

**THE HIGH COURT**

**Judicial Review**

**BETWEEN /**

**KATHERINE ZAPPONE AND ANNE LOUISE GILLIGAN**

**Applicants**

**- and -**

**REVENUE COMMISSIONERS,  
IRELAND AND THE ATTORNEY GENERAL**

**Respondents**

**Counsel's Note of Judgment delivered by Mr. Justice McKechnie**

**Application for Leave for Judicial Review**

**10.30 am**

**9<sup>th</sup> November 2004**

The Applicants are both women, employed persons, earning salaries and with assets in this country. They went through a ceremony of marriage valid in accordance with the laws of British Columbia. Their union is recognised in Canada.

Section 1019 of the 1997 Taxes Consolidation Act is the provision dealing with married persons. Such persons get a more favourable regime than unmarried individuals do.

The Applicants applied to the Revenue Commissioners for benefits under section 1019 and were refused. Accordingly these proceedings were launched by way of Judicial Review. Several reliefs were sought in the Affidavit and Statement of Grounds. Given the nature of the proceedings, they need the Court's permission to proceed. The threshold for Leave has been specified in a number of cases, for example in *G v. DPP*. The Applicants must satisfy the Court that on the facts and the law as outlined, an arguable case has been established. The requirement for Leave is no higher than that.

In their Statement, the Applicants seek a number of declarations and other reliefs. They claim the circumstances as outlined constitute a violation of the 1937 Constitution, Articles 40.3, 41 and 43. They allege the same circumstances are in

breach of the European Convention on Human Rights and the European Convention on Human Rights Act 2003. They also seek a declaration that the relevant provision of the Taxes Consolidation Act is incompatible with the European Convention. It is alternatively said that section 1019 is capable of being used in a manner compatible with the Convention. If so, then some of the reliefs will not follow.

In support, the Applicants have given some authorities and have referred to the EU Charter and the European Convention on Human Rights Act 2003, and the Convention, in particular Articles 8, 12 and 14.

It is not necessary for the purpose of determining this application to outline in any detail the relevant cases or passages cited. This case is not simply about tax bands or allowances, or a comparative analysis between married and unmarried persons.

The matters raised here transcend these individuals, and are of profound importance to society and to persons contemplating same sex marriages. A number of deeply held values, and so on, are up for consideration. The issue of marriage itself is up for debate. The ramifications of the case will not stop there. If the Applicants succeed, a stream of consequences - legal, cultural – may follow. Far-reaching issues are raised. However, this is but a Leave application. Consequently, once the Applicants have satisfied the *G v. DPP* threshold, they are entitled to permission to continue with the proceedings. Having considered the documents and re-read the cases overnight, I have no doubt that the Applicants have met that threshold, therefore as a matter of law they are entitled to Leave. I make no comment on the ultimate outcome of the case, and no indication as to what that might be. The ultimate rules are quite distinct and different when dealing with the substantive case. Accordingly, this is no reflection on the ultimate outcome. However I propose to grant Leave to seek the reliefs set out at paragraph (d), (i) to (xi), on grounds 1 – 13 inclusive. The matter should commence by way of plenary proceedings, so pleadings will be necessary, to be served on the Chief State Solicitor's Office on behalf of the Revenue Commissioners, Ireland and the Attorney General. It is not necessary to give a return date for such proceedings. I reserve the question of costs.

I will allow four weeks to serve the Plenary Summons and Statement of Claim, but the case stays in the Judicial Review list.

Ivana Bacik BL