

Hong Kong Moving Slowly Down the Path to Equality Regarding Recognising Same-Sex Relationships

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This article first appeared in the *South China Morning Post* on 25 August, 2015.

City has been a Slow Adopter of Laws Protecting Sexual Orientation, but will Inevitably Catch Up

In June, the United States Supreme Court determined that the right to marry was a fundamental right protected by the US Constitution. The decision once again threw a spotlight on the question of when Hong Kong would join the growing number of jurisdictions granting same-sex relationships equivalent legal status to more conventional relationships.

Hong Kong has been a late developer in this area. It was only in 1991 that homosexual acts were decriminalised, and it was not until 2005 that the ages of consent for heterosexual and homosexual relationships were equalised at 16.

There is no legislation making it unlawful to treat an individual less favourably due to his or her sexual orientation. But this issue is now the subject of a review by the Equal Opportunities Commission, which is

expected to issue its findings towards the end of the year. Should the review indicate legislation should be enacted to outlaw such discrimination, it would take several years to become law.

So what is the chance of same-sex marriage being recognised in Hong Kong?

Currently, the Marriage Ordinance defines a marriage as a "voluntary - union for life of one man and one woman to the exclusion of all others". This definition excludes any same-sex union.

The courts have recently agreed that a transgender individual can marry by reference to his or her reassigned gender. Therefore, a person born as a man who transitions to a woman can legally marry another man.

While rights of transgender individuals are often bracketed together with those of homosexual individuals under the well-known LGBT moniker, this case only had to consider whether a transgender woman was a "woman" for the purposes of the Marriage Ordinance. The court was very clear that its judgment did not impact the question of same-sex marriages.

One option for Hong Kong would be to choose a steady increase in rights for same-sex relationships. The city is now openly discussing the possibility of enhanced rights for homosexuals in a way which simply would not have been possible 15 years ago. If the executive and legislature consider Hong Kong is not ready to grant same-sex unions the same status as different-sex unions then they could go down the "civil partnership" route consider whether a transgender woman was a "woman" for the purposes of the Marriage Ordinance. The court was very clear that its judgment did not impact the question of same-sex marriages.

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While Hong Kong may be a slow adopter of laws protecting sexual orientation, the good news is that the advent of social media has meant global standards of tolerance are becoming the norm. Many employers have policies that embrace equality for persons of every sexual orientation.

There is an inevitability in the path Hong Kong is following. Same-sex unions will be granted increased rights until, eventually, same-sex marriages will be permitted. In the meantime, social media will continue to use rainbow filters and similar eye-catching techniques to put pressure on all governments, including ours.

applicant parent granted in the home country, coupled with a breach by removing the child to Hong Kong and refusing to send them back to the custodial parent.

As for the circumstances that may lead to the court refusing to make the return order, these include whether the applicant parent who has custody of the child was not actually exercising custodial rights at the time of the removal or retention, or whether the respondent parent

had the consent or subsequent acquiescence of the applicant parent.

The court would also consider whether a return may expose the child to grave risk of physical or psychological harm or would place the child in an intolerable situation.

Objections to being returned made by the child may also be considered if the court accepts that the child has attained an age and degree of maturity.

Applications made under CACO to have a child returned under the Hague Convention remain the most effective procedure for securing the return of a child abducted to Hong Kong, but apply only to children under 16 years of age.

However, only those states listed on the CACO schedule can apply to have a child returned from Hong Kong, and the mainland is currently not on that list.

Endnote

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