

Marriage Equality, Relationship Recognition and Non-Discrimination: Securing Equality and Rights?

Address by Minister Kathleen Lynch T.D., Minister of State, Department of Health and Department of Justice, Equality and Defence with responsibility for Disability, Equality, Mental Health and Older People

It is a great pleasure to be invited to address you here in Cork today, on a subject very close to my heart, namely marriage equality.

The conference today promises to make a fruitful contribution to the debate on this important issue. The Centre for Criminal Justice and Human Rights here at UCC has drawn together a very impressive group of national and international experts for today's conference.

I know that Professor Robert Wintemute, as one of the leading experts on human rights and same-sex partnership rights, will have given you the benefit of his significant expertise on international trends and, in particular, on the latest developments in England and Wales.

Such an interesting programme has been made possible, of course, because of the high reputation enjoyed by Professor Siobhan Mullally. You will be aware of the important contribution that Siobhan has made through her research on equality and human rights. She has worked tirelessly to promote equality and human rights, highlighting those areas on which progress is needed. I am very pleased that UCC should be such a significant actor in this area.

I should say a special word of welcome to Mr. Boris Dittrich, currently Advocacy Director of the LGBT programme in Human Rights Watch. Boris brings to the role the experience that he gained as a parliamentarian who launched and pursued the successful campaign for equal marriage in the Netherlands. It is no surprise to me that the Netherlands was the first country in the world to provide same-sex marriage. Its citizens are rightly proud of their country's powerful commitment to equality. Marriage equality is now on the agenda in many countries. The debate rightly cannot be ignored. So, in a very real way, Mr. Dittrich planted the seed which has led to the point at which we are here today discussing the prospect of constitutional reform and marriage equality in Ireland.

The timing of today's conference is very apt for our UK-based speakers. The first same-sex marriage ceremonies will be celebrated in England and Wales from this weekend. For gay and lesbian couples, this marks an important symbolic shift from the extensive rights conferred through civil partnership, to full equal recognition of their relationships. Scotland is also moving to providing full equal marriage rights, with the passing in February of the Marriage and Civil Partnerships (Scotland) Bill.

Most EU member states now provide some form of partnership rights for same-sex couples, with a steadily increasing number providing equal marriage. Starting with Denmark back in 1989, many of those states created various forms of registered partnership for same-sex couples before moving on to same-sex marriage. While the journey to marriage equality may have taken longer than some would have liked, the scale of what has been achieved on that journey has been truly remarkable.

Ireland's journey to full recognition of marriage equality has been telescoped into a relatively short time. At the same time that Denmark was legislating for partnership rights for same-sex couples, Ireland provided the first protection for its lesbian, gay and bisexual citizens by making sexual orientation a protected ground in the

Prohibition of Incitement to Hatred Act 1989. As you are aware, decriminalisation of homosexuality followed in 1993.

In the following years, the legal landscape changed significantly, with extensive protections for LGBT individuals introduced in the Employment Equality Act 1998 and the Equal Status Act 2000. The equality legislation, underpinned by a system allowing people to seek redress against discrimination in employment, goods and services, helped to create a culture supportive of LGBT rights. The publication last week of the Bill concerning the establishment of the Irish Human Rights and Equality Commission is an important further step forward in safeguarding people's rights in terms of equality and human rights.

Siobhan Mullally and Kieran Rose, who has spoken here today, as Commissioners-designate of the new body, will have the responsibility of building the new organisation. I believe that the new organisation will be able to combat discrimination more effectively than heretofore by being enabled to approach the issue from an integrated equality and human rights perspective.

The development of an equality infrastructure in Ireland placed a spotlight on the importance of safeguarding people's rights and of creating a pro-equality culture. While the equality legislation focused on employment, goods and services, we came to realise as a society that recognition and respect were also needed in other areas. We needed similar legislation to affirm the respect and value of our society for relationships between same-sex couples.

The campaigns undertaken by NGOs such as GLEN have been pivotal in highlighting the need for legislation in this area. I would also like to acknowledge the important contribution made by parliamentarians. Senator David Norris first proposed a "Civil Unions Bill" in 2004. My colleague Brendan Howlin TD, now

Minister for Public Expenditure and Reform, also proposed legislation in 2006 to enable same-sex couples to enter relationships that would have legal standing and protection.

These bills, the public discourse around them, and the strong support from civil society organisations helped to cultivate the atmosphere within which the last Government brought forward civil partnership legislation. It was truly remarkable to see the enthusiastic all-party support for civil partnership. The legislation was enacted in 2010 as the snappily entitled “Civil Partnership and Certain Rights and Obligations of Cohabitants Act”. More than a thousand couples have registered their civil partnerships since it came into effect. Many more people than that are directly and positively affected by the legislation. For example, many Irish resident couples have UK civil partnerships, which are legally entitled to the same treatment as an Irish civil partnership.

Civil partnership has been a hugely important stage in a long journey. It gives a very significant package of rights, obligations and protections in a large number of arenas, from tax and pensions to immigration, from succession to maintenance obligations, from additional protection under the equality codes to specified property rights.

However – and this is a big “however” – there are differences between civil partnership and marriage. Some of them are significant. Civil partners who co-parent, for instance, cannot both have recognition as parents. The “non-biological” parent does not even have the same obligations to a child that he or she is helping to raise as a step-parent in a marital family. In cases of relationship breakdown between the adults, that leaves the child and the non-biological parent in a very vulnerable position. If the biological parent dies, the non-biological parent has no automatic rights and responsibilities in relation to a child who they may have been

parenting for all of that child's life. And sometimes it is the little things that can create serious problems for a family such as the decisions on who can bring the child to a doctor, who can authorise school trips, all the ordinary day-to-day responsibilities of parenting.

There are also the symbolic differences. While civil partnership was quite rightly celebrated as representing major progress towards equality in terms of relationships, there were always those who believed it was not enough. Some feel that only marriage can confer the societal recognition that truly signifies acceptance that same-sex relationships are as valid and worthy of protection as opposite-sex ones.

Legal change does not, of course, eliminate prejudice and bigotry. But it does help to emphasise that those prejudices are not acceptable and that the State does not condone them by its laws. We have made enormous progress over the last twenty-one years. The generation turning twenty one this year have never known an Ireland in which male homosexual acts were criminal. They probably cannot remember a time when people were not protected in their employment, and in accessing goods and services. Civil partnership came in when they were in their late teens, and the vast majority of them welcomed it.

While we all know of the continuing problems of homophobic bullying of young people, at the same time, this is the first generation of LGBT young people who have been able to come out at relatively young ages. Many have had the supports of their friends, families and communities in doing so. They have been able to be true to themselves and have not been forced into a damaging straitjacket because of others' prejudices. This is the first generation for whom a person's sexuality is a simple fact of life.

We have further progress to make on our journey to full equality. As you are aware, the Government decided agreed at its meeting of 5 November that a referendum would be held, no later than mid 2015, on the question of enabling same-sex couples to marry. The preparatory work for that referendum is underway. In tandem with this process, my colleague, Alan Shatter TD, Minister for Justice and Equality, published the General Scheme of the Children and Family Relationships Bill on 30 January 2014 for consultation. The Joint Oireachtas Committee on Justice, Defence and Equality, is currently undertaking a public consultation on the General Scheme at Minister Shatter's request. He has asked the Committee to respond by Easter. The consultation process is providing a very useful mechanism for feedback on the General Scheme.

The intention is that the Children and Family Relationships Bill would put in place a legal architecture to underpin diverse family situations. It would place the child's welfare at the heart of decisions on guardianship, custody and access. It would update and modernise the law regarding parental rights relating to children living in diverse family relationships. Under these proposals, civil partners and same-sex cohabiting couples would jointly enjoy parental rights for a child who was genetically linked to one of them. The proposals would make civil partners eligible to jointly adopt a child.

Presently, single individuals regardless of sexual orientation may adopt, as may married couples but a gay couple cannot jointly adopt. They would also allow step-parents, civil partners and those cohabiting with the biological parent and acting in loco parentis for a specified period to obtain guardianship and/or custody. They clearly set out how parentage is to be assigned in cases of assisted reproduction and non-commercial surrogacy and propose transitional provisions applicable to surrogacies which precede the Bill's enactment.

Unfortunately, not all relationships last forever. Recognising the negative financial impact on children of relationship breakdown, it is proposed that civil partners and same-sex cohabiting partners would have maintenance obligations for a child being raised by the couple, similar to those for step-parents. The maintenance obligation would arise, for instance, where the child was effectively being co-parented over a period by the adult.

These are exciting times in which we are working actively to expand the rights of same-sex couples. I am conscious that much work needs to be done. Change always takes a great deal of energy.

Next year we will ask the Irish people to decide on a fundamental question. That question will be whether or not marriage should be open to all couples. The Irish people will have to decide whether all couples will be able to enjoy the same societal support and affirmation for their relationships and families that so many of us are lucky enough to take for granted. It is my sincere and profound hope that we will collectively show our inclusiveness and generosity of spirit by voting “Yes”.

ENDS