

IN THE MATTER OF:-

RE:-

THE GENDER RECOGNITION BILL:

THE EUROPEAN CONVENTION ON HUMAN RIGHTS:

The Impact on Religious Liberty:

OPINION

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INTRODUCTION:

1. I have been asked to consider the potential ‘conflict of rights’ between religious bodies and those individuals whose gender has been changed pursuant to the Gender Recognition Bill.
2. This Opinion will be formulated in parts; the *first* will identify the Convention Rights and relevant national law, the *second* part will focus on religious rights in a secular society and the *third* on potential areas of likely legal conflict.
3. The contention is by reason of the fact that many religious organizations do not accept the capacity of an individual to change sex/ gender. In many religions (Judaism, Christianity and Islam) the gender identity is pre-ordained by the Lord God and the procedures adopted in the Gender Recognition Bill are analogous to a form of subterfuge.

4. This problem is compounded by the manifest 'hostility' of many groups to the traditional religious message in the area of sexual ethics. The latest example of litigation is the attempt by six trade unions to require bodies with a religious 'ethos' to employ individuals whose sexual ethics are disapproved of¹. This case is a manifestation of 'secular intolerance' to traditional religion.

PART I

THE LAW:

The Convention:

5. Article 9 of the European Convention states:-

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice or observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The Human Rights Act 1998:

6. Section 13 of HRA reads:-

¹ *R (Amicus and Others) v Secretary of State for Trade and Industry* (CO Ref: 4670/2003) in relation to the Employment Equality (Sexual Orientation) Regulations 2003.

(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or of its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

7. Article 9, which protects religious freedom, may be directly in conflict with the Article 8 rights (privacy) of an individual who has changed gender. The conflict between competing rights requires a necessary balance by the Judiciary in individual cases; therefore, it is preferable for Parliament to identify the balance as far as possible.
8. Section 13 of the HRA grants heightened protection to 'religious organizations'. The exact meaning of this provision is unclear², but the provision evinces a pre-determined 'value test' (by Parliament) for the secular court to take on board the values of the religious body in question.
9. It is permissible for a national Parliament to give heightened protection to categories of individuals based on religious, ethnic or sexual identity with the United Kingdom's 'margin of appreciation'. Section 13 would appear to identify the 'balance', but it would be appropriate for the Gender Recognition Bill to remove any potential area of conflict.

The Gender Recognition Bill:

10. The Gender Recognition Bill was introduced into the House of Lords on 27th November 2003. Clause 9(1) of the Bill provides that the 'person's gender becomes *for all purposes*, the acquired gender'. It is obvious that such a wide ranging provision may impact to the detriment of religious bodies.

11. Clause 10 and Schedule 3 have effect so as to preclude ‘knowledge’ of the change of gender.
12. Clause 21 goes further and criminalizes disclosure by those in an official capacity. Clause 21(3) (offence) is vague with terms such as ‘voluntary organisations’ (this appears to apply to all non State private associations), ‘employer’ (including those of a religious nature) and ‘otherwise in connection with’ which is unspecified. Regulation 21(5) and (7) enable the Secretary of State to make provision where such disclosure is permissible.
13. The current state of the Bill is most unsatisfactory as the present Bill will violate religious rights (see below). This could be partially remedied in relation to clause 21 by means of appropriate Regulations. However, this is not on the ‘face of the Bill’ and remains subject to Ministerial discretion. A Convention based defence would be available to any prosecution.
14. Schedule 4, paragraph 3 amends the Marriage Act 1949 to include new section 5B which provides:-

(1) No clergyman is obliged to solemnize the marriage of a person whose gender has become the acquired gender under the Gender Recognition Act 2004.

The Government intends to amend this clause to cover the case where a clergyman ‘reasonably believes’ that the person has changed gender.

PART II:

PRINCIPLES OF RELIGIOUS FREEDOM:

² *R (Williamson) v Secretary of State for Education and Employment* [2003] 1 All ER 385 per Rix LJ.

15. This part will summarise a number of principles in the relationship between the State and 'religious organisations' and those individuals of religious faith.

Principle A: The Principle of Religious Autonomy:

16. The principle of 'religious autonomy' is central to any form of freedom of religion. Thus, 'religious autonomy' must permit the self- selection and self-identification of all adherents, employees, the access to divinity schools and non- association/ association of membership, based purely on a *subjective* test of faith.

17. In *X v Denmark*³, the Commission of Human Rights considered the case of an internal Church dispute between an individual minister and the Church body. The dispute was understandable; the Church of Denmark was a state Church to which the citizens of Denmark had a legal right to baptism of their children⁴. The individual minister, in question, required that such parents should attend five religious lessons (prior to baptism), rather than have it performed as of right. The Church Ministry dismissed the individual minister. He commenced proceedings for unfair dismissal for the violation of his religious beliefs.

18. The decision of the Commission is interesting; first, a religious dispute does not even fall within the ambit of Article 6 requiring access to the court. The Commission held:-

A Church is an organised religious community based on identical or, at least, substantially similar views ... and it is free to act out and enforce uniformity in these matters ... and their right to leave the Church guarantees their freedom of religion in case they oppose its teachings.

³ DR 5, Appl. 7374/76.

⁴ An analogous situation to the United Kingdom.

19. This is religious freedom; the right to associate with individuals who share deeply held conscientious views (including views on sexual ethics and identity). No one is *compelled to join* a religious organization and their religious rights are preserved by the ability to form their own distinctive religious organization⁵.
20. This principle of 'religious autonomy' was specifically recognised as an Article 9 right in the decision of the European Court of Human Rights in *Hasan & another v Bulgaria*⁶. Thus, religious organisation must be able to maintain their 'purity' by consistency of practice and message. If one engages in the (knowing or unknowing) marriage of an individual who has changed Gender, it will be assumed that the individual approves of such activity.
21. An analogous situation arose in *Boy Scouts of America & another v Dale*⁷. Mr. Dale was an avowed homosexual and former scoutmaster, who was excluded from the Boy Scouts organisation. The Boy Scouts organisation is a private body⁸ that seeks to promote 'moral values' and declines membership to both homosexuals and atheists. Mr. Dale argued the violation of a New Jersey 'public accommodation' statute that prohibited discrimination on grounds of sexual orientation.
22. The judgment of Rehnquist CJ is wide ranging, but recognised that an organisation such as the scouts was engaged in 'expressive' speech within the First Amendment. The Boy Scouts were engaged in advocating the 'clean way of life' that rejected homosexual conduct as legitimate. The corollary of this was that to require their association with a homosexual activist, would

⁵ Followed by the Commission in *Knudsen v Norway* (1985) 42 DR 247 and *Karlsson v Sweden* (1988) 57 DR 172.

⁶ (2000) 10 BHRC 646.

⁷ (2000) 8 BHRC 535.

⁸ This was problematic in the light of the size, nonselectivity and inclusive nature of the organisation. The Boy Scouts was a facet of American life.

interfere with their message/ free expression by making their position contradictory. The Supreme Court articulated the principle of 'freedom of expression' association.

23. The Supreme Court held:-

Dale's presence in the Boy Scouts would, at the very least, force the organisation to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as legitimate form of behaviour. (page 543c)⁹.

The Right to Marry in a Civil or Religious Ceremony:

24. The decision of *Goodwin v United Kingdom* held that the inability of a transsexual to marry was contrary to Article 12 of the Convention. However, compliance with Article 12 requires no more than a 'civil' ceremony and the definition of 'marriage' by the European Court was *secular* focusing on the material and emotional benefits of marriage and not its religious significance.

25. *There is no obligation upon the United Kingdom to permit religious marriage of trans-sexuals; in fact to so do could breach the duty of the secular state not to interfere with religious affairs. This is the effect of the Bill.*

26. In fact, for an analysis of religious rights as described above; trans-gendered individuals are free to establish their own religious communities and individuals are free to join, or leave the group as they wish. There can be no right to marry in the religious ceremony of ones choice in the knowledge of the religious group's principled opposition to that *type* of marriage¹⁰.

⁹ See *British Columbia College of Teachers v Trinity Western University* (2001) 10 BCHR 425, SCC.

¹⁰ Similar considerations apply to the remarriage of divorcees.

27. Nonetheless, it is possible that a trans-sexual may seek in the United Kingdom courts to require churches to perform trans-sexual weddings. The UK courts are not restricted by the ‘margin of appreciation’ and may go further than the European Court. Although a church is not a ‘core’ public authority, certain of its functions are public in nature such as solemnisation of marriages. The House of Lords has already held that conducting a marriage is a ‘governmental function’.¹¹

*Principle B: The Duty of the State not to
entangle itself in religious affairs.*

28. In *Serif v Greece*¹², the issue of direct self identification of a religious leader was raised and it was held that this is of no concern to the State. It is the ‘free market’ of religious ideas that will prevail.

29. As a consequence of the ethnic tension between the Greek Christians and the Greek Muslim population in Thrace, a number of international treaties were entered into to preserve the rights of the minority Muslims¹³. In return for Muslim privileges, the Mufti of Rodopi is appointed by Presidential decree by the Greek President.

30. Mr. Serif usurped the position of Mufti in 1995 (with considerable support of the local population) without Presidential sanction. He was prosecuted and convicted for the usurpation of a minister of religion and for publically identifying himself as the Mufti.

31. The European Court declared his conviction contrary to Article 9 in that Mr. Serif was entitled to call himself the Mufti of Rodopi and, if people wished to

¹¹ Parochial Church Council of the Parish of Ashton Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank and another, [2003] UKHL 37 per Lord Nichols at paragraph 13.

¹² (2001) 31 EHRR 20.

¹³ In particular, the *Treaty of Athens of 1913* and the *Treaty of Lausanne of 1923*.

adhere to his spiritual leadership it was entirely a matter for believers. The majority of Muslims supported him. It was not the concern of the Greek government.

32. This case is known among religious rights practitioners as the 'right to wear funny clothes'. The principle is that anyone can declare religious truth and any individual can decide to be an adherent of the faith.

33. The European Court held:-

53... the Court recognizes that it is possible that tension is created in situation where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism.

The role of the authorities in such circumstances is not to remove the cause of the tension by eliminating pluralism, but to ensure that the competing groups tolerate each other

34. Religious division and spiritual truth are not matters of secular concern. The theological dispute over the ability of any individual to change gender is of no concern to Her Majesty's Government. The duty of the Crown is to recognize this pluralism and ensure that the competing groups tolerate each other (which includes the right to convince). True liberalism is achieved by the recognition of the rights of religious organisations.

35. State entanglement with religion would involve courts in the resolution of religious truth; a task for which they are ill equipped. In *R v Chief Rabbi, ex*

*parte Wachman*¹⁴, Simon Browne J. (as he then was) upheld the principle that a secular court was an inappropriate body to determine spiritual truth.

Principle C: The Right to Proselytise:

36. *Kokkinakis v Greece*¹⁵ is the *classicus* case on the freedom to evangelize. Paragraph 31 necessitates consideration. The European Court of Human Rights held that:-

As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life ...The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

While religious freedom is primarily a matter of individual conscience, it implies, inter alia, freedom to 'manifest [one's] religion. Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, 'in public' and within the circle of those whose faith one shares, but can also be asserted 'alone' and 'in private'; furthermore, it includes in principle the right to try to convince one's neighbour, for example through 'teaching,' failing which, moreover, 'freedom to change [one's] religion or belief,' enshrined in Article 9, would be likely to remain

¹⁴ [1992] 1 WLR 1036. The issue was the adultery of Rabbi Wachman under Jewish law.

¹⁵ [1994] ECHR (25th May 1993)

a dead letter”

37. This paragraph identifies a number of obvious principles. First, the basis of religious belief is central to an individuals' life. Secondly, a civilized state needs to recognize religious pluralism. Thirdly, this is 'bound up' with the principle of '*Bearing Witness*'. Fourth, there is a right to 'manifest' religion in public and fifthly this includes the right to convince one's neighbour to convert to one's own faith.
38. *Kokkinakis* is a case that is *directly on point*. It deals with the principles of 'Bearing Witness' and seeking to persuade others in the tense areas of conflict between religious and secular rights. A violation of a right that goes to one's religious identity would have to be convincingly established.
39. The case involved a Jehovah Witness who sought to convert a member of the Greek Orthodox faith (to a belief of the JWs). The relevance of the issue is that the Greek Orthodox Church does not consider the Jehovah Witnesses to be 'true' Christians and believed they were seeking to 'fraudulently' gain converts. The Greek case law had defined proselytism as 'fraudulent, offering inducements and taking advantage of the inexperience, trust, need, low intellect and naivety of others'.
40. The Greek law preventing this was held contrary to the European Convention and the conviction of Mr. Kokkinakis was held unlawful and compensation was ordered.

Individuals who Change Gender are not a Protected Class:

41. It is the law that religious groups have the right to seek converts, even from among those who express hostility towards them, or who believe their message not to be the 'truth'.

42. However, this Judgment goes further. The right to proselyte cannot be denied to certain religious groups such as evangelical Christians. Nor, is it recognized that certain groups should be protected (such as the Greek Orthodox in Greece, or the trans-gendered (or homosexual) community in the United Kingdom) from determined evangelical activity.
43. There are no special categories of individuals that one cannot seek to convince (such as the Cantor's wife in *Kokkinakis*). Thus, there is no definition of 'vulnerable' people who are poor, uneducated or not versed in the Scriptures. There are only adults who are free to make personal choices as to the faith that they wish to adhere to.
44. Religious speech is a particular type of speech. It is 'sincere moral speech' that many find offensive for multifarious reasons (sexual ethics, abortion and damnation). It is expressive as it seeks to convert people in the public fora who do not wish to be exposed to the message. However, that is precisely why the public authorities must protect such speech. Otherwise, there would be a 'hecklers veto' and a rush to complain (or even worse) to silence a speaker which is contrary to 'democratic society'.

*Principle D: The duty to facilitate the manifestation
of religious Rights:*

45. The duty on the State is to 'accommodate' religious practice. It is not to denigrate it, or seek to confine practice to the *private* sphere. Article 9 of the Convention specifically recognizes the *public* dimension.
46. The principle of 'accommodation' is similar to the principle to 'facilitate', and one stage further, not to impede the free practice of religion. For example, Barnet LBC has *permitted* the construction of an Eruv for its Jewish residents.

Barnet LBC is not *promoting* a particular religion but facilitating practice by Jews.

47. If there is no exemption for religious organizations in the Gender Recognition Bill, there will be, *as a minimum*, a court enquiry into whether a practice is a religious claim or a secular act. This arguably breaches the principle of non-interference by the State into religious affairs.

PART III

THE AREAS OF POTENTIAL LEGAL CONFLICT:

Parry v Vine Christian Centre:

48. In *Parry v Vine Christian Centre*¹⁶, Mr. (Mrs.) Parry sued a Baptist Church over rights of membership and the right to use the female toilet (as opposed to the male toilet).

49. The Minister refused to accept that Parry was a woman (in God's sight) and believed there was merely a transformation of external appearances by means of surgical intervention¹⁷. Parry sued the Church pursuant to the Sex Discrimination Act 1975 and the Church was successful in 'striking out' the Claim.

50. The case raises a number of issues; the *first* is whether the Gender Recognition Bill would *now* change the outcome and *secondly*, the case was illustrative of the *militancy* of Parry in clearly seeking to 'break' the Vine Christian Centre.

¹⁶ Cardiff County Court of 15th February 2002.

¹⁷ Genesis 1:27.

51. Parry could simply have attended a more accommodating Church community, but sought to impose secular law on Church doctrine by means of aggressive litigation.
52. It cannot be certain that the Church would be successful again. The first reason is the very decision of *Goodwin v United Kingdom*¹⁸ and the *nature of the reasoning* of the European Court. Secondly, Parry did not possess a Gender Recognition Certificate and thus was not ‘*for all purposes*’ a woman. The third reason is the nature of the ‘comparator’ under the Sex Discrimination Act 1975 as interpreted by Clause 9 of the Gender Recognition Bill of the meaning ‘for all purposes’. Fourthly, Parry was *not* a member of Vine Christian Centre (but a mere attendee) and his claim would have been considerably enhanced if he had been a member.
53. Of course, the basic argument that there is *no right* to attend a particular Church remains, but without a clear exemption in the Gender Recognition Bill, there will be future litigation of an unpredictable nature.
54. If the Church does permit the individual (who has changed gender) to attend and requires that the ‘former’ man use the men’s toilets rather than the women’s toilets of his new gender¹⁹ is the comparator for the purposes for a sex discrimination claim a man, or a woman, or a person who has changed gender?
55. Further, the continuing development of enabling human rights is difficult to predict. There is no Convention Right to join a Church, and arguments to such

¹⁸ *Parry v Vine Christian Centre* was in February 2002, which was 7 months prior to the decision in *Goodwin v United Kingdom*. The relevant European Court decision at the time was *Sheffield & Horsham v United Kingdom* (1998), which specifically held there was no right for a trans-sexual to marry, nor did such a gender status have to be recognised.

¹⁹ This is not a fanciful example as *Parry v Vine Christian Centre* involves direct consideration of Parry’s desire to use the female toilet, whereas the Church wanted the use of the men’s toilets to avoid embarrassment to female adherents to the faith of the Church.

effect have been rejected²⁰ *so far*. The terms in Clause 9 arguably could give rise to a cause of action for the denial of membership of a religious organization or employment by one in conjunction with the Sex Discrimination Act 1975.

56. The rights of an individual to *join an organisation* are weaker than his rights where he is *dismissed from* or *excluded from* a body from which the individual is an employee or member already. The Courts would, as a *minimum*, have to inquire if the reason was contrary to law, or for religious doctrine.

57. In *Smith & Grady v United Kingdom*²¹, homosexuals were granted Article 8 Rights on dismissal from the Armed Services, despite joining in the knowledge of the prohibition on homosexuality. In *Stedman v United Kingdom*²² Mrs. Stedman was denied Article 9 Rights for the Sunday Sabbath, despite the employer breaching the then Shops Act 1950.

58. Thus, there will be conflict with the principle of state entanglement with religion as to whether the act was Church doctrine, or secular animus. It is difficult to conceive of an area of applicability to religious rights that will not be affected by the Gender Recognition Bill (such as, for example, appointment of teachers by a religious school).

59. There is only one certainty and that is the certainty of extremely expensive litigation on issues that secular courts are ill equipped to resolve.

The Rights of Conscience:

²⁰ *RSPCA v AG and Others* [2001] 3 WLR 1323, CA.

²¹ (2000) 29 EHRR 493.

²² (1997) 23 EHRR CD 168.

60. The Bill fails to provide an effective and wide-ranging conscience clause. The Bill offends against the 'principle of effectiveness' ('effect utile') and would require courts to resolve ethical issues of dispute.
61. The amendment to the Marriage Act 1949 (in the Fourth Schedule) is woefully inadequate. A clergyman (but presumably not a Baptist Minister) is not obliged to solemnize the marriage of a person who has changed gender. It is recognized that only an Anglican clergyman has parish responsibilities.
62. However, he cannot know, not find out, nor inform, nor discuss whether any given individual has had a gender re-assignment. At best, he can (under a Government amendment to the Bill, arguably) refuse because a person 'looks' like there has been a change of gender.
63. It is rather like saying to a Muslim school: 'We don't know if the food given to your children has pork in it. Further, you are not allowed to inquire, or check whether this is the case'. Thus, the choice for the Muslim is not to eat. Or to say to a Jewish person, that you should become a vegetarian as you cannot secure Kosher meat. The very posing of the question illuminates the clear violation of religious rights.
64. The State is engaged in subterfuge in which the religious adherent may be required to breach his allegiance to God. The State is effectively informing the adherent that he has not violated his religious vows by reason of ignorance, or more accurately, by state enforced ignorance.
65. In the US Supreme Court case of *West Virginia State Board of Education v Barnette*²³ the issue of religious conscience arose. A number of Jehovah Witness schoolchildren refused to salute the US flag on the basis that secular power was a 'graven image'.

66. The Supreme Court recognized that the minor act of reciting the pledge would not prevent their religion, nor change the student's views of the American flag. However, the students had a negative first amendment right not to endorse an act they religiously objected to.

State Coerced Endorsement:

67. The Crown is either contradictory in the Bill, or is simply seeking to insert a 'sop' to clergymen and religious organisations. It is recognizing that there is disagreement over 'right' and 'wrong' in the field to the marriage of trans gender individual in a religious context, but has implemented the legislation in a fashion that secures the 'correct viewpoint' against those who consciously disagree. The Crown is seeking *passive acquiescence* with their viewpoint.

68. There is something profoundly illiberal and unlawful in the Crown seeking to advance the objective of promoting 'acceptance' and 'tolerance' by demonstrated intolerance for a viewpoint not consistent with their own.

69. Article 9(1) of the First Sentence is not subject to any form of derogation as contained in 9(2). Thus, the *forum interim* is inviolable. The effect of the inability of a 'religious organisation'²⁴ to examine the Gender Recognition Register is a *direct* conscience violation. The State is requiring an individual to engage in involuntary affirmation of an act and force such individuals to choose between their religious beliefs and suspicions.

70. The irony of this is that this is unnecessary and likely to fail the *proportionality* test of the Convention. First, *Goodwin* does not require religious endorsement and can be restricted to the general civil sphere and secondly, there are probably some liberal Jewish, Christian (and Muslim) Ministers who will be prepared to marry trans-gendered individuals.

²³ 319 US 624 (1943).

71. The measure cannot be established as a *pressing social need* and as *necessary in democratic society*. Article 9 requires ‘respect’ and there is a violation of ‘dignity’ under the present Bill.
72. The Crown is effectively securing endorsement by a *religious organization* of a union that is not *religiously* recognized. The Crown is effectively securing the employment, and the membership of an association of individuals who are known not to share religious and sexual ethics with others.
73. A secular ‘comparator’ would be a requirement that the Labour Party would have to engage in employment a Conservative activist by reason of being unable to verify the individuals true political allegiances. The Crown is requiring religious organizations to modify their ‘expression’ to whatever beneficiaries of the law choose to alter it with messages of their own.

Negative Article 10 and 11 Rights:

74. Freedom of association has always included the ‘negative’ freedom of association. Article 9 is to be interpreted in the light of Article 11; as illuminated in the (secular) decision of *Young, James and Webster v United Kingdom*²⁵, where the 'closed shop' agreement with British Rail necessitated membership of a trade union. This is 'secular autonomy'.
75. The concept of freedom of association impliedly includes the right not to be compulsorily associated with people one does not wish to associate with; ie the ‘freedom of negative association’. The European Court held:-

²⁴ Within the definition of section 13 of the Human Rights Act 1998.

²⁵ (1981) 4 EHRR 38. See the development of this principle of association in *Sigurdur Sigurjonsson v Iceland* (1993) 16 EHRR 462.

55. ...In the Court's opinion, such a form of compulsion, in the circumstances of the case, strikes at the very substance of the freedom guaranteed by Article 11. For this reason alone, there has been an interference with that freedom as regards each of the three applicants.

76. The 'closed shop' failed the 'proportionality' test and Her Majesty's Government was required to pay compensation to the 'principled' 'victims'.

77. Freedom of speech must include the right of a citizen the freedom to refrain from speaking and not to endorse (openly) a course of conduct. The Crown is mandating a 'moral code' of which contravenes the *forum interim*.

78. The Gender Recognition Bill fails to protect the rights of religious organizations; a failure to ensure their principled rights are respected can only result in further litigation.

79. The 'balancing' of rights will be undertaken by the Courts, rather than by the legislature. This is an unhealthy and unnecessary transfer of power and, in which, the process will be slow and determined on a case by case basis.

Other Contentious Issues:

80. The Sex Discrimination Act 1975 and the Employment Equality (Sexual Orientation) Regulations 2003 both provide a degree of exemption for organized religion from their provisions. The Gender Recognition Bill leaves these 'exemptions' in a state of confusion. For example, section 19 of the Sex Discrimination Act 1975 provides that certain religious appointments can be restricted on the basis of 'sex' and the argument now exists that a transgendered individual is of that sex and with section 6 of the 1975 Act.

81. Similar considerations apply to the appointment of school teachers pursuant to the School Standards and Framework Act 1998 in which the lack of verification will exist and there exists the strong possibility that the secular court will adjudicate on the compatibility of a change of gender with tradition interpretations of scripture.

82. Similar considerations will apply to Anglican (and other religious bodies) functions such a confirmation, baptism and so forth.

83. The rights of the trans-gendered individual would depend on the obtaining of a Gender Recognition Certificate; otherwise the situation is likely to be comparable to the law as determined in *Parry v Vine Christian Centre*.

CONCLUSIONS:

84. In my opinion, the present state of the Gender Recognition Bill fails to protect the rights of religious groups; there is a duty upon Her Majesty's Government to so accommodate and *Goodwin* does not provide otherwise.

85. A final concern is the very nature of litigation. If I can be of any further assistance, please do not hesitate to contact me.



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26th January 2004

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