

## PRESS RELEASE

**HCAL 2875/2019**

**Ng, Hon Lam Edgar & Li Yik Ho v. Hong Kong Housing Authority**

Hearing Date	19 April 2021
Date of Judgement	25 June 2021
Before	Hon Chow J as he then was
Solicitors for the Intended Applicant	Daly & Associates
Counsel for the Intended Applicant	Mr. Jin Pao, SC & Mr. Azan Marwah
Counsel for the Respondent	Mr. Abraham Chan, SC & Ms. Karen Tsang

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This is another step forward on the long road towards equality for the LGBT+ community in Hong Kong, following our earlier successful landmark cases such as *Leung Chun Kwong v SCS and CIR* (FACV8/2018) and *Ng Hon Lam Edgar v Secretary for Justice* (HCAL 3525/2019).

This morning, the Court of First Instance ruled in the Applicant’s favour declaring that it is unconstitutional for the Housing Authority (“**HA**”) to bar same-sex married couples from jointly owning or living in a Home Ownership Scheme (“**HOS**”) flat, contrary to Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights. Under the HA’s prevailing policy, same-sex married couples are required to pay a substantial premium if they would like to live together in their own home. Heterosexual married couples are not required to make such payments because their marriages are deemed ‘traditional’ marriages.

In the judgment, the Court expressly recognized that the HA’s policies “*constitute unlawful discrimination on the ground of sexual orientation*” and that same-sex married couples have the same needs as opposite-sex married couples:

“45. ...*Their need for affordable housing and a home to live together as a family, and their wish or desire to achieve home ownership on a joint basis, are not intrinsically different.*”

The Court viewed that such differential treatment is not justified:

*“76. Having regard to (i) what, on any view of the matter, would be a very limited increase in the number of HOS flats which may become additionally available to heterosexual couples for purchase as a result of the Spousal Policy, and (ii) the unfairness or unreasonableness of not allowing a same-sex married couple to live together as a family in a HOS flat owned by one of them, or jointly own the HOS flat (unless a substantial premium is paid, in this case in the region of HK\$2.4 million), I consider that **the Spousal Policy operates on particular individuals like the Deceased and Mr Li with such oppressive unfairness that it cannot be regarded as a proportionate means of achieving the Family Aim.** (emphasis added)*

*77. In conclusion, the differential treatment between same-sex married couple and opposite-sex married couples under the Spousal Policy cannot be justified, and constitutes unlawful discrimination. Since the Decision was based on the Spousal Policy, it is similarity vitiated.”*

Also, at paragraph 64(2), the Court pointed out the inconsistency of the HA’s justifications that fail to take account of same-sex couples who may intend and are able to “form a family with children (by artificial procreation, adoption or otherwise)”.

We welcome this judgment today, not only for its significance as a victory for the LGBT+ community in Hong Kong, but also as a formal recognition of the bravery of Mr. Edgar Ng, who initiated these judicial review proceedings to seek equal treatment and dignity for himself, his husband, Mr. Li Yik Ho, Henry, and other same-sex married couples in Hong Kong.

Today’s victory is bittersweet. Just like any other couples in Hong Kong, all Edgar and Henry wanted was to be able to build a home together without suffering harassment and discrimination. Sadly, for years, they had lived in constant fear that they be evicted from their own home. It would have meant a lot to Edgar to receive today’s judgment.

Discrimination not only inflict legal or financial injustices on LGBT+ people, but too often it causes emotional damage that is not easily undone. Therefore, we strongly implore the Hong Kong government to take timely, proactive actions to protect fundamental human rights, including the right of being free from discrimination on the ground of their sexual orientation.

For more information, please contact human rights lawyer Mr. Mark Daly of Daly & Associates at phone number 2781 2998 or 9880 5466.