

Press Release

Court of Appeal upholds same-sex couple equality rights on public housing

CACV 362/2021

Ng Hon Lam Edgar (Edgar) & Li Yik Ho (Henry) v Hong Kong Housing Authority

Today, the Court of Appeal upheld the lower court's ruling in favour of same-sex couples – that the Housing Authority's refusal to recognise same-sex spouses as “spouse” or other “family members” of Home Ownership Scheme (HOS) flat owners married overseas (Spousal Policy) is unconstitutional and amounts to unlawful discrimination on the basis of sexual orientation.

Ownership and use of HOS flats are subject to conditions set by the Housing Authority. One of the conditions is that an HOS flat shall be used only for residential purposes by the owner and their family members recognised by the Housing Authority. As such, under the current Spousal Policy, unlike the opposite-sex counterparts, same-sex spouses such as Edgar and Henry cannot jointly own or live together in their own home, unless they pay a substantial premium effectively forfeiting the housing subsidy provided under the HOS.

The Court's ruling is based on the following facts of the case. Edgar and Henry started a romantic relationship in 2012 and married in London in 2017. Shortly after their marriage, anonymous letters were sent to the Housing Authority complaining that Henry was living in a public rental housing (PRH) flat leased by Edgar. Due to the threat of eviction, Edgar moved out of the PRH flat and bought the HOS flat in 2018, believing that he could finally live together with his husband in peace at a home he owned. However, they were mistaken and subsequently advised of the Spousal Policy. In 2019, Edgar filed the present judicial review. Sadly, after years of depression, Edgar passed away by suicide in December 2020 before the lower court ruled in his favour in June 2021.

Henry, the applicant of the case, said: “What Edgar and I wanted was simply to be able to live together in our own home lawfully. This is a humble wish shared by many couples in Hong Kong. Sadly for us, it has been cruelly denied by the Housing Authority on the basis of sexual orientation. While I am grateful for today's judgment, it also reminds me painfully that Edgar is no longer here to see this. We could no longer live together for which Edgar had fought so hard. It has been more than 4 years since this court case started. I sincerely hope that upon thoughtful consideration, the Housing Authority would not appeal and let this matter rest, and at last let Edgar rest in peace.”

Daly & Associates, the solicitors of the case, said: “Discrimination not only inflicts oppressive legal and financial injustices on LGBT+ people, but also causes them irreversible emotional damage. We strongly urge the government and other public authorities to take timely, proactive actions to respect fundamental human rights, including the right to freedom from discrimination on the ground of sexual orientation.”

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By Daly & Associates
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