

## The Battle For Same-Sex Marriage in Bermuda

Bermuda finds itself once again in the international spotlight over the issue of same-sex marriage, which, by a Court of Appeal ruling handed down in November of 2018, was declared legal for the *third time* in Bermuda.<sup>1</sup> Despite the Courts' consistent rulings, same-sex marriage remains unpopular amongst Bermuda's conservative population and the Government is intent on exhausting its rights of appeal on the issue.

The legal saga started in 2016, when a male Bermudian and his Canadian male fiancé filed a suit in the Supreme Court of Bermuda against the Registrar-General whom, they claimed, infringed their human rights by refusing to post their marriage banns. The Court held that restricting the definition of marriage to a man and a woman contravened Bermuda's Human Rights Act 1981.<sup>2</sup> Following that decision several same-sex marriages ensued.

However, taking the view that domestic partnerships offer rights that are equal to marriage, the Government passed the Domestic Partnership Act 2017 ("DPA"). The DPA replaced same-sex marriage with civil unions and prohibited future same-sex marriages.

Same-sex couples then launched a legal challenge to the DPA, claiming that domestic partnerships were unconstitutional.<sup>3</sup> In May of 2018, the Chief Justice ruled, inter alia, that the DPA violated the right to freedom of conscience guaranteed by the Constitution. The Government appealed that decision which led to the Court of Appeal's decision reinstating same-sex marriage as legal for the third time.

The Government is currently appealing the case to the Privy Council in London, Bermuda's final forum of appeal.

It is expected that if *Ferguson* is allowed to stand, the decision will set a precedent for other British territories on the issue of freedom of conscience with an expanded interpretation of that right. However, given that same-sex marriage invokes not only human and civil rights but, also, political, social and religious fervor, regardless of the final legal outcome, the battle for the acceptance of marriage equality is far from over.

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<sup>1</sup> *Attorney General for Bermuda v Ferguson et al* (Civil Appeal Nos 11 and 12 of 2018)

<sup>2</sup> *Winston Godwin and Greg DeRoche v Registrar General* [2017] SC (Bda) 75 Civ

<sup>3</sup> *Roderick Ferguson et al. v The Attorney General* [2018] SC (Bda) 46 Civ

The Privy Council's decision will inevitably impact the employment market because foreign nationals who are spouses of Bermudians are entitled to reside and work in Bermuda without a work permit and may gain Bermuda status in their own right if they remain married for 10 years, subject to certain residency requirements. It is also envisaged that many non-heterosexual Bermudians living abroad will repatriate if same-sex marriage is allowed to stand. This is particularly relevant at a time when the Island's labour force is drastically aging and shrinking, and economic stimulus is desperately needed to help service our \$2.5 million national debt.