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Equality is not an abstract concept . . . The Court has an historic choice to make – a choice that commits our legal system to equality or one that entrenches and confirms prejudice and discrimination.

Fionnuala Ní Aoláin, *The Irish Times*, 2 October 2006

Democracy is not an abstract concept. When we decided to go to court, we believed that it was our right as citizens to engage with the structure of Irish democracy in order to seek justice for ourselves: the Irish Constitution proclaims that ‘Justice shall be administered in courts established by law by judges appointed’ (Article 34.1). At a personal level, we wanted to ensure that our fundamental rights were protected in the same way as other citizens. The judicial structure is there precisely to provide citizens with this way of practising democracy.

We believed too that the issues which our case would raise would go far beyond our own individual lives and would bring us into the realm of what is called ‘matters of public interest’. The human, psychological impact of interacting with the legal structure, however, is profound, and there has been and continues to be a massive cost to our lives at all sorts of levels, and yet, this kind of action, we believe, supports a healthy democracy. But how many people are able to take such action? This question weighed heavily on our minds and hearts, and, while we clearly took this case on our own behalf, we also took it on behalf of those who might not be able to withstand the human cost – financial and

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otherwise – of engaging in such democratic action.

Later on, we heard from our senior counsel, Gerard Hogan, that the Irish Constitution is not ‘permafrost in the period of 1937’ (when it was written), rather, that it is a ‘living document’ that requires reinterpretation as society changes, as ‘we the people of Éire’ (from the Prologue to the Irish Constitution) evolve over time. How is this foundational document to maintain its life, we ask, if ‘we, the people’ do not engage with it?

Returning to Ireland from Vancouver brought us back to the real world of the Irish legal realm. We had stepped outside that realm to do what any couple does when they are in love and want to solemnise and legalise their partnership (except, of course, those who are barred by law). As we faced the next steps of the legal journey, though, we did feel changed. When one’s marital or family status alters, something happens inside as well as outside – at least, it did for us. An interplay between social choice and personal identity begins and eventually melds into a new understanding and experience of ourselves as family, and so Ann Louise’s family is now Katherine’s and Katherine’s family is Ann Louise’s in that formal sense. Family shapes identity, and now we are people who have a wider network of relationships that we depend on and who depend on us. Kinship through law may not always deepen intimacies between people, but it did for us. June is Katherine’s sister-in-law. Philip is Ann Louise’s brother-in-law. Katherine’s sister Suzie introduces her friends to Ann Louise as her sister-in-law. How proud that makes us both feel, how recognised and how affirmed on the outside for who we are now on the inside.

We wonder if all married couples go through this path of changing and unfolding self-awareness? We suspect that we are like them, indeed, we are like you the reader who is married – at least in this regard.

Towards the end of September 2003, ten days after we were married, Phil O’Hehir (our solicitor) and Ivana Bacik (our junior counsel) passed on the Equality Authority research to Gerard Hogan (senior counsel and constitutional expert) along with a statement about our circumstances and our desire to press ahead. We held our breath for his preliminary

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opinion, and it came towards the end of November. While Mr Hogan was quite cautious about predicting anything close to a clean win, he did write that we have a 'serious and stateable constitutional case' and that he would be willing to act on our behalf. Uplifted by his response, we met with Phil and Kevin Brophy (owner of Phil's firm) to discuss the implications of Mr Hogan's opinion and to plan the next steps. As we reviewed recent case law and parliamentary changes in other jurisdictions, we noted that the usual tack was for same-sex couples to present themselves to apply for a marriage license, be refused and, on that basis, to initiate legal proceedings in the light of that refusal. We also noticed that in jurisdictions where cases were successful in opening the institution of marriage to same-sex couples, several couples took the one case.

In light of this first review, we agreed to undertake a number of actions. We decided that the best thing to do would be to apply for a marriage license in Ireland (following the route of those in other jurisdictions), to seek out at least four or five other couples who would join us in this action and to begin to think about ways to raise money for the case. While Brophy's and our counsel were willing to take the case *pro bono*, there still would be significant costs for administrative and other types of outlay, and we still had the weighty threat of costs being awarded against us should we lose.

What strikes us now, as we record these memories, is that there was no previously charted course for what we would end up doing. Equally, as we took each step, we would discover unanticipated dimensions; barriers would appear from nowhere, and dead ends would litter the path. Every time these things happened, we would have to regroup as the Americans say, or take stock as the Irish say, and dig deep within our souls to keep on course.

Finding other couples to enter the legal action with us proved to be one extremely disheartening dead end. We put the word out through various formal and informal networks, and we held countless conversations with colleagues and friends. We hit a wall, time and again, mainly for two types of reason: most lesbian or gay couples we knew,

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while happy for us that we married, absolutely did not want to have anything to do with the ‘heterosexual’ or ‘patriarchal’ institution of marriage: marriage held a burdensome history of oppressing women; or marriage was too much like ‘them’; or marriage lasted too long; or some had the experience of marriage already and it contained memories fraught with conflict, disappointment or torment. Second, the few couples who did not hold these views were not ‘out’ to their families or to their workplace or to the public; declaring a desire to marry would carry too great a personal risk. We realised, eventually, that we would have to go it alone. We tried not to pass judgement on anyone, though this was very tough to avoid at times. Once again, we felt immensely frustrated that, unlike other countries, no Irish national organisation was campaigning for civil marriage for same-sex couples. Our solitary position dampened our spirits some days, but our will never faltered. The road to justice simply lengthened.

In early December, we received a great gift, which we experienced like a blessing dropping from the heavens. Our friends Mary Paula Walsh and Kay Conroy hosted an Irish wedding reception for us in their beautiful home. It was a generous evening, which is the hallmark of all evenings in their home. Before the meal was served and the music began, they had prepared a ritual of blessing to celebrate our marriage. Everyone sat around in a large circle; some shared their reflections on love and marriage, and others played a piece of music or read a poem that summarised their thoughts. In conclusion, all present joined hands forming an archway down the long room, they then invited us to enter and to pass under as they each gave us their blessing. The old Irish word for marriage, *cétmuintir* – *cét* ‘together’ and *muintir* ‘community’ – summarised the event.

Some time later, in An Cosán, West Tallaght, a similar evening was held with many of our friends from the local community present. During the evening, Nuala Wood came up to us: ‘I was so relieved when I heard that you two got married,’ she said. ‘You know, during the early days, when we used to go up to The Shanty, I’d look at you both and say to

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myself, I just hope these women can find two good, eligible men.’ Then, warming the lobby with her hearty laugh, she added, ‘Little did I know!’

Before the close of the year, we approached two friends, Patricia Prendiville and Éadaoín Ní Chléirigh, to discuss any possible avenues to raise funds. Together they had founded Meitheal, a not-for-profit highly successful organisation that provides technical support to the community and voluntary sector in Ireland. While they took up our cause without hesitation and met with a large philanthropic organisation to put our case (anonymously) to them, the answer came back with a negative. Another dead end. The year 2003 closed with our health intact and our personal happiness high, a legal team assembled, but a strategy that required revision.

By mid-Februray of 2004, the new strategy crystallised on Parliament Street in the offices of our solicitors when we met our junior and senior counsel together for the very first time. While Mr Hogan’s reputation preceded him, we could not have anticipated how his graciousness (which reminded Ann Louise of her father Arthur), combined with his astute intellect and immense breadth of legal knowledge and expertise, could comfort us so much. We felt intellectually inspired and personally accompanied throughout the discussion and debate of the best way forward. Mr Hogan (or Ger, as we would now call him) believed that it was a good time to take the case. Once again, we were cautioned in relation to costs and further warned of the ‘sensation’ that the case would create within the media and the public. We must be aware that this would happen, he told us, we must know that our case would bring a spotlight on many aspects of our personal lives and be ready to withstand the unexpected as well as the anticipated. ‘Yes, yes,’ we said (with some trepidation it must be admitted), ‘but why do we need to apply for a marriage licence here? We ARE married!’ A pause in the heated conversation took place, but it was not long. ‘The best thing to do in this case, then,’ he said, ‘is to apply to the Revenue Commissioners to recognise your marriage by requesting a change of tax status, and to apply to the Registrar General to recognise your marriage – as any

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married couple returning from a foreign land would do! If they accept your application, we will have completed our business. If they refuse, this constitutes grounds to seek a judicial review of their decision, and this will be the starting point of *our* case.'

We required only one thing, and that was an affidavit from a Canadian lawyer stating that we had had the capacity to marry in Canada and that our marriage was legally recognised in that jurisdiction. We knew no Canadian lawyers, but, through our friend Fionnuala Ní Aoláin (who sat on the Human Rights Commission with Katherine and had many international legal contacts), we were put in touch with lawyers Shelagh Day and Gwen Brodsky, both active in the Canadian movement for the recognition of same-sex marriage. They recommended Kenneth Smith, a barrister and solicitor practising in British Columbia and working in the area of gay and lesbian rights and the rights of same-sex couples since before his call to the bar in 1978. To this day, we have not set sight on Ken, though he responded to our request with enormous generosity, international solidarity and pragmatic swiftness. We owe him a huge debt of gratitude. By April of 2004, we had written to our local office of the Revenue Commissioners (based in Tallaght!), enclosing the affidavit and our marriage certificate, stating that we were married in Vancouver on 13 September 2003, that we were both Irish citizens and residents in Ireland and that 'we now request that we be able to claim our allowances as a married couple under the Taxes Consolidation Act.' Around the same time, Phil wrote on our behalf to the Registrar General of Marriages, requesting that they confirm that our Canadian marriage was binding under Irish law.

We received a speedy reply from the Registrar General telling us that the remit of its office does not extend to making a declaration on the validity of marriages that occur outside of the Irish State, and that it was a matter for the courts. The Revenue Commissioners were a different matter. Their very courteous letter, addressing us as 'Dear Ladies', stated that as they had never received a request such as ours, and as 'Irish taxation legislation caters for marriage only on the basis of the institution

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consisting of a husband and wife', they needed a legal opinion, which they now forwarded on to us, stating that, though 'the Taxes Acts do not define husband and wife, the *Oxford English Dictionary* offers the following:

Husband – a married man especially in relation to his wife

Wife – a married woman especially in relation to her husband.

So, on the basis of using the *Oxford English Dictionary* to interpret Irish tax law, the Revenue declared that they could not give us the allowances that any other married couple would get. While the negative response was not unexpected, the rationale certainly was.

We held another meeting with our legal team and formally agreed to apply for a judicial review of the Revenue's decision because we believed – and still believe – that it is unjustly discriminatory and in breach of our rights under the Irish Constitution. Our lawyers went to work immediately, drawing up all the appropriate papers over the late summer and early autumn. When all was completed, they simply notified the courts' office that we were looking for a date to go into the High Court to get permission from a judge to take the review. That's the way it works: one needs permission to begin the review process before a date is given for the case to be heard.

Phil rang us at the beginning of November. The date for mention (the technical term for 'date to seek permission') in the High Court was set for 8 November. A list is published, the judge knows only that Mr Hogan is coming in to seek leave to apply for a judicial review – there is no notification of the content of any 'mention'. The day had finally come! While this was not the date that the case commenced (we belabour the point!), it was the date that our intent would be unveiled to the Irish public. So, we decided that, out of courtesy or in friendship, we would get in touch with as many close friends as possible to let them know that they might be hearing about us in the news. In addition, Katherine rang the President of the Human Rights Commission, Dr Maurice Manning, as

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well as the CEO, Dr Alpha Connelly, to let them know. Both were immensely sympathetic and supportive. In fact, Katherine had discussed our intentions with Maurice a number of months previously, beginning with the news of our marriage. She will never forget his gracious and magnanimous response: during the meeting, he excused himself for a moment, and towards the end of their session, glasses of champagne arrived to congratulate Katherine on her marriage to Ann Louise. These are the memories that sustain us, even to this day.

Ann Louise phoned Eddie Ward, CEO of the National Educational Welfare Board, the statutory board she chaired, to tell him of our impending action. Eddie also responded sympathetically and graciously, and he made two eminently sensible suggestions: perhaps we should ring our respective government ministers (Education for Ann Louise; Justice, Equality and Law Reform for Katherine) on the morning of going to court and inform them so they wouldn't be taken off-guard if they were door-stepped for a quote; he also suggested we might get some personal assistance to deal with the media queries that undoubtedly would come our way once the news broke. On the weekend before the court mention (8 November was a Monday), Katherine phoned Edel Hackett, a public-relations consultant that both she and Ann Louise had worked with professionally in the past. After describing to Edel what we were up to, Katherine said, 'We think that there *may* be some media interest when we go to court – could you help us with that?' Edel responded with her characteristic good humour and generosity 'I think you may be right! Of course I'll do anything I can to help you out.'

Monday morning arrived, and Katherine was in her office telephoning the last few friends we hadn't got a hold of the night before, when Ann Louise burst through the door saying, 'It's on "Morning Ireland"!' (the RTÉ breakfast radio programme). They gave the whole story, based on a piece from Carol Coulter on the front page of *The Irish Times* – no names, but everything else! How did this happen? We had waited to phone almost everyone until the night before, swearing all to secrecy. To this day, we do not know how Carol got the information.

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Needless to say, as we approached the courts later that morning, there was a swarm of photographers and television cameras. Phil advised us to be courteous, smile and say nothing and just keep on walking into the courts, which we dutifully did. When we arrived in the courtroom, barristers, solicitors and clients came and went as each stood before the judge to get permission for their case. At 12.55pm Judge McKechnie called on Mr Hogan to put forward our details. Ger stood up and said that his clients, Katherine Zappone and Ann Louise Gilligan, were seeking a change in their marital status for taxation purposes in the light of their Canadian marriage. The statement electrified the courtroom. The Judge immediately requested that all other cases be held over until the next day and further stated that he would be ready to hear Mr Hogan's submission after lunch. Mary Wilson, RTÉ legal correspondent, and other journalists literally ran from the courtroom to phone in our names to the various news outlets. Though we did not know it then, our names were soon going around the world – to Boston, New York, Canada, Japan, Australia, South Africa, Taiwan, Seattle – as journalists reported that Ireland would now have to deal with the issue of marriage and partnership rights for same-sex couples.

When we returned to the courtroom after lunch, Ger outlined the central issues of our case. Judge McKechnie asked numerous questions, including technical issues related to articles of the European Convention on Human Rights. The Convention had recently been incorporated into Irish domestic law, and so we were claiming that our convention rights as well as constitutional rights had been breached. An hour passed very slowly before Ger concluded his submission. To our complete amazement, Judge McKechnie declared that he would hold his judgement until the next morning! This rarely happens: standard practice is that a judge will decide then and there. Our legal team certainly did not expect that getting permission to take leave to apply for a judicial review would be a big hurdle. What could we do except leave and wait until the morning? Phil informed us that correct protocol prevented us from speaking about the details of our case once we had started the

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judicial process, so we pushed our way out through the cameras and journalists. We felt deeply unsettled. After all the planning, the facing of fear time and again, were we to be halted at the starting line? The night also passed very slowly.

At breakfast, we discussed the fact that as Ann Louise was interviewing candidates for a new doctoral programme in St Pat's, she simply had to go to work, which meant that Katherine would be in court to hear the judgement without her. We decided then that we wanted to make some kind of personal statement to the public, so that Ann Louise could be named even though she was unable to be present. We wrote a few lines together – with the anticipation of a positive outcome (and hoping that our words would not breach protocol) – and Katherine went off to meet our legal team at the courthouse, while Ann Louise went to St Pat's.

A packed courtroom greeted Katherine, Phil, Ivana and Ger. We all rose as the Judge entered. His judgement began with a recitation of the facts as presented to him, followed by an explanation of the 'threshold for leave', namely, that we must satisfy the Court that on the facts and the law as outlined, an arguable case was established. We were all on the edge of our seats – still no indication! Then finally he said:

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 ... Having considered the documents and reread the case overnight, I have no doubt that the Applicants have met that threshold, therefore, as a matter of law they are entitled to Leave.

(As noted by Counsel, Ivana Bacik, 9 November 2004)

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We rushed from the room, jubilant. Katherine telephoned Ann Louise, didn't get her, but left her a voicemail with the great news. Katherine and Phil went towards the outside of the courts where the media were gathering in droves at the gate (they are not allowed inside the court grounds), and Katherine asked Phil to read what we had written, to see if she thought it was OK; she said, yes, the personal nature of the statement meant it was fine. The cameras flashed and Katherine could only think of Ann Louise as she said,

Ann Louise Gilligan, my beloved partner, and I are delighted with the outcome of the judgement this morning.

Twenty-three years ago we made a commitment of life partnership to each other. We have been exceptionally blessed by our unconditional love for and fidelity to one another. Yesterday and today are simply the first steps to seek legal recognition of our lifelong love and faithfulness. This case is about equality, fairness and human rights – as our legal team has so ably outlined in the court. For us, it is a case as well about equality and human rights in the context of love.

We wish to thank, at this point, all our family, friends, legal team and colleagues who have enabled us to get to this day and who have promised to walk the path ahead with us – four-square. We want to acknowledge as well the Equality Authority and all its important work in this arena. Our parents have provided us with exceptional models of love and married life, and we are inspired by them and grateful to them.

Today is a happy day. This is a happy case.

The floodgates opened. For two solid weeks, newspapers, magazines, radio and television shows carried our story. One of the best headlines proclaimed: 'Archbishop Backs Legal Rights for Gay Couples' (front page, *Irish Independent*, 16 November 2004). What Dr Diarmuid Martin, the Catholic Archbishop of Dublin, actually said was: 'I recognise that there are many different kinds of caring relationships and these often create dependencies for those involved. The State may feel in justice that the rights of people in these relationships need to be protected.' He was

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responding to comments made by Taoiseach Bertie Ahern, who had said earlier in the week that extending rights to gay couples in the areas of tax and inheritance was the 'fairest' and 'Christian way to deal with this'. While neither of these men got anywhere near declaring support to recognise our marriage, likewise neither of them had ever uttered such positive statements before about legal rights for same-sex couples. The public, political and religious ground started to shift during those weeks. A huge majority of the coverage was positive; very few voices were critical of our action, barring a few of the usual suspects. We declined all interviews – though we would love to have given a few! – as we thought it best during that time to stay quiet. We were just beginning to discern what we could say and what we couldn't, when it was the right time to speak and when silence was the appropriate response.

Our reactions to the public focus on our private lives differed considerably. Ann Louise returned to college with certain trepidation, wondering when or if she would get a knock on the door to deliver the news that she was being dismissed. Thankfully, this never happened. Also, she received nothing but support and affirmation from the majority of her colleagues. One staff member did feel the need to send out an email to 'all staff' reminding them of the Catholic ethos of the college and reiterating the negative Church teaching on homosexuality. This correspondence was short-lived as the College President intervened and called a halt. The said colleague met Ann Louise in the car park later that day and assured her there was 'nothing personal' in his stance, he just had to uphold Catholic faith and morals.

Katherine loved the coverage – finally the Irish public were debating the issues, and she didn't mind at all that her face and Ann Louise's provided the focal point. Our neighbours, on a quiet rural road in Brittas, delighted in our stance and surprised us by all sorts of kind gestures. One morning, we went to the post box at the end of our drive to discover a bottle of champagne from new neighbours we hadn't even met; congratulations cards also came through the box – some with euro notes to provide practical support – and our next-door neighbours on

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both sides (one a younger couple, another an older couple) said they would stand with us and support what we were doing. Friends, colleagues and people we had never met sent us hundreds of cards and letters with deeply moving expressions of encouragement. Ann Louise received a petition signed by hundreds of students in St Pat's declaring their admiration and approval. To this day, we have received only two letters with damning words and tone.

During the subsequent months, we worked with our legal team as they drew up the documents to submit to the High Court office, and we considered carefully the kinds of expert witnesses who would provide the necessary evidence for our case. We continued to be troubled, though, by the financial risk that we were embarking upon and so decided to host three dinners of friends and colleagues to discuss these concerns. Their response went beyond what we could have imagined: Grainne Healy and Denise Charlton agreed to found and co-chair a fund-raising and advocacy initiative on our behalf. Ailbhe Smyth and Orla Howard of the National Lesbian and Gay Federation, and Christopher Robson, Keith O'Malley, Brian Sheehan and Eoin Collins of the Gay and Lesbian Equality Network declared practical support for the initiative. Edel Hackett pledged her public-relations expertise, and at the request of Brian Kearney-Grieve, a staff member of Atlantic Philanthropies' human-rights programme, our dear friends Deirdre Hannigan and Anne O'Reilly agreed to develop a proposal to support extra-legal expenses that we would incur. Rachel Matthews-McKay and Richie Keane of the Labour LGBT (Lesbian, Gay, Bisexual, Transgender) group, Aengus Carroll, a professional editor, Senator David Norris, Maureen Lynott, Monica O'Connor, Olive Braiden, Ellen O'Malley-Dunlop and many others got to work on planning fund-raising and public affairs events for our cause.

On Friday, 15 April 2005, we appeared on the front page of *The Irish Times* yet again. The headlines read, 'State to Challenge Lesbian Couple's Legal Action' and the subsequent article outlined how, at a cabinet meeting, ministers agreed to contest our case. They could have chosen

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otherwise, but they did not. The full gravity of what we were taking on hit us hard. Imagine if you wake up one morning to read that the State, the Attorney General and all the Cabinet Ministers are against you? While we admit that we did not really expect them to do the brave thing, equally we did not anticipate that we would feel personally insulted and degraded, nor did we expect or anticipate our own feelings of rejection, denial and, yes, fear at what now lay ahead. It took several months to regain our energy and drive, but when we walked into a packed Mansion House on Dawson Street in late November for the first fund-raising event, and as we drank champagne with Senator Norris who was kind enough to MC the lunch, our courage and well-being returned. That is the enormous gift of solidarity; being accompanied by so many people from every sector of Irish society transformed us time and again. We owe a debt that cannot be repaid, and we are humbled by the experience and knowledge that our human achievement does not happen on its own.

At the beginning of 2006, we received an invitation to be interviewed by Ireland's premier television talk-show host, Pat Kenny, on 'The Late Late Show'. After considerable consultation with our lawyers and friends, we decided to rise to this personal challenge because we discerned that the Irish public might benefit from hearing our story. So much of the prejudice against lesbian and gay people happens, we think, because a substantial number of the population do not see the normal, everyday lives that lesbian and gay people lead. Yes, we are different from the majority in our sexual identity, but, as ordinary human beings, we are like them in so many other ways. We fall in love, we get sick, and we want to mind each other; we deal with the stresses of twenty-first-century living; we work hard and relish leisure. While we could not talk about our court case, narrating the story of our relationship and marriage might demonstrate the normality of a minority group.

Stage fright set in, however, several weeks prior to our 10 March appearance. A live show, in full view of the hundreds of thousands who often watch the 'Late Late', called upon every ounce of courage we could

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muster. We sought the assistance of our friends Michael Murphy, RTÉ broadcaster, and Terry O’Sullivan to help reduce our fear by working with us to develop a plan for what we wanted to say. Edel Hackett also provided advice and travelled from her home in Westport, County Mayo, to accompany us out to the Montrose studios for the evening itself. While Katherine fussed over what she would wear, Ann Louise struggled to overcome a cold and laryngitis. We met Pat Kenny in the hospitality room about an hour before we walked on the set. He seemed uncomfortable in our presence, and we did our best to make conversation. When we met each other again in front of the cameras and live audience, Pat appeared to be as nervous as we were. Once we started to tell our story, though, all three of us relaxed as the power of narrative took hold. When he turned to the audience for their questions to us, the first woman with her hand up spoke angrily, stating that we can’t be married because marriage is between a man and a woman, that it has always been that way, and that if we take those rules away then she would cease to be married because she is married to a man! The depth of her paternalism evoked a collective gasp from the audience. Pat questioned her further, and she then continued: ‘You may have minority rights, but *I* have human rights, and you ought to be eternally grateful to live in an Irish society where the law could change so you can get partnership rights.’ Another woman shot up her hand and said: ‘How can we know whether or not marriage between two women actually works? See how they love one another, love is shining in their lives’, and after a big clap from the audience, she concluded with: ‘I am straight and my marriage broke down. I haven’t measured up in the way that they have measured up,’ and there was another round of applause. Pat noted that Taoiseach Bertie Ahern had said earlier in the week that he would not embark on a referendum to change the law to allow gay marriage because the Irish people didn’t want it. Pat then asked his audience, ‘Hands up those who would vote to change the Constitution so that gay and lesbian people can marry here’ – and all but a few raised their hand. He concluded the twenty-four minute interview with the words, ‘Bertie,

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you were wrong!' Afterwards, in the hospitality room, the producer ran in to tell us that the phone calls and text messages they received about our interview were overwhelmingly positive. Facing the fear, yet again, had been worth it.

Two days later, we received word that 'An Irish Tea' fund-raiser was being held for us in the Boston home of Liz Breadon and Mary McCarthy, two women we had never met. They read about our efforts on the front page of *The Boston Globe*, 30 December 2005, with the headline 'Same-Sex Couple's Lawsuit – a Test of Tolerance in Ireland'. The article began with: 'In a country that has had its share of revolutionaries, Katherine Zappone and Ann Louise Gilligan hardly look the part. They are smartly dressed, well-coiffed, middle-aged members of Ireland's burgeoning middle class. But in trying to get the Government to recognise their 2003 marriage in Canada, they are challenging the very notion that Ireland has become a less socially conservative, more tolerant corner of Europe' (Kevin Cullen, *Globe* staff). Then and there, Liz and Mary set about planning the fund-raiser, and it just so happened they did know one of our dear friends, Maura Twomey, another Irish woman who had moved to Boston. Their invitation to the Boston Irish and American clan read: 'Those whom we support hold us up in life. You are warmly invited to join us for "An Irish Tea" in support of Katherine Zappone and Ann Louise Gilligan.' They passed around a book for all who came to sign and send on to us. We include here two of the entries that reflect such extraordinary solidarity between Boston and Ireland.

Katherine and Ann Louise, you would so enjoy the afternoon here in Oak Square. A lovely gathering of women and men, interested in justice, having tea and homemade scones, homemade blackcurrant (organic!) jam supporting your case. 'I thank my God, each time I think of you and when I pray for you, I pray with joy' ... The connections stay strong, and I am so proud of the two of you and of the friends here who are moved to support you. I look forward to introducing you to each other when you next come to Boston. Liz, Mary and Cathleen have done a great job here.

Love, Le Grá, Maura.

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Dear Ann Louise and Katherine,

We applaud your courage and determination in fighting for equality. We are very fortunate to live in the great commonwealth of Massachusetts where many of us have been able to get recognition for our relationships. The important work of letting people know who you are and building respect is essential to not only winning in the courts but winning in the court of public opinion which is ultimately more important. We love you both as our 'sisters in arms'.

Love, Cathleen Finn and Carey Cohley-Finn,

Married, 17 July 04, civil, and 18 September 04, church.

Overwhelmed and humbled by these human connections with friends, known and unknown, we continued preparations with our legal team for the High Court Judicial Review. During this period, Ger Hogan indicated that he would be greatly assisted by adding another senior counsel to the team. Michael Collins, well known for his work in commercial law, agreed to join us. At our first meeting, Michael impressed us greatly. In a relatively short period of time he had acquired a comprehensive grasp of the issues and brought to the table not only exceptional experience in the courts but also the crucial legal argument of 'liberty' to complement our foundational plea for equality. The principle of liberty – that all people ought to be free to make critical life choices – provided the basis for the eloquent contention that we ought to be able to marry the person we choose to love.

Finally, we heard that the case would begin on 3 October 2006, a date four and a half years subsequent to making our first telephone call to the Equality Authority. Our time had come. The Court set aside two weeks to hear the arguments of both sides. Michael Collins rose to his feet to deliver our opening submissions on the 3rd, and Gerard Hogan closed our arguments on the 13th. In between, of course, the State presented its arguments and rebuffed those witnesses we put forward to provide expert evidence on our behalf. Because we are writing now while the case is *sub judice* – that is, still in the courts – we do not think it appropriate to outline the happenings of those days. (May we recommend to the interested

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reader to go to the online archives of Ireland's newspapers which provided in-depth coverage of each day, and plenty of photos!) We note briefly, instead, fragments of feelings and reflections, recorded in our own court journals, alternating here between us.

I am moved deeply by Michael's opening – the impeccable rationale is matched by his oratory skills, and I am weeping by the time he finishes. His voicing our arguments publicly in a court of law seeps into the deepest part of my being and I feel acknowledged for who I am. I tried to explain this to him at the end of the day.

The courtroom is packed, with people we know and don't know. So many of our friends and colleagues took off work to be here; thank God, we are not alone. Anne Colley (Chair of the Government's Working Group on Domestic Partnerships, set up by Minister Michael McDowell in March 2006) just walked in, and we had a brief word – I am reminded of a winter afternoon in the Bridge Bar, a Portmagee, County Kerry, pub, where we met her mother with Lelia Doolin, and shared drinks and stories.

Ger told us that no matter what, only good will come from what we have undertaken. His kindness sustains our courage and confidence.

I wanted to sit next to Katherine, but she has got the court officer to agree to allowing her to sit up front – with the legal teams – because of her hearing loss. As my hearing is impeccable I watch and listen from the back bench. I am fascinated with law, it runs in the blood, and while nervous from time to time because this court scene is about *us*, I am enthralled with how it all works.

The State counsellors argue that it is not appropriate to have Professor Dan Maguire provide expert testimony (as a Roman Catholic theologian) about how the Church's understanding of marriage has changed through time, and that Roman Catholicism is pluralistic on the subject of same-sex relationships. Please say yes, Judge Dunne, please allow him to testify. He has flown from Milwaukee to be here. She calls him to the stand ...

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We have just listened to two days of the State's arguments, and I feel so angry. Aren't these men free to marry? Why do they want to block us? I know their arguments are not personal, but it feels that way. As Michael said, there will be good days and bad days during the hearing. These have been bad days.

Phil and Jeanne (Boyle) have put in endless hours on our behalf. Jeanne mentioned that she works voluntarily on our case, after her own work day is complete! At every step of the way, they listen with great attentiveness to our concerns, our ideas, our frustrations and our hopes. We feel graced to be accompanied by them.

The last days are approaching. Ivana, Michael and Ger work overtime to prepare the closing submissions. As Ger stands to his feet, I glance back at Ivana who sits behind him. I have never seen her looking so exhausted and yet still working furiously on our behalf, handing up to Ger various texts of jurisprudence or articles with the most recent psychological and sociological evidence to support our arguments. Ger's power of speech spellbinds all of us. How could we lose? We are elated – and emotionally drained – as he closes the final big notebook and sits down.

On 15 December 2006, we arrived early at the Four Courts to hear Judge Elizabeth Dunne's judgement. Several friends and colleagues waited with us outside the courtroom until we were called in. Two members of Ann Louise's family (and now Katherine's) surprised us with their presence – Dermot McEvoy and Sally Kelly embraced us with love and hope. The court officer signalled to enter the courtroom. We rose as the Judge arrived and then sat down after her. While her written text is lengthy (138 pages), she kept us less than ten minutes, saying that, in summary, we do not have the right to marry here under the Constitution because that right is confined to the union of a man and a woman; consequently, our marriage in Canada is not recognised as valid here.

As we reread the media coverage now in writing this account, a lowness descends again, as it did that wintry morning. Nevertheless, we

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faced the cameras afterwards with dignity and an upbeat statement that, 'while disappointed at a human and personal level' we wanted to thank the Judge for her graciousness throughout the hearing, and that we would study her judgement carefully. We concluded our words with the vision we still have: 'We believe that Ireland will be a land of justice and equality for all human beings. We believe that the Irish Constitution does protect and promote our rights – as it does all others.'

Six days later, we walked back into the Four Courts to receive her judgement on costs. The State Counsel indicated that the Government would not be looking for costs on their side, though they argued vigorously that we should not be awarded costs for our side. Judge Dunne declared that, as this case was not a matter of public interest, there did not exist any rationale for her to award costs to our side. Ger Hogan jumped to his feet, appearing stunned by the judgement, and proclaimed that his clients would seek to appeal her judgement in the Supreme Court. He came over to us then, after the Judge left the room, and said once again, 'Only good will come from what you are doing.' Some two weeks later, we filed our appeal to the Supreme Court, the highest court in the land, where the case would be heard, probably by five judges.

We had lost twice, once on the case and once on costs. Our emotions reflected the season: it was the winter solstice, the darkest day of the year, yet equally the seasonal turning towards the light. Later that evening, we agreed to go on 'Drivetime', the RTÉ radio show, at the invitation of its presenter, Mary Wilson. We described our hurt, our disappointment to the nation. Ann Louise said: 'This judicial decision, its lack of recognition, means we are not equal in this country in one of the most critical aspects of our lives. You are either equal or you are not. We are not.' Katherine addressed a special group of listeners: 'I want to say something to the young people who right this very moment are preparing to marry, and I want to say it to their parents as well. Can you imagine what it would be like if you were not allowed to marry the person you choose to love? That is what the judge has said to us.' Ann

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Louise concluded, reaching for hope we did not feel but knew would return: 'No family member or no stranger in the street has done anything but wish us well; they say they are so sorry this has happened to us and encourage us to keep going.'

And that is what we are doing.