



14 December 2009

PRESS SUMMARY

**Nadine Rodriguez (Appellant) v (1) Minister of Housing of the Government
(2) The Housing Allocation Committee (Respondents) (Gibraltar)**

[2009] UKPC 52

ON APPEAL FROM: The Court of Appeal of Gibraltar

MEMBERS OF THE BOARD: Lord Phillips, Lady Hale, Lord Collins, Sir Jonathan Parker, Sir Henry Brooke

BACKGROUND TO THE APPEAL

This appeal concerned the refusal by the Housing Allocation Committee in Gibraltar to grant an application for joint tenancy to a same sex couple. The Committee's policy was to approve a joint tenancy only where a couple were married or were unmarried partners with a child in common. The Appellant and her partner had been in a relationship for 21 years, but as they fell outside the policy their application was refused.

There were two main questions in this appeal: firstly, whether the Committee had discriminated against the Appellant in a manner prohibited by the Constitution; and, secondly, if it had done so, whether this discriminatory treatment could be justified. The Court of Appeal in Gibraltar concluded that the policy was not discriminatory.

JUDGMENT

The Judicial Committee of the Privy Council unanimously allows the appeal and declares that the Appellant has been treated in a discriminatory manner in contravention of her rights under sections 7 and 14 of the Constitution of Gibraltar.

REASONS FOR THE JUDGMENT

On the first question, the Board decided that the Committee's policy, when applied to the Appellant, was indirectly discriminatory. This is so because the impact on the Appellant was more severe when compared to other unmarried couples, given the Appellant and her partner, on account of their sexual orientation, cannot marry and cannot have children in common. This means she will not ever be able to satisfy the policy criterion, which is a form of indirect discrimination which comes as close as it can to direct

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discrimination.

On the second question, the Board did not accept the Respondent's argument that the difference in treatment could be justified in order to protect marriage and children. These can be legitimate aims, but in this case there was no rational relation between them and the discriminatory effect of the policy. Denying benefits to people who cannot marry does not protect those who can.

The Board does not seek to dictate what the Committee's policy should be. It should not, however, exclude same sex partners who are in a stable, long term, committed and inter dependent relationship from the protection afforded by a joint tenancy.

NOTE

This summary is provided to assist in understanding the Board's decision. It does not form part of the reasons for that decision. The full opinion of the Board is the only authoritative document. Judgments are public documents and are available at: <http://www.jcpc.uk/decided-cases/index.html>