

PRESS RELEASE

HCAL 295/2021

Li Yik Ho v The Secretary for Justice and The Director of Health

Hearing Date	7 October 2021 Thursday
Time	10:00 am
Coram	Court No. 14 (7/F), High Court Hon Chow JA (Sitting as an additional Judge in CFI)
Solicitors for the Applicant	Daly & Associates
Counsel for the Applicant	Mr. Jin Pao, SC & Mr. Azan Marwah

This case concerns the rights of same-sex widows and widowers to handle the after-death arrangements of their loved ones in Hong Kong. The Applicant argues that the prevailing laws and government policies discriminate against same-sex married couples, by excluding people in same-sex marriage from handling their spouse's after-death arrangements, contrary to Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights.

In these judicial review proceedings, the Respondents have now acknowledged their mistake, clarified their positions and confirmed that same-sex widows and widowers would be treated equally by various government branches and departments with respect to handling various after-death arrangements of their deceased spouses, without distinction of their sexual orientation. In view of these clarifications, the Court and the parties are prepared to dispose of the present judicial review application. The following clarified positions of the Respondents will be stated in open Court at the hearing:

- (i) there is no policy for distinction between opposite-sex couples and same-sex couples for arranging an appointment with the public mortuary for body identification by the Police. It is a matter of investigation as to who is in the best position to be the identifier in the circumstances of each death case;
- (ii) the Forensic Pathology Service (“**FPS**”) does not have a policy of refusing a person to act as an identifier of the deceased or denying that person any service or right on the ground of being the same-sex spouse of the deceased person;
- (iii) there is no distinction between same-sex and opposite-sex spouses for the term “spouse” under Schedule 2(1) of the Coroners’ Ordinance (“**CO**”);
- (iv) there is no policy of the Coroner’s Court which denies any rights of or gives differential treatment to the same-sex spouse of a deceased person;
- (v) the policy of the Food and Environmental Hygiene Department (“**FEHD**”) in respect of services related to cemeteries and crematoria (including services related to scattering of a deceased’s ashes) does not exclude the right of a same-sex couple of a deceased to handle such arrangements;
- (vi) there is no policy and internal guideline within FEHD which prohibits or restricts in any manner the department from providing services on various after-death arrangements to the same-sex spouse of the deceased. In particular, there is no restriction that the spouse of a deceased making the application must be one of the opposite-sex; and
- (vii) there is no policy of the Immigration Department which denies a person to apply for a Certified Copy of an Entry in the Death Register (Death Certificate) on the ground of being the same-sex spouse of the deceased person.

Mourning the loss of a spouse is undoubtedly one of the most difficult times in one's life. It is regrettable that the Applicant and his late husband had to endure unnecessary indignities during such difficult times at the public mortuary in December 2020, when the government's pathologist refused the Applicant to act as the official identifier of his late husband in his own right, because they were a same-sex couple.¹ As a result, the Applicant was subject to the mercy of his late husband's family who might or might not authorise the Applicant to handle his husband's after-death arrangements. Today, the Applicant may finally find some relief to know that the Respondents will from now on respect the fundamental human rights of same-sex married couples without any ambiguities, and that everyone may grieve over the loss of their loved ones with dignity and equal treatment, regardless of sexual orientation.

However, the Applicant notes that the clarified positions set out above hardly represent all the Hong Kong government's laws, regulations and policies relating to after-death arrangements. For instance, the government's clarified positions in these proceedings today do not cover:

- the rights of same-sex civil partners;
- whether a same-sex spouse may object or consent to organ donation for medical education or research, etc²;
- whether a same-sex spouses have the right to be buried together³;
- whether a same-sex spouse would have the priority in applying for a cremation permit for the deceased in cases of natural death, as an opposite-sex spouse currently does under the law⁴;
- whether a same-sex spouse would have the priority to deal with ashes released from columbaria⁵; and
- whether a same-sex spouse would be considered as "next of kin" of the deceased and has priority to be granted written permission from the Director of Health to dispose of the body (including burying, exhuming or removing of the body), as an opposite-sex spouse currently does under the law⁶, etc.

Judicial review by its nature may only cover issues on a piecemeal, fact-specific basis. Therefore, the Applicant, Henry, strongly implores the government to proactively and comprehensively review its laws, regulations and policies with respect to after-death arrangements, as well as other areas which have been identified by the report commissioned by the Equal Opportunities Commission in June 2019⁷. Due to his sexual orientation, the Applicant's husband Edgar suffered greatly from discrimination he experienced throughout his life. Edgar commenced various proceedings on LGBT+ issues precisely because he believed everyone should be treated equally before the law. Henry hopes that Edgar's wishes could be finally heard and respected and what had tragically happened to Edgar will not be repeated in future.

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

¹ He has now acknowledged that this was a mistake in his evidence before the Court.

² According to [section 3 of the Medical \(Therapy, Education and Research\) Ordinance Cap. 278](#)

³ According to [rule 3 of the Wo Hop Shek, Sandy Ridge and Sandy Ridge \(Urn\) Cemeteries, Private Lots, Rules Cap. 132CH](#) or rules 3(1) and 10(1) of [the Chinese Permanent Cemeteries Rules Cap. 1112A](#)

⁴ According to [regulation 4 of the Cremation and Gardens of Remembrance Regulation Cap. 132M](#)

⁵ According to sections 6 and 9 of [Schedule 5 to the Private Columbaria Ordinance Cap. 630](#)

⁶ According to [sections 118\(1\) and \(3\) of the Public Health and Municipal Services Ordinance Cap. 132](#)

⁷ <https://www.eoc.org.hk/EOC/upload/ResearchReport/2019626142922933384.PDF>.