

## Susan Wilkinson V (1) Celia Kitzinger (2) Attorney-General (Respondents) & Lord Chancellor (Intervener) (2006)

**[2006] EWHC 2022 (Fam); (2007) 1 FLR 295 : (2006) HRLR 36 :  
(2007) UKHRR 164 : Times, August 21, 2006**

31/07/2006

### **Barristers**

Ruth Kirby KC

### **Court**

Family Division

### **Summary**

The Civil Partnership Act 2004 accorded same sex relationships all the rights, responsibilities, benefits and advantages of civil marriage save the name. To the extent that by reason of that distinction it had discriminated against same sex partners, that discrimination had a legitimate aim, was reasonable and proportionate and fell within the margin of appreciation accorded to Convention States.

### **Facts**

The petitioner (W) applied for a declaration as to her marital status under the Family Law Act 1986 s.55 . W and the first respondent, who were both female and domiciled in the United Kingdom, had married under the law of British Columbia, which recognised as valid marriages between persons of the same sex. W, who had issued the instant proceedings in advance of the implementation of the Civil Partnership Act 2004 , sought a declaration that the marriage was a valid marriage at its inception and, if necessary, a declaration of incompatibility under the Human Rights Act 1998 s.4 in relation to the Matrimonial Causes Act 1973 s.11(c) . W argued that (1) the provisions of the 1973 Act and the 2004 Act, which precluded recognition of a marriage between persons of the same sex, amounted to a violation of her rights under the European Convention on Human Rights 1950 Art.8 , Art.12 and Art.14 and asked the court to give effect to s.11(c) of the 1973 Act, and s.1(1)(b) and s.212 to s.218 of the 2004 Act so as to recognise same sex marriages, lawfully effected in other jurisdictions, as valid in English law; (2) alternatively, the court should develop the common law so as to recognise her Canadian marriage as a marriage in English law; (3) alternatively, the provisions of the 1973 Act and the 2004 Act were incompatible with her Convention rights.

### **Held**

HELD: (1) W's claim related to an area of considerable social, political and religious controversy in respect of which there was no consensus across Europe. The European Court of Human Rights had consistently declared itself to be slow to trespass on areas of such controversy, B v United Kingdom

(36536/02) (2006) 42 EHRR 11 considered. Parliament had closely examined the issue of same sex marriages and, by the 2004 Act, it had decided that there should be statutory recognition of a status and relationship closely modelled upon that of marriage that made available to civil partners essentially every material right and responsibility arising from marriage, with the exception of the form of ceremony and the actual name and status of marriage. Parliament had ostensibly passed the 2004 Act, not because it felt obliged to comply with European law or rulings, but because it elected to do so as a policy choice. By withholding from same sex partners the actual title and status of marriage, Parliament had declined to alter the deep-rooted and almost universal recognition of marriage as a relationship between a man and woman, but without in any way interfering with or failing to recognise the right of same sex couples to respect for their private or family life in the sense that European jurisprudence regarded them as requiring protection. Neither Art.12 nor Art.8 by themselves guaranteed W the right to have her same sex marriage recognised as having the status of a marriage in English law, nor did the facts of her case demonstrate that those Articles had been violated, *Secretary of State for Work and Pensions v M* (2006) UKHL 11, (2006) 2 AC 91 applied. Parliament had enacted the 2004 Act to accord same sex relationships all the rights, responsibilities, benefits and advantages of civil marriage save the name, and to remove the legal, social and economic disadvantages suffered by same sex couples. To the extent that by reason of that distinction it discriminated against same sex partners, that discrimination had a legitimate aim, was reasonable and proportionate and fell within the margin of appreciation accorded to Convention States. When Art.8 and Art.12 were read in combination with Art.14, it was not shown that there had been a breach of the non-discrimination guarantee in Art.14. (2) The unambiguous statutory wording of s.11(c) of the 1973 Act reflected the common law rule and it was not necessary to develop the common law. (3) The provisions of English law were not incompatible with the Convention.

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