**IN THE SUPREME COURT**
**TURKS AND CAICOS ISLANDS**

**ACTION NO. CL 88/21**

**BETWEEN:**

**(1) TIMOTHY HAYMON**

**(2) RICHARD SANKAR** **PLAINTIFFS**

**-and-**

**(1) DEREK BEEN (in his capacity as the Director of Immigration)**

**(2) THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS** **DEFENDANTS**

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| **Before:** | **The Hon. Mr Justice Anthony S. Gruchot** |
| **Appearances:** | **Mr Tim Prudhoe and Mr Yuri Saunders of Stanbrook Prudhoe for the Plaintiffs** |
| | **Mr Ivan Hare KC and Ms Clemar Hippolyte on behalf of The Attorney General's Chambers for the Defendants** |
| **Hearing Date:** | **1st and 2nd November 2022** |
| **Venue:** | **Court 5, Graceway Plaza, Providenciales.** |

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**JUDGMENT**

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## Introduction

1. The Plaintiffs, both male, were married in Florida, USA on 2nd November 2020. Same-

sex marriages became legal in Florida in 2015.

2. Mr Sankar is a Turks and Caicos Islander having been granted status on 19th May 2021[1]. On 16th August 2021 Mr Haymon applied for a residence permit pursuant to s.29(1) of the Immigration Ordinance (Cap. 5.01) ('the Ordinance'). Mr Haymon was already lawfully allowed to remain in the Turks and Caicos Islands ('TCI') by virtue of holding a home-owner permit. The purpose of applying for a residence permit was to give Mr Haymon the right to work.

3. S.19 of the Ordinance imposes restrictions on engaging in gainful employment within the TCI and provides a list of exemptions of persons to whom the restriction does not apply. S.19 (1)(b) provides an exemption to "*the spouse of an Islander [who is] the holder of a Residence Permit*". A home-owner permit does not carry the privilege of being able to take up gainful employment.

4. The Immigration Regulations[2], made under s.118 of the Ordinance provide[3]:

> *"24. (1) An application for a Residence Permit may be made by or on behalf of an applicant to the Director in Form 1 set out in Schedule 4 and shall contain the particulars required therein. (2) An applicant must show to the satisfaction of the Director that condition A, B or C is met."*

5. Conditions A and B contain restrictions on engaging in gainful occupation, but condition C does not and provides:

> *"(5) Condition C is that the applicant is the* ***spouse of an Islander*** *or a British Overseas Territories Citizen, and lives with that* ***spouse***." (Emphasis added)

6. However, Regulation 25(3) provides:

[1] See covering letter to the application dated 16th August 2021.
[2] The Regulations cited in the Plaintiffs' skeleton argument were references to the Regulations that were in force at the 2018 revision of the Laws. References in this judgment are to the Regulations in force at the 2021 revision of the laws and those operative at the date of the application. The only changes relevant to the application are the actual Regulation numbers, not the content of the relevant Regulations.
[3] At Regulation 24.

*"(3) If the application is for the issue of a Residence Permit because the spouse condition applies, the application form shall also be accompanied by an undertaking in writing that the applicant, while resident in the Islands, will not engage in any gainful occupation other than undertaking such activities as are necessary to oversee his investment."*

7. This restriction and its apparent conflict with s.19(1)(b) of the Ordinance was not dealt with by either party in submissions/argument and whilst noting, it is not something that the Court needs to resolve in this action.

8. By way of letter dated 1st October 2021 from the 1st Defendant, the application was refused. The letter concluded:

*"Kindly be advised that after reviewing your application, we are unable to grant it. The reason is, in the absence of definition (sic) of spouse in the Immigration Ordinance, we relied on the definition of marriage under the Marriage Ordinance and the Constitution. Both dictate that marriage is between a man and a woman. Turks (sic) and Caicos Islands neither recognizes (sic) same sex marriage nor civil unions. Any change to this is a matter of policy for the Government to consider."*

9. There is no definition of 'spouse' in the Ordinance, the Regulations, the Interpretation Ordinance (Cap. 1.03), or the Constitution[4].

10. Mr Prudhoe submits:

*"The [Plaintiffs] contend that this reasoning (that is, of "importing" a definition of spouse into the Immigration Ordinance) is just plain* wrong *as a basic matter of statutory construction.[5]"*

And further:

[4] Schedule 2 to the Turks and Caicos Islands Constitution Order (Cap. 1.01) ('the Constitution').
[5] Paragraph 15 of the Plaintiffs' skeleton argument.

*"The [Plaintiffs] reject any suggestion to the effect that the right to marry is a proper basis for deciding [the second Plaintiff's] application under the Immigration Ordinance.[6]"*

**The Application**

11. The Plaintiffs commenced this action by way of originating summons dated 8th October 2021 and issued on 21st October 2021[7]. An amended originating summons was re-dated 17th January 2022 and was filed on 17th March 2022.

12. The application is brought under s.21 of the Constitution which provides for the enforcement of the fundamental rights and freedoms of an individual protected under Part 1 of the Constitution. The relief sought is:

    a. A declaration in respect of the First Defendant's refusal on 1st October 2021 of the First Plaintiff's Residence Permit Application (as made on 16th August 2021) a (sic) reflecting his spousal relationship to the Second Plaintiff. Such refusal being:

        i. Based on the stated reasons that a "marriage" is defined elsewhere in the laws of this jurisdiction than the Immigration Ordinance under which the application was made (namely the Marriage Ordinance) as being solely *between a man and a woman*. Also, under the Constitution as defined hereinafter.

        ii. in contravention of the fundamental rights and freedoms of the Plaintiffs in Schedule 2 to the Turks and Caicos Islands Constitution Order 2011 ("the Constitution").

    b. An order under s.21(2) of the Constitution for the amendment of the Marriage Ordinance to the extent that such is necessary for the grant to the First Plaintiff of his Residence Permit Application.

    c. Damages for infringement of the Plaintiffs' fundamental rights and freedoms.

[6] Paragraph 17 of the Plaintiffs' skeleton argument.
[7] The originating summons was sent to the Registry by email on 12th October 2021.

13. I have interpreted the above to mean that what is being sought by the Plaintiffs are declarations that:

    a. the First Defendant was wrong to define the word 'spouse' by reference to the Marriage Ordinance and to the Constitution;

    b. the refusal to grant a work permit to the First Plaintiff is a breach of the protected fundamental rights and freedoms guaranteed by the Constitution;

    and if they are successful on those arguments the Plaintiffs seek:

    c. an amendment to the Marriage Ordinance which would include in the definition of 'spouse' (or such other description) same-sex couples or something equivalent.

14. For the purposes of this judgment, the issue of damages does not need to be addressed Aziz J having ordered that "*[T]he Plaintiffs' claim or claims for damages be listed for determination (if any) after the conclusions of the [final] hearing*".

15. A list of Common Ground and Issues has been prepared. This lists the issues in the claim as:

    (1) Whether determination of the Application and/or Amended Originating Summons requires anything more than statutory interpretation of the Immigration Ordinance ("the Immigration Ordinance question")

    (2) Subject to the Immigration Ordinance question, whether and to what extent the Constitution (or any part thereof) requires interpretation for the determination of the Application and/or Amended Originating Summons of the right to marry and found a family (s.10 of the Constitution).

    (3) Subject to the relevance of the Constitution to determination of the Application and/or Amended Originating Summons, whether the Refusal Letter offended one or more of the following rights and freedoms as protected by the Constitution:

        a. Equality before the law (s.7(1))

        b. The right to private and family life (s.9)

        c. Protection from discrimination based on sexual orientation (s.16(3)).

(4) Steps from/by the Court necessary pursuant to subject (sic) to its determination(s) on Issue (3)

**Discussion**

16. The Hon. Anthony Smellie[8], Chief Justice of the Cayman Islands in the opening paragraphs of his substantial 1st instance judgment in **(1) Chantell Day (2) Vickie Bodden Bush v (1) The Governor of the Cayman Islands (2) The Deputy Registrar of the Cayman Islands Government General Registry (3) The Attorney General of the Cayman Islands**[9] said:

> *"In the present state of the Law, while opposite-sex couples are recognised by the State as committed couples and allowed* ***to marry and so enjoy a variety of further legal rights and protections*** *from the State, same-sex couples are denied access to marriage and so are denied access to those rights and protections."* (My emphasis)

17. The above is equally applicable to the state of the Law in the Turks and Caicos Islands.

18. I have to confess that I have struggled to distil precisely what relief the Plaintiffs are seeking. Unlike in **Day and Bodden Bush**, they are not seeking a right to marry. Mr Prudhoe submits:

> *"In Day (the appeal from the Cayman Islands), the issue was whether the right to marry in the Cayman Islands extended to same-sex couples. The [Plaintiffs] do not seek that; they are already married under the law of Florida USA."*[10]

And

> *"The [Plaintiffs] reject any suggestion to the effect that the right to marry is the proper basis for deciding [Second Plaintiff's] application under the Immigration Ordinance.*[11] (Emphasis in the original)

[8] As he then was.
[9] Civil Cause Nos. 111 and 184 of 2018.
[10] Paragraph 37(b) of the Plaintiffs' skeleton argument. Also, at paragraph 20.
[11] Paragraph 17 of the Plaintiffs' skeleton argument.

19. Mr Prudhoe further submits:[12]

> *"The Defendants argue that s.10 of the Constitution is a lex specialis governing the right to marry <u>in TCI</u> and its requirements may not be altered by reference to other provisions of the Constitution or other documents. They point to statements made by the Privy Council in Day in support of that argument.*
>
> *This argument misses the simple point that the Plaintiffs are <u>already married</u>. The Plaintiffs' claim does not stand to be determined by the right to marry."* (Emphasis in the original)

20. The Plaintiffs argue *locus regit actum*[13] and refer to **<u>Eugene Berthiaume v Dame Anne-Maria Yvonne Dastou</u>**[14] on appeal to the Privy Council overturning the Court of King's Bench (Appeal side) of Canada which had upheld the court at 1st instance's declaration that a marriage celebrated in France, although void under French law, was valid under a discretion granted to it by art. 156 of the Civil Code. Mr Prudhoe cites the dictum of Viscount Dunedin.

> *"Their Lordships are unable to agree with the judgment under appeal. If there is one question better settled than any other in international law, it is that as regards marriage -**putting aside the question of capacity**- locus regit actum. If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicile of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony of proceeding if conducted in the place of the parties' domicile would be considered a good marriage."* (My emphasis)

[12] At paragraph 27 and 28 of the Plaintiff's skeleton argument in reply.
[13] "[The place governs the act.] The validity of an act depends on the law of the place where it was done; e.g. marriage" – Osborn's Concise Law Dictionary, Sweet & Maxwell 9th Ed.
[14] [1930] A.C. 79.

21. Mr Prudhoe did not expand on the above and but I take his argument that as the Plaintiffs are legally married in the USA, then they are to be considered married everywhere and in particular, the TCI. If that is the argument then I cannot agree. To accept that argument I would have to ignore the emboldened words above. The laws of the TCI have set out the categories of persons who have the capacity to marry, to which see paragraph 24 *et seq. infra*. Viscount Dunedin in the above passage was not, in my view, suggesting that *locus regit actum* could legalise, legitimise or recognise categories of marriage that would otherwise be considered prohibited.

22. I struggle with the Plaintiffs' argument that the First Defendant was wrong to take a definition of 'spouse' from the Marriage Ordinance (Cap. 11.02) and the Constitution, and then go on to seek relief that the definition derived from the Marriage Ordinance should be amended to include same-sex relationships, thereby endorsing taking the definition from the same provisions which they say should not have been applied. They do not say that in clear terms but that is the corollary of the submissions. The relief sought is an amendment of the Marriage Ordinance <u>to the extent that such is necessary for the grant to the First Plaintiff of his Residence Permit Application</u>. (My emphasis).

23. The Plaintiffs make no suggestion as to what that amendment should be, but I am referred to **<u>Gory v Kolver NO and others</u>**[15], a claim arising under the South African Intestate Succession Act 1987. There the Constitutional Court endorsed the decision of the High Court in finding that s.1(1) of the Act[16] was unconstitutional. At paragraph 43 of the judgment Van Heerden Ag J said:

> *"... first, I am of the view that the High Court correctly found that s.1(1) of the Act to be unconstitutional and invalid to the extent that it confers rights of intestate succession on heterosexual spouses but not on permanent same-sex life partners. Second, the most fitting way to cure this unconstitutionality is by reading in after the word 'spouse' wherever it appears in s. 1(1), the words 'or*

[15] South Africa [2007] 2 LRC

[16] S.1(1) of the Intestate Succession Act 1987 provided that if a person died intestate and was survived by a spouse, but not by a descendant, his spouse inherited the intestate estate.

*partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support' ..."*

24. Mr Prudhoe submits:

> *"By letter of 1.10.21 the [First Defendant] refused the [First Plaintiff's] application on the ground(s) that although the Immigration Ordinance itself had/has no definition of "spouse", the Marriage Ordinance and the Constitution contained definitions of "marriage" as being solely between a man and a woman."*[17]

25. The above is not entirely accurate. The Marriage Ordinance (Cap. 11.02) does not define 'marriage' *per se*. S.4 of the Marriage Ordinance provides:

> *"A marriage ("the relevant marriage") performed in the Islands shall be void—*
> *... (c) if the parties are within the* ***prohibited degrees of relationship*** *to each other at the time of the relevant marriage;"* (My emphasis)

26. S.2 of the Marriage Ordinance defines 'prohibited degrees of relationships' as those degrees of relationship between persons as a result of which a marriage is prohibited by Schedule 3.

27. Schedule 3 provides:

> *"A man shall not marry—*
> *... Any person born as a male person."*

28. Likewise, there is no definition of 'marriage' in the Constitution. S.10 of the Constitution provides for a fundamental right to marry and found a family. S.10(1) provides:

> *"Every unmarried man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and found a family.*"

[17] Paragraph 14 of the Plaintiffs' skeleton argument.

29. S.10(4) provides:

> *"Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children …"*

30. So, whilst there is no definition of 'marriage' or 'spouse' it must be the case that the Constitution intended for it to mean the other party to a marriage (or to married persons, 'spouses') and s.10(1) limits that to persons of the opposite sex.

31. The 3rd piece of legislation dealing with the definition of marriage to which I was referred is the Matrimonial Causes Ordinance (Cap. 11.04). S.15 provides:

> *"A marriage celebrated on or after 28 December 2012 shall be void on the following grounds only, that is to say-*
>
> *… (c) that the parties are not respectfully male and female."*

32. The Integrity Ordinance defines 'spouse' as:

> *""spouse", in relation to a specified person in public life, means a person—*
>
> *(a) to whom the specified person in public life is married; or*
>
> *(b) who is living with the specified person in public life in the circumstances of husband and wife for a continuous period of one year during the period covered by the person's declaration;"*

This definition supports my thinking at paragraph 30 above and expands the definition to unmarried cohabiting couples, but only of the opposite sex.

33. The crux of the Plaintiffs' argument is that if they were a heterosexual couple then their marriage, legally undertaken in Florida USA, would be recognised in the TCI. That is no doubt true. Mr Prudhoe pleads that *"[T]he contents of the refusal letter of 1st October 2021 make clear that but for the same-sex status of the marriage as subsisting between the Plaintiffs then the subject application would have been granted by the First*

*Defendant*."[18]

34. I am not persuaded that the First Defendant's letter can be read in such clear terms[19] but I agree the import of the letter is that the application was refused due to the same-sex status of the Plaintiffs and that no other reason was put forward for refusing the application.

35. In attempting to distil the relief sought by the Plaintiffs, the Court asked Mr Prudhoe if what was being sought therefore was a recognition of the legal overseas marriage. In the Plaintiff's skeleton argument, he states "[*T]he Ps seek simply that an existing overseas marriage be recognised*.[20]", however, his oral arguments were not so clear. In particular, in answer to the above question he stated that recognition was not what was being sought, but if that was the way the Court could get to the relief he was seeking, then the Plaintiffs would accept that.

36. Mr Hare KC put the principal issue as being:

> *"... whether the Constitution ... grants to the Plaintiffs the right to have their overseas same-sex marriage recognised in law in the Turks and Caicos (sic) by the grant to a Residence Permit in circumstances where such a Permit would be granted to a heterosexual lawfully married couple.[21]"*

37. As noted above Mr Prudhoe attempts to take the arguments outside that of recognition of an overseas marriage. He submits, following on from his submission above, that "*[T]he Plaintiffs do not claim the right to marry ..."* and that *"[P]rior to such [a] challenge, the prohibited types of marriage (including same-sex) in the Marriage Ordinance ought not to play a part in any decision whether or not to issue to P2 a TCI residence permit."* The argument is contradictory. What appears to be suggested is that the definition of 'spouse' in the Marriage Ordinance should not be considered in reference to the grant of a residence permit to a spouse until such time as the definition of marriage includes a same-sex spouse

[18] At paragraph K of the Grounds on the Application.
[19] The operative content of the letter is set out in paragraph 8 above.
[20] At paragraph 23 of the Plaintiffs' skeleton argument.
[21] At paragraph 3 of the Defendant's skeleton argument.

and then it can or should be.

38. With respect to the Immigration Ordinance Question[22] Mr Hare KC submits:

> *"The Defendants submit that the Immigration Ordinance must be interpreted by reference to relevant constitutional and other statutory provisions which are relevant to its areas of application. The Plaintiffs' assertion that the Immigration Ordinance should be interpreted in isolation is contrary to principle, unsupported by authority and inconsistent with other parts of their pleaded case."*

39. After referring to the fundamental rights and freedoms enshrined in the Constitution, Mr Prudhoe pleads:

> *"The combined effect of these sections[23] of the Constitution is that the First Defendant's decision in the context of applying the Immigration Ordinance to construe any provisions of the Marriage Ordinance and/or the Constitution as (whether separately or in combination) as (sic) constituting a bar to recognition of a valid overseas same-sex marriage is inconsistent with the Plaintiffs' fundamental rights and freedoms."*[24]

40. The above it seems is badly pleaded when considering the Immigration Ordinance Question. The First Defendant did not apply the Immigration Ordinance to construe provisions of the Marriage Ordinance or the Constitution. He applied the derived definition of 'spouse' arrived at from construing the Marriage Ordinance and the Constitution to the Immigration Ordinance.

41. Mr Prudhoe submits:

> *"In line with the evolving nature of what we understand to be a family, the [Plaintiffs'] are to be afforded equal treatment in process, procedure and outcome. It follows from that that 'spouse' can only be given a meaning which*

[22] See List of Common Ground and Issues at paragraph 15 above.
[23] S.7(1), 9, and 16 of the Constitution.
[24] At paragraph H of the Grounds of the Application.

*encompasses a same-sex couple. The enquiry ends there. Obviating the need as perceived by [the First Defendant] to go on a hunt in other legislation for clues as to the construction of the word spouse in the Immigration Ordinance."*[25]

42. I agree with Mr Hare KC that an interpretation of 'spouse' on the Interpretation Ordinance alone is inconsistent with the Plaintiffs' pleaded case. Mr Prudhoe refers to the various canons of statutory interpretation, and in particular, the presumption against absurdity[26] when interpreting a statutory provision. If I were to accept Mr Prudhoe's submission above, then the outcome would lead to an absurdity that we would be left with one definition of 'spouse' under the Immigration Ordinance and a different definition under both the Marriage Ordinance and the Constitution and arguably, the Matrimonial Causes Ordinance.

43. That a clear definition of 'marriage' can be derived from the Marriage Ordinance and in the Constitution is not in doubt. The issue raised is whether that definition infringes on the Plaintiffs' protected rights under the Constitution.

44. Both Mr Prudhoe and Mr Hare KC refer me to Hendry and Dixon, British Overseas Territories Law[27] which is worth reproduction:

*"The most controversial provision for each of the Caribbean territories is the right to marry. This is not because those territories are opposed to the institution of marriage— quite the reverse—but because they are unanimously opposed to same-sex marriages and marriages involving a transsexual marrying a person who is of the birth sex of the transsexual. To date, the case law of the European Court of Human Rights has confirmed that the right to marry guaranteed by Article 12 of the Convention refers to a traditional marriage between two persons of opposite biological sex. And while the UK Parliament has legislated for same-sex marriage in the Marriage (Same Sex Couples) Act 2013, the Act does not extend to any overseas territory. Despite the reference in Article 12 of*

[25] At paragraph 42 of the Plaintiffs' skeleton argument.
[26] See Bennion, Bailey and Norbury on Statutory Interpretation 8th Ed. 2020.
[27] 2nd Ed. Oxford: Hart 2018

*the Convention to national law governing the exercise of the right to marry, that wording does not, in the view of some territories, provide a clear enough steer on this issue, and therefore additional wording was agreed during the negotiations. For the Virgin Islands, the solution comes with the wording: 'Every man and woman of a marriageable age has the right to marry and found a family in accordance with laws enacted by the Legislature', and for the Cayman Islands with: 'Government shall respect the right of every unmarried man and woman of marriageable age (as determined by law) freely to marry a person of the opposite sex and found a family.' The Turks and Caicos Islands accepted a similar formulation: 'Every unmarried man and woman of marriageable age (as determined by or under any law) has the right to marry a person of the opposite sex and found a family.'*

45. This leads me to the conclusion that what is being sought in this action is a recognition of an overseas same-sex marriage, which if recognised would affect the Ordinances referred to as well as others. Recognition would have to be applied consistently and not simply to the grant of spousal rights under the Immigration Ordinance. This appears to be accepted by the Plaintiffs as they have prepared a table of domestic legislation where provision is given to the rights of a spouse, but that is counterintuitive to the submission that the Immigration Ordinance should be construed in isolation.

46. In my view, the correct interpretation of the impugned provision in the Immigration Ordinance, as the law presently stands, is that a spousal right to a residence permit only applies to heterosexual couples, the definition of 'spouse' being derived from the institution of marriage. There is no right for same-sex couples to marry in the TCI and likewise, there is no right to have an overseas same-sex marriage recognised in the TCI.

47. I find that the distinction that the Plaintiffs make in that they are already married and so are not seeking a right to marry is artificial. To separate a same-sex couple's right to marry and a right to have an overseas same-sex marriage recognised is in my view inconsistent and illogical. Either same-sex marriage is recognised and valid in the TCI or it is not and, as I have found, it is not. It does not become legal on the basis that it was legal in the

jurisdiction of the place where the marriage occurred.

48. The above disposes of the first 2 issues set out in the List of Common Ground and Issues. The 3rd issue to be considered is whether the refusal letter offended one or more of the protected rights under the Constitution.

49. The question, I believe, goes further than that. It is whether the denial of, or recognition of, same-sex marriage by the State offends one or more of the rights and freedoms protected by the Constitution.

50. The rights relied on by the Plaintiffs are:
    a. Equality before the law (s.7)
    b. The right to private and family life (s.9)
    c. Protection from discrimination [based on sexual orientation] (s.16(3).)

51. Smellie CJ in **Day and Bodden Bush**[28] sets out a comprehensive exposition of the institution of marriage and its development throughout time[29] to its present-day secular State-regulated and controlled institution.

52. The circumstances in **Day and Bodden Bush** were that the Plaintiffs, both female, sought a licence to marry in the Cayman Islands. The licence was refused by the Deputy Registrar of the General Registry for the following reasons:

> *"In the Cayman Islands, the ability to marry is restricted to opposite-sex couples by virtue of the definition of "marriage" in section 2 of the Marriage Law (2010 revision) as "the union between a man and a woman as husband and wife". A special marriage licence can therefore only be granted to solemnize a marriage between a man and a woman…*
>
> *As the proposed same-sex union between the above individuals would not fall within the definition of "marriage" under section 2 of the Law, a special*

[28] *Supra*.
[29] At paragraphs 65 to 83 and specific to the Cayman Islands from paragraphs 84 to 104. That exposition is to the greatest extent applicable to the TCI.

*marriage licence cannot be granted for the purposes of solemnizing that union. The application is therefore refused."*

53. Smellie CJ observes that before 2008[30]:

> *"... the [Marriage] Law was administered on the basis of what was taken to be the common law understanding that marriage indeed meant a union between a man and a woman which is classically stated by Lord Penzance[31], as also being an exclusive union for life:*
>
> > *"I conceive that marriage, as understood in Christendom, maybe for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others"."*

54. In 2008 an amendment to the Marriage Law was passed. S.2 of the 2008 Marriage (Amendment) Law provided:

> *"Marriage means the union between a man and a woman as husband and wife."*

55. Smellie CJ states:

> *"It is clear, from the Hansard records of the debate upon the second reading of the Bill for the Amendment Law, that the statutory definition of marriage was regarded as important for reasons expressly aimed at excluding same-sex couples from the institution of marriage."*

56. Like the expansive narrative on the history and evolution of marriage, Smellie CJ, again in **Day and Bodden Bush**, carried out a full exposition of the evolution of protected constitutional rights in the context of same-sex marriages and the interpretation of constitutional provisions.

57. The Plaintiffs put the issues applicable to the instant matter somewhat narrower than in **Day and Bodden Bush** as they say the Plaintiffs are not seeking a right to marry. Putting

[30] At paragraph 17.
[31] In *Hyde v Hyde and Woodmansee* (1865-69) L.R. 1 P&D 130 at 133.

aside my view expressed in paragraph 47 above, they argue that their position impacts their constitutional rights in a narrower context because they are married under Florida law.

58. In this jurisdiction, there has not been, as far as I am aware (and I have not been directed by the parties save for the preliminary correspondence in this matter to), any call on the Legislature from the citizens of the TCI either to allow same-sex marriages or to pass legislation to allow same-sex couples access to any other kind of institution granting the same package of rights as marriage. In writing this judgment I carried out my own research of the local news services as I recalled that the issue of same-sex marriage had been previously reported.

59. In 2019, there was a vociferous response to a Foreign Affairs Committee report from the then Premier, to recommendations for overseas territories to set a date for the legalisation of same-sex marriages, including a recommendation that if legislation was not passed then the UK should impose legislation under reserved powers by Order in Council[32]. In the event, the British Government did not accept the recommendations[33].

60. In 2022 a private members' Bill was laid before the British Parliament seeking to empower British-appointed Governors to roll out legislation enabling same-sex marriages. The response from the Premier was:

> *"My government will be guided by the views of the electors but I think equality before the law is possible while still preserving the biblical principle of marriage."*[34]

61. In **Godwin and another v Registrar General and another**[35] (Bermuda) Simmons PJ held that the refusal to issue a licence to marry to two men was discriminatory and in contravention of s.5 of the Human Rights Act ('HRA') on the grounds that s.13 of the

[32] TCI Weekly News 4th March 2019.
[33] TCI Weekly News 27th May 2019.
[34] TCI Weekly News 15th July 2022.
[35] [2017] DC (Bda) 36 Civ

Marriage Act[36] had to be read in conjunction with s.15(c) of the Matrimonial Causes Act,[37] and further that s.24(1)(b) of the Marriage Act required the Registrar to enquire whether the parties were 'desirous of becoming man and wife'. He stated:

> *"The applicants have applied for two remedies (a) an order of mandamus compelling the Registrar to act in accordance with the requirements of the Marriage Act; and (b) a declaration that same-sex couples are entitled to be married under the Marriage Act.*[38]
>
> *… It is neither the intention nor the purpose of the court to introduce new legislation to give effect to the HRA. There is neither need nor ability in the court to do so. Section 29 of the HRA however empowers the court to declare any provision of law to be in violation of the prohibitions contained in the HRA to be inoperative. As I have indicated above this includes the common law definition of marriage*[39] *and statutory provisions reflecting the same. The remedial provisions of the HRA are broad enough to allow for a striking out and or reformulation of certain words.*[40]*"*

62. Simmons PJ went on to order:

> *"(i) The applicants are entitled to an order of mandamus compelling the Registrar to act in accordance with the Marriage Act; and*
>
> *(ii) A declaration that same-sex couples are entitled to be married under the Marriage Act 1944."*

63. He then went on to suggest possible declarations and reformulations of the relevant sections of the Marriage Act and the Matrimonial Causes Act[41]. He proposed an

[36] Which provided for notice of the intended marriage to be entered into a Marriage Notice Book.
[37] Which provided that a marriage was void if the parties were not respectively a man and a woman.
[38] At paragraph 130.
[39] It was held that there was no statutory definition of 'marriage' and no decided case in Bermuda that defined 'marriage' and hence the common law definition which defined marriage as 'a voluntary union for life of a man and a woman was acquired from English authority.
[40] At paragraph 132.
[41] The final form of such declarations and reformations were put to counsel to consider precise terms.

amendment to the common law definition of marriage as "*the voluntary union for life of two persons to the exclusion of all others*."

64. Smellie CJ in **Day and Bodden Bush**, in reliance on **Godwin**, ordered an amendment to s.2 of the Marriage Law[42] to read "*Marriage means the union between two people as one another's spouses*." He went on to make a consequential amendment to s.27 of the Marriage Law with respect to the marriage declaration. He concluded[43]:

> *"As Lord Bingham declared on behalf of the Privy Council in Roodal v the State in modifying the death penalty legislation of Trinidad and Tobago to bring it into conformity with the Constitution:*
>
> > *"The Constitution is the Supreme law … the Constitution itself has placed on an independent neutral and impartial judiciary the duty to construe and apply the Constitution and statutes and to protect guaranteed fundamental rights, where necessary. It is not a responsibility which the courts may shirk or attempt to shift to Parliament. Loyalty to the democratic legal order of the Constitution required the Privy Council to grapple with the question and to decide it."*
>
> *This Court is similarly bound not to allow the violation of the Petitioners' rights to continue without redress. The Constitution, in its mandatory requirement that Law be brought into conformity, must prevail. The Petitioners and their daughter are entitled to the indignities to which they have been subjected to be put to immediate end by the Court.*

And after dealing with the amendments to the Law:

> *When consequentially, one now reads the Law as a whole, the institution of marriage itself is maintained, the formalities are maintained, the requirements for consent are maintained, the requirements for objection are maintained and*

[42] See paragraph 52 above.
[43] At paragraph 380 *et seq*.

*the procedures for the solemnization are maintained. So too are the duties of the Registrar and the provisions of enforcing the law. What has changed, to bring the Law into conformity with the Bill of Rights, is that the more limited definition contained in section 2 of the law has been changed so as to cover unions between same-sex couples.*

*This process of modification in no way threatens the institution of marriage. Rather, as has been repeatedly emphasized (sic) by the courts of the United Kingdom[44], the United States[45], South Africa[46] and other jurisdictions, in fact the institution strengthened.*

65. After the decision in **Godwin**[47] the Bermudian legislature brought into force The Domestic Partnership Act 2018 ('the 2018 Act'). This revoked the effect of **Godwin** and provided that the 1981 Marriage Act would not take precedence over the provisions of the 2018 Act. The 2018 Act introduced a scheme of domestic partnerships into which same-sex couples could enter.

66. The revocation of the effect of **Godwin** (to allow for same-sex marriages) was challenged in **Ferguson v Attorney General; OUTBermuda and others v Attorney General**[48]. The court at 1st instance held[49]:

*"The Applicants are accordingly entitled to a declaration that the provisions of the DPA purporting to reverse the effect of this Court's decision in Godwin v Registrar General (Human Rights Commission intervening) are invalid because they contravene the provisions of s.8(1)[50] of the Bermuda Constitution and … s.12(1)[51] as well. The impugned provisions of the DPA interfere with the rights*

[44] *Rodriguez v Minister of Housing of the Government* [2009] UKPC 52.
[45] *Obergefell v Hodges* 576 U.S (2015).
[46] *Fourie and Bonthuys* (232/2003) [2004] ZASCA 132.
[47] *Supra.*
[48] [2018] WIR 92.
[49] At paragraph 112.
[50] Freedom of conscience. S.8(1) is in almost identical terms as S.11(1) of the Constitution.
[51] Protection from Discrimination. S.12(1) provides: "*Subject to the provisions of subsection (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect*." S.12(4) provides: "*In*

*of those who believe (on religious and non-religious grounds) in same-sex marriage of the ability to manifest their beliefs by participating in legally recognised same-sex marriages …"* (Citations omitted)

67. In the Court of Appeal it was held, dismissing the appeal that:

*"In deciding whether s.53[52] of the DPA had been enacted for religious purpose, authority established that it was the primary purpose of the impugned legislation that mattered. If that was religious, it was ineffective and had to be struck down, even if it was not the only purpose. In applying the religious purpose test, the legislation, including its preamble, its structure and evolution, as well as its context and the legislative debate, were all indicators that could be used to delineate the provision's purpose. In the instant case, the fact that the revocation provision was derived from the Furbert Bill and was proposed in 2017 in response to religious lobbying was not only relevant, but important. Further, in identifying that the revocation provision was not made solely or even substantially for a religious purpose, but for mixed purposes, the judge failed to focus on the revocation provision in s.53; it was the purpose of that provision that was critical. Introducing a comprehensive scheme for same-sex relationships had nothing to do whatsoever with s.53. The remainder of the Act introduced civil partnerships for all couples, not just those of the same-sex. Nor was s.53 in the Act for meeting the expectations of the LGBT community; the*

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*this section, the expression discriminatory means affording different treatments to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or **creed** whereby persons is one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description*." (Emphasis added)

The equivalent in the Constitution is s.16(3) which has more expansive descriptions of "*race, national or social origin, political or other opinion, colour, religion, language, creed, association with a national minority, property, sex, **sexual orientation**, birth or other status*." (Emphasis added)

[52] S.53 of The Domestic Partnership Act provided: "*Notwithstanding anything in the Human Rights Act 1981, and any other provision of law or the judgment of the Supreme Court in Godwin … a marriage is void unless the parties are respectfully male and female*."

*reverse was the case. As to mitigating the adverse publicity for Bermuda, that could only apply to the other provisions in the DPA giving same-sex couples, along with others, the right to enter civil partnerships. The one purpose that did relate to the revocation provision was satisfying the religious demands of the opponents of same-sex couples, i.e. religious purpose. It was therefore plain that the underlying purpose of the revocation provision in s.53 was religious. It follows that the revocation provisions in s.53 were invalid and had to be struck down.*"

68. The Privy Council in a majority decision[53] went on to hold that protection of the right of freedom of conscience did not give rise to an imposition on the State to give legal recognition to same-sex marriage; and that the DPA was passed to bring about a democratic solution to the issue of same-sex marriage and to accommodate both sides of the debate.

69. Whilst **Ferguson** focused on the right to the protection of freedom of conscience, it also considered the right to protection from discrimination. The argument put forward in **Ferguson** was based on discrimination by 'creed'. The importance of this in the instant case arises from the Amended Originating Summon. The Plaintiffs in the Originating Summons relied on the protected right of freedom of conscience, but this was removed by amendment. On the discrimination point, the Privy Council held:

*"The respondents appeal against the rejection by the Court of Appeal of their case under s.12 of the Constitution. The respondents contend that the revocation provision in s.53 of the DPA was unconstitutional under s.12 of the Constitution because their belief in a legally recognised same-sex marriage constitutes a 'creed'. They further contend that s.53 of the DPA replaced a wide secular definition of marriage with a narrow religious one, held by certain creeds and not others, and thus accorded privileges and advantages to persons of certain creeds, and imposed disabilities and restrictions on persons of other creeds.*

[53] Lord Reid, Lord Hodge, Lady Arden and Dame Victoria Sharp, Lord Sales dissenting.

*The Court of Appeal in paras. [73] to [75] of its judgment rejected the respondents' arguments on the grounds that s.12 applies to discrimination against a person on the ground of his or her system of beliefs, whether religious or secular, and does not apply to a single belief. The Board is satisfied that the Court of Appeal was correct to do so.*

*Section 12(3) defines 'discriminatory' as 'affording different treatments to different persons attributable wholly or mainly to their respective descriptions by creed.' (emphasis added). There were two reasons why the respondents cannot bring themselves within the protection of s.12. The first is the reason given by the Court of Appeal. Discrimination attributable to a person's description by creed is a reference to a discrimination based on a person's system of beliefs, by which he or she is described, such [as] adherence to a religion such as Christianity or Islam, or a secular belief system such as communism. Secondly, the exclusion of same-sex couples from the institution of marriage is attributable not to their or their supporters' description by creed but because they are of the same sex."*

70. The conclusion of **Ferguson** was to uphold the legislation that 'marriage' was an institution or union between a man and a woman.

71. **Schalk and Kopf v Austria**[54] concerned a same-sex couple living in Vienna, who complained that the Austrian Civil Code only recognised and provided for marriage between 'persons of the opposite sex'. Following the dismissal of their complaint by the Austrian Constitutional Court they appealed to the European Court of Human Rights ('ECt.HR'). They submitted that Article 12[55] imposed an obligation on the Austrian Government to grant them access to marriage. Secondly, they submitted that if Article 12

[54] (2011) 53 EHRR 20

[55] The European Convention on Human Rights - The right to marry (expressed as being the right of a man and a woman).

did not enshrine a right to marriage, Article 14[56] when read in conjunction with Article 8[57] did. In what was described by the Court in its judgment as 'the second limb of their complaint', they complained of the lack of alternative legal recognition of their same-sex relationship. There was no recognition of such relationships at the time they lodged their application however by the time of the judgment the Registered Partnership Act 2010 had been passed.

72. The Court went on to hold:

> *"In conclusion, the Court finds that Article 12 of the Convention does not impose an obligation on the respondent Government to grant a same-sex couple such as the applicants, access to marriage.*
>
> *Consequently, there has been no violation of Article 12."*

73. The Court also went on to hold that Article 14 taken together with Article 8, could not be interpreted as imposing such an obligation either. In paragraph 108 it stated:

> *"The court starts from its findings above, that states are still free, under art. 12 of the convention as well as under art. 14 taken in conjunction with art. 8, to restrict access to marriage to different sex couples."*

74. In **Hämäläien v Finland**[58] the ECt.HR in confirming **Schalk and Kopt** said:

> *"The Court reiterates that Article 12 of the Convention is a lex specialis for the right to marry. It secures the fundamental right of a man and a woman to marry and to find a family. Article 12 expressly provides for the regulation of marriage by national law. It enshrines the traditional concept of marriage as being between a man and a woman … While it is true that some Contracting States have extended marriage to same-sex partners, Article 12 cannot be construed as imposing an obligation on the Contracting States to grant access to marriage*

[56] Prohibition of discrimination – "*on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*".
[57] Right to respect for private and family life.
[58] (Application No. 37359/06) 16 July 2014 at para. 96.

*the same-sex couples."*

75. In **Oliari and others v Italy**[59] the ECtHR held that Article 12 of the convention did not impose an obligation on the respondent Government to grant same-sex couples access to marriage.

76. In **(1) The Deputy Registrar General of the Cayman Islands (2) The Attorney General of the Cayman Islands v (1) Chantelle Day (2) Vickie Bodden Bush**[60] the Court of Appeal overturned the 1st instance decision. The Court in considering the right to marry in the context of the Cayman Islands Bill of Rights[61] ('BoR') the Court considered:

> *"The wording of section 14(1), on its face, defines marriage in terms of marriage between a man and a woman. The wording, in our judgment, precludes same-sex marriage. It seems to us Ms Rose was right when she submitted that as a matter of syntax and logic, the words, "the right of every unmarried man and woman of marriageable age…freely to marry a person of the opposite sex"*[62] *make up a single, composite expression. Meaning and effect have to be given to the words, "a person of the opposite sex." If, as Ms Rose put it, the framers of the Constitution had intended that same-sex couples should enjoy a constitutional right to marry, the words "of the opposite sex" would have been otiose and misleading. The absence of the word 'only' before "of the opposite sex" does not support the proposition that the limitation expressed in these four words can be ignored, circumvented or expanded so as to include in their scope persons of the same sex.*
>
> *Moreover, as Ms Rose observed, it is only within section 14(1) that the words "every … man and woman" appear. That is the only right enshrined in the BOR to specify the sex of the person to whom it applies."*

[59] (2015) 40 BHRC 549
[60] CICA No. 9 of 2019
[61] Broadly similar to the Constitution.
[62] The equivalent provision of the Constitution is set out at paragraph 28 above.

77. It went on[63]:

> *"The BoR was based on the ECHR. The United Kingdom Parliament plainly intended that the pattern of the BoR should follow that of the ECHR. At the time of the legislation the jurisprudence of the European Court of Human Rights in respect of marriage was clear. Article 12 did not impose an obligation to grant a same-sex couple access to marriage. That obligation only arose in respect of opposite-sex couples. Subsequently, the court found (in Schalk v Kopf) that a right to marry could not be derived from Article 8 in conjunction with Article 14. The Articles had to be construed in harmony. Article 12 was the specific, substantive provision in respect of marriage. Articles 8 and 14 were for a more general purpose and more limited in scope. They could not be used as the means of construing a right to same-sex marriage, when the substantive provision in respect of marriage did not impose such an obligation. It provided for the opposite. That analysis was repeated subsequently (see paragraphs 50-1 and 54 above in particular). The European Court of Human Rights' analysis had nothing to do with allowing member states any margin of appreciation. It was based on its finding that Article 12 was the* ***lex specialis*** *as far as marriage is concerned."* (My emphasis)

78. And:

> *"The rationale underlying the decisions of the European Court of Human Rights applies equally to the BoR. Just as a right to marry cannot be derived from Articles 8 and 14 because Article 12 is the lex specialis as far as marriage is concerned, so it cannot be derived from sections 9[64], and 16[65] (or, for that matter, sections 10[66] and 16). In other words, the specific, defined and restricted right to marry under section 14 cannot be extended by a reference to other*

[63] At paragraph 101.
[64] The right to Private and Family Life – S.10 of the Constitution.
[65] The Protection from Discrimination – S.16 of the Constitution.
[66] The right to conscience and religion.

*general rights in other provisions. Consequently, section 16 cannot be brought into play.*

79. The appeal to the Privy Council[67] was dismissed. Lord Sales delivering the judgment of the Board said:

> *"The right to marry in s 14(1) of the Bill of Rights has been drafted in highly specific terms to make it clear that it is a right 'freely to marry a person of the opposite sex …'. Comparing s 14(1) with art. 12 of the ECHR, which was the model for it, it is obvious that this language has been used to emphasise the limited ambit of the right and to ensure that it could not be read as capable of covering same-sex marriage. The reference to 'traditional Christian values' in the preamble to the Constitution and the reference to 'the distinct history, culture [and] Christian values' in s 1(2)(a) of the Bill of Rights reinforce the point by referring to the cultural and religious values which led to this emphasis being given to opposite-sex marriage in s 14(1).*
>
> *In the Board's judgment, it is clear that within the scheme of the Bill of Rights s.14(1) constitutes a lex specialis in relation to the right to marry.*
>
> *Therefore, the interpretation of the other general provisions in ss 9, 10 and 16, which do not stipulate for a right to marry, must take account of this and cannot be developed to circumvent the express limits on the right to marry in s 14(1). They cannot establish indirectly by implication a right to marry which is not directly set out in the relevant express provision in the Bill of Rights. Interpreting them in that way, as Mr Fitzgerald urges us to do, would have the effect of making the right in s 14(1) redundant, which would clearly be contrary to the intention of the drafters of the Bill of Rights.*

80. Whilst the Constitution does not contain an equivalent to s.1(2)(a) of the Cayman Islands Bill of Rights, the preamble to the Constitution reads:

> *"The people of the Turks and Caicos Islands as a God-fearing people with*

[67] *Day and another v Governor of the Cayman Islands and another* [2022] UKPC 6

*convictions based on sound Christian culture, values and principles, tolerant of other religions;*

*Affirm their intention to:*

*— maintain the highest standards of integrity in their daily living;*

*— commit to the democratic values of a just and humane society pursuing dignity, prosperity, equality, love, justice, peace and freedom for all;*

*— ensure a vibrant diversified economy, work to provide full employment opportunities, and protect their posterity."*

**Conclusion**

81. The absence of an equivalent provision as to s.1(2)(a) of the Cayman Islands Bill of Rights does not in my view in any way dilute the authority derived from the Privy Council in paragraph 79 above.

82. The denial to a same-sex couple of a right to marry, and hence a right to have an overseas same-sex marriage recognised in the TCI is not, in my judgment discriminatory, s.10(1) of the Constitution being the *lex specialis* as far as marriage is concerned, and such denial does not contravene the fundamental protected rights under the Constitution and hence, does not allow a widening of the definition of 'spouse' with respect to the Immigration Ordinance.

83. The question that arises is whether the refusal to give the Plaintiffs access to the same rights as a married couple, based on their sexual orientation, is discriminatory. The Constitution at s.16 gives protection from discrimination based *inter alia* on sexual orientation.

84. The remedy sought by the Plaintiffs is in essence, that the Plaintiffs are entitled to a declaration that the refusal to grant a residence permit to Mr Haymon is in contravention to the fundamental rights and freedoms protected under the Constitution.

85. The limiting of the grant of a spousal resident permit to only heterosexual couples in my view is discriminatory but not on the basis of marriage. It fails to grant equal rights to

homosexual couples who are in a permanent and committed relationship. In my view, there can be no doubt that the refusal to grant Mr Haymon the equivalent right to a residence permit as would be granted to a heterosexual spouse (whether or not they were married in the TCI) offends the protection afforded by s.16 of the Constitution, *a fortiori* given the expressed protection afforded on the basis of sexual orientation, is not so expressed in the Bermudan Constitution, the European Convention on Human Rights or the Cayman Islands BoR.

86. Accordingly, in my judgment, the Plaintiffs are entitled to the declaration they seek, that the refusal to grant a residence permit to Mr Haymon based on the definition of a spouse is in contravention of the protected rights in s.9 and 16 of the Constitution.

87. I base that conclusion on the authorities cited herein and the additional authorities cited in those judgments. In particular, by the time **Day and Bodden Bush** got to the Court of Appeal it was accepted that the Legislative Assembly of the Cayman Islands was required under s.9(1) of the BoR to provide same-sex couples "*with a legal status functionally equivalent to marriage, such as a civil partnership*"[68].

88. The Court went on to say:

> *"[The Legislative Assembly's] failure to comply with its obligations under the law in that regard is woeful. That it had such an obligation has been apparent for several years. As the Chief Justice set out in detail, the Respondents, in broad terms, offered to compromise the present litigation on appropriate undertakings from the appellants to establish an institution of civil partnership. Even now, when during the course of argument, the court sought information as to what the appellants intend to do, we were merely told that they were waiting the outcome of the litigation. It is difficult to avoid the conclusion that the legislative assembly has been doing it all it can to avoid facing up to its legal obligations.*"

89. The Court of Appeal went on to order the following declaration:

[68] Paragraph 6 of the Court of Appeal Judgment *supra*.

*"In recognition of the longstanding and continuing failure of the legislative assembly of the Cayman Islands to comply with its legal obligations under section 9 of the Bill of Rights*

*And in recognition of the Legislative Assembly's longstanding and continued violation of Article 8[69] of the European Convention on Human Rights,*

*IT IS DECLARED THAT: Chantelle Day and Vicki Bodden Bush are entitled, expeditiously, to legal protection in the Cayman Islands, which is functionally equivalent to marriage."*

90. When the matter reached the Privy Council, Lord Sales said:

*"It was common ground in the Court of Appeal and his common ground before the Board that under s.9(1) of the Bill of Rights (right to respect for family and private life) the Legislative Assembly of the Cayman Islands was required to provide the appellants with the legal status functionally equivalent to marriage, such as the civil partnership. The Government and the Legislative Assembly were in breach of this obligation, so the Court of Appeal made a declaration to that effect. The Government does not appeal against that declaration. This obligation has now been complied with by the promulgation of the Civil Partnership Law 2020."*

91. As can be seen from paragraphs 65 *et seq*. similar provision has been made in Bermuda with the passing of the Domestic Partnership Act 2018. In my judgment, it is beyond peradventure that such a challenge in the TCI would have a similar outcome and it is perhaps without doubt that such a challenge is now imminent.

92. The above said, the remedy that is sought in this action is *"[A]n order under section 21(2)[70] of the Constitution for the amendment of the Marriage Ordinance to the extent as*

[69] The right to respect for private and family life.

[70] S.21(2) provides:

"*The Supreme Court shall have original jurisdiction—*

*(a) to hear and determine any application made by any person in pursuance of subsection (1); and*

*is necessary for the grant to the First Plaintiff of his Residence Permit*". Given my findings that a denial of a right for same-sex couples to marry is not discriminatory, and that such a right is inescapably tied to the recognition of an overseas same-sex marriage, I cannot grant the remedy that is sought.

93. In conclusion I express my gratitude to the parties for their patience in awaiting this decision. This is a sensitive subject and I have been presented with weighty authorities to which I have given careful consideration.

94. I will hear counsel on the form of order and the issue of costs.

**12th March 2024**

**The Hon. Justice Anthony S. Gruchot**
**Judge of the Supreme Court**

*(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Part to the protection of which the person concerned is entitled; but the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law*."