2015 00:22
**To:** John O'Doherty
**Subject:** Legal challenge to Northern Ireland’s ban on same-sex marriage

<http://www.pinknews.co.uk/2015/01/13/northern-ireland-couple-launch-legal-bid-for-same-sex-marriage-recognition/>
**A legal challenge to Northern Ireland’s ban on same-sex marriage has been filed in Belfast’s High Court.**

John
Has this case advanced at all since January?
I have a couple of lawyers wanting to take up an equal marriage case but this may well be moving forward well.
It is possible that even if a winner it does not eat into the full question of no marriage option for locals here but I am no lawyer.
Jeff

**Agenda**

**Licensing Committee
Wednesday, 17th June, 2015 5.00 pm**

* [Agenda frontsheet PDF 121 KB](https://minutes3.belfastcity.gov.uk/documents/g231/Agenda%20frontsheet%2017th-Jun-2015%2017.00%20Licensing%20Committee.pdf?T=0)
* [Agenda reports pack PDF 3 MB](https://minutes3.belfastcity.gov.uk/documents/g231/Public%20reports%20pack%2017th-Jun-2015%2017.00%20Licensing%20Committee.pdf?T=10)

Venue: Lavery Room - City Hall

Contact: Mr Henry Downey, Democratic Services Officer  90320202 x6311

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| Items |
| **No.** | **Item** |
| 1. | Routine Matters |
| 1a | Apologies |
| 1b | Minutes |
| 1c | Declarations of Interest |
| 2. | Delegated Matters - Restricted Items |
| 2a | Application for the renewal of a Stationary Street Trading Licence for a site in Duncrue Crescent* [View the reasons why item 2a is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3519&OID=2772&OT=A&RPID=500268140&BM=AI2772)

Additional documents:* Restricted enclosure 3 [View the reasons why document 2a/2 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3545&OID=2772&OT=A&RPID=500268140&BM=AI2772)
 |
| 3. | Delegated Matters |
| 3a | [Request to operate beyond the standard hours of 11.00pm at Holy Cross Boys Primary School pdf iconPDF 73 KB](https://minutes3.belfastcity.gov.uk/documents/s3541/Request%20to%20operate%20beyond%20the%20standard%20hours%20of%2011.00pm%20at%20Holy%20Cross%20Boys%20Primary%20School.pdf) Additional documents:* [Appendices - Holy Cross , item 3a pdf iconPDF 223 KB](https://minutes3.belfastcity.gov.uk/documents/s3543/Appendices%20-%20Holy%20Cross.pdf)
* Restricted enclosure 6 [View the reasons why document 3a/3 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3549&OID=2788&OT=A&RPID=500268140&BM=AI2788)
 |
| 3b | [Application for the renewal of a Stationary Street Trading Licence for a site in Cornmarket pdf iconPDF 75 KB](https://minutes3.belfastcity.gov.uk/documents/s3530/Application%20for%20the%20renewal%20of%20a%20Stationary%20Street%20Trading%20Licence%20for%20a%20site%20in%20Cornmarket.pdf) Additional documents:* [Appendix - V Wilkinson , item 3b pdf iconPDF 67 KB](https://minutes3.belfastcity.gov.uk/documents/s3546/Appendix%20-%20V%20Wilkinson.pdf)
 |
| 3c | [Application for the Renewal and Variation of an Entertainments Licence for Biddy Duffy’s pdf iconPDF 67 KB](https://minutes3.belfastcity.gov.uk/documents/s3514/Application%20for%20the%20Renewal%20and%20Variation%20of%20an%20Entertainments%20Licence%20for%20Biddy%20Duffys.pdf) Additional documents:* Restricted enclosure 10 [View the reasons why document 3c/2 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3544&OID=2766&OT=A&RPID=500268140&BM=AI2766)
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| 3d | [Application for the Grant of a 7-day Annual Outdoor Entertainments Licence for Villa pdf iconPDF 74 KB](https://minutes3.belfastcity.gov.uk/documents/s3520/Application%20for%20the%20Grant%20of%20a%207-day%20Annual%20Outdoor%20Entertainments%20Licence%20for%20Villa.pdf) Additional documents:* Restricted enclosure 12 [View the reasons why document 3d/2 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3531&OID=2773&OT=A&RPID=500268140&BM=AI2773)
 |
| 3e | [Application for the Grant of a 7-day Annual Outdoor Entertainments Licence at Odyssey Car Park, Queens Quay and Arc Public Realm pdf iconPDF 69 KB](https://minutes3.belfastcity.gov.uk/documents/s3515/Application%20for%20the%20Grant%20of%20a%207-day%20Annual%20Outdoor%20Entertainments%20Licence%20at%20Odyssey%20Car%20Park%20Quee.pdf) Additional documents:* Restricted enclosure 14 [View the reasons why document 3e/2 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3532&OID=2767&OT=A&RPID=500268140&BM=AI2767)
 |
| 3f | [Application for the Renewal and Variation of a 7 day Annual Entertainments Licence for Lavery’s Bar pdf iconPDF 68 KB](https://minutes3.belfastcity.gov.uk/documents/s3517/Application%20for%20the%20Renewal%20and%20Variation%20of%20a%207%20day%20Annual%20Entertainments%20Licence%20for%20Laverys%20Bar.pdf) Additional documents:* Restricted enclosure 16 [View the reasons why document 3f/2 is restricted](https://minutes3.belfastcity.gov.uk/mgReasonsRestricted.aspx?ID=3548&OID=2769&OT=A&RPID=500268140&BM=AI2769)
 |
| 3g | [Consideration of Designating Resolutions for New Street Trading Sites pdf iconPDF 64 KB](https://minutes3.belfastcity.gov.uk/documents/s3521/Consideration%20of%20Designating%20Resolutions%20for%20New%20Street%20Trading%20Sites.pdf)  |
| 3h | [Licences Issued under Delegated Authority pdf iconPDF 66 KB](https://minutes3.belfastcity.gov.uk/documents/s3513/Licences%20Issued%20under%20Delegated%20Authority.pdf)  |
| 4. | Non-Delegated Matters |
| 4a | [Institute of Licensing National Training Event pdf iconPDF 62 KB](https://minutes3.belfastcity.gov.uk/documents/s3518/Institute%20of%20Licensing%20National%20Training%20Event.pdf) Additional documents:* [Appendix 1 - IoL National Event Enclosure , item 4a pdf iconPDF 632 KB](https://minutes3.belfastcity.gov.uk/documents/s3536/Appendix%201%20-%20IoL%20National%20Event%20Enclosure.pdf)
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| 4b | [List of Premises transferring under Lisburn and Castlereagh and Review of Application Certification pdf iconPDF 72 KB](https://minutes3.belfastcity.gov.uk/documents/s3529/Licensed%20premises%20transferring%20from%20Lisburn%20and%20Castlereagh%20and%20review%20of%20application%20certification.pdf) Additional documents:* [Transferring Premises Enclosures , item 4b pdf iconPDF 1 MB](https://minutes3.belfastcity.gov.uk/documents/s3547/Transferring%20Premises%20Enclosures.pdf)
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