

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO 295 OF 2021

LI YIK HO Applicant

and

THE SECRETARY FOR JUSTICE 1st Respondent

THE DIRECTOR OF HEALTH 2nd Respondent

Before: Hon Chow JA in Court
Date of hearing: 7 October 2021 at 10.00 am
Present: Attendance of the applicant was excused
Attendance of both respondents was excused

P R O C E E D I N G S

COURT: The applicant in this case was the husband of the late Mr Ng Hon-lam Edgar who passed away on 7 December 2020. By this application for judicial review, he seeks to challenge the definitions of "spouse", "husband", "wife", "family", "relative" and the "next of kin" under various statutory provisions, including schedule 2 to the Coroners Ordinance, rule 3 of the Coroners Rules, sections 14 and 17 and schedule 2 to the Birth and Death Registration Ordinance, Part 11 of the Public Health and Municipal Services Ordinance, and schedule 5 to the Private Columbaria Ordinance.

Essentially, the applicant's complaint is that these definitions were contrary to provisions of the Basic Law or the Bill of Rights, contrary on the ground that they are discriminatory of same-sex persons.

He also complained about the policy of the Forensic Pathology Service not to recognise the spouses of deceased persons in same-sex marriages to identify the bodies of their spouses as the spouse or relative or family or next of kin of the deceased as well as the decision of the Forensic Pathology Service not to allow the applicant to identify the body of the late Mr Ng Hon-lam Edgar at the Fu Shan Public Mortuary on 9 December 2020.

A On 10 March 2021, following consideration of the documents A
B for the applicant, leave to apply for judicial review was B
C granted by this court on consideration of papers alone, and C
D directions were given to the parties to proceed with the D
E case. E

D Subsequently, the parties have been able to agree on the D
E disposition of this application for judicial review. In E
F particular, by a letter dated 20 July 2021 in reply to the F
G applicant's letter of 18 June 2021 and also in the evidence G
H filed by the respondents herein, the respondents clarify H
I their position as follows: I

F (1) There is no policy for distinction between F
G opposite-sex couples and same-sex couples for G
H arranging an appointment with the public mortuary H
I for body identification by the police. It is a I
J matter of investigation as to who is in the best J
K interest to be the identifier in the circumstances K
L of each case. L

I (2) The Forensic Pathology Service does not have a I
J policy of refusing a person to act as an J
K identifier of the deceased or denying that person K
L any service or right on the ground of being the L
M same-sex spouse of the deceased person. M

K (3) There is no distinction between same-sex and K
L opposite-sex spouses for the term "spouse" under L
M schedule 2(1) of the Coroners Ordinance. M

M (4) There is no policy of the Coroner's Court which M
N denies any rights or gives differential treatment N
O to the same-sex spouse of the deceased person. O

O (5) The policy of the Food and Environmental Hygiene O
P Department in respect of services related to P
Q cemeteries and crematoria, including services Q
R relating to scattering of a deceased's ashes, does R
S not exclude the right of the same-sex couple of S
T the deceased to handle such arrangements. T

Q (6) There is no policy and internal guideline within Q
R the Food and Environmental Hygiene Department R
S which prohibits or restricts in any manner the S
T department from providing services on various T
U after-death arrangements to the same-sex spouse of U
V the deceased. In particular, there is no V
restriction that the spouse of the deceased making
the application must be one of opposite sex.

U (7) Lastly, there is no policy of the Immigration U
V Department which denies a person to apply for a V

certified copy of an entry in the death register (death certificate) on the ground of being the same-sex spouse of the deceased person.

By reason of the clarification of the respondents in respect of the above matters, the parties proposed to dispose of the present application by consent pursuant to the Practice Direction SL 3 which the court considered to be appropriate.

In the circumstances, the court makes the following order:

- (1) The applicant to have leave to withdraw his application for judicial review;
- (2) the 1st and 2nd respondents to have leave to withdraw the summons filed on 4 June 2021 (the respondents' summons), and the hearing of the respondents' summons fixed for 3 November 2021 be vacated;
- (3) there be no order as to costs of this application and of the respondents' summons and of these proceedings; and
- (4) the applicant's own costs in relation to this application and of the respondents' summons and of these proceedings be taxed in accordance with the Legal Aid Regulations.

Thank you.

Court adjourns - 10.08 am
7 October 2021

I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript of the audio recording of the above proceedings



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Jeremiah B. Castro
Date: 9 November 2021