

1 June 2018 – FOR IMMEDIATE RELEASE

A Step backward for LGBT rights development in Hong Kong - Daly, Ho & Associates represents a civil servant in a challenge against the unfair treatment in spousal benefit and tax assessment towards couples in same-sex marriage in Hong Kong.

On 1 June 2018, the Chief Judge of the High Court, the Honourable Mr. Justice Lam, V-P and the Honourable Mr. Justice Poon, JA handed down a judgment in “*Leung Chun Kwong v Secretary for the Civil Service and Commission of Inland Revenue (Respondents) and International Commission of Jurists (Intervener)*” (CACV 126/2017, “the Leung Chun Kwong case”). Their Lordships unanimously allowed the appeal of the Secretary for the Civil Service and dismissed the cross-appeal of Mr. Leung. Under this judgment, the spouse of a civil servant in a same-sex marriage will have no entitlement to any spousal benefit as their heterosexual counterparts. Citizens in a same-sex marriage could not enjoy joint assessment of their taxes.

Mr. Leung’s legal team is comprised of Counsel Ms. Karon Monaghan QC of Matrix Chambers, Mr. Nigel Kat SC of Parkside Chambers and Mr. Azan Marwah of Gilt Chambers, and Mr. Mark Daly, the Partner of Daly, Ho & Associates, and Mr. Aaron Chan, the Associate of Daly, Ho & Associates.

Mr. Leung says “My husband and I are deeply disappointed with the judgment. It is a huge back step for equality in Hong Kong. We are not asking for special treatment, we just want to live our life fairly and with dignity. We will discuss the judgment with our legal team and consider our next step.”

Mr. Leung is in the process of taking legal advice on issues including the possibility to appeal to the Court of Final Appeal.

Mr. Leung’s legal team is disappointed by the result. It is clear that the current tax regime is unfair and discriminatory towards same-sex married couples.

Mr. Mark Daly says “We fear this judgment is reflective of and is likely to embolden anti-LGBT paranoia. It deviates from international human rights law and common law principles of adjudication. It runs contrary to the living instrument doctrine and amounts to a retrograde ossification of the law. It appears that the rights and the people before the court expecting justice were forgotten and treated as a mere afterthought. If this type of judicial analysis prevails, it does not bode well for minority rights and Hong Kong as an international city.”

... we are committed to continue fighting for LGBT rights in Hong Kong. We believe that everyone, regardless of their gender and sexual orientation, deserves equal treatment in the society and equal rights under the law.”

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