

**Ms. Juliet Joslin et al. v New Zealand, Communication No. 902/1999, U.N. Doc. A/57/40 at 214 (2002)**

### **1) Reference Details**

Jurisdiction: UN Human Rights Committee

Date of Decision: 17 July 2002

Link to full case: <http://www1.umn.edu/humanrts/undocs/902-1999.html>

### **2) Facts**

Ms Joslin and Ms Rowan commenced a lesbian relationship in January 1988, since then, they jointly assumed responsibility for their children out of previous marriages. They all lived together. They applied under the Marriage Act 1955 to the local Registrar of Births, Deaths and Marriages for a marriage licence, by lodging a notice of intended marriage at the local Registry Office. The Deputy Registrar-General rejected the application.

Similarly, Ms Zelf and Ms Pearl commenced a lesbian relationship in April 1993. They also share responsibility for the children of a previous marriage also they pooled financial resources and maintained sexual relations. On 22 January 1996, the local Registry Office refused to accept a notice of intended marriage.

### **3) Laws**

#### *National Law*

- 1955 Marriage Act of New Zealand

#### *International Law*

- Article 16 of the International Covenant on Civil and Political Rights (right to recognition before the law)
- Article 17 of the International Covenant on Civil and Political Rights (right to privacy, home, family and correspondence)
- Article 17 in conjunction with Article 2, paragraph 1 of the International Covenant on Civil and Political Rights (Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status)
- Article 23, paragraph 2, in conjunction with Article 2, paragraph 1 of the International Covenant on Civil and Political Rights
- Article 26 of the International Covenant on Civil and Political Rights (right to non-discrimination)

### **4) Legal Arguments**

#### *The Authors*

The authors claimed to be victims of a violation by New Zealand of Articles 16 and 17, on its own and in conjunction with Article 2, paragraph 1; Article 23, paragraph 1, in conjunction with Article 2, paragraph 1; Article 23, paragraph 2, in conjunction with Article 2, paragraph 1; and Article 26 of the Covenant. They claimed that the failure of the Marriage Act to provide for homosexual marriage discriminates against them directly on the basis of sex and indirectly on the basis of sexual orientation.

They further argued that their inability to marry causes them to suffer "a real adverse impact" in several ways as they are denied the ability to marry, a basic civil right, and are excluded from full membership of society and their relationship is stigmatised. Also there can be detrimental effects on self-worth and they did not have ability to choose whether or not to marry, like heterosexual couples did.

#### *The State*

The State contended that the authors did not exhaust domestic remedies. The State party rejected the authors' claims of futility in pursuing a further appeal to the Privy Council, noting that it would be open to the Privy Council to construe the terms of the Marriage Act as permitting a lesbian marriage.

On the merits, the State rejected the authors' arguments that the Covenant requires States parties to enable homosexual couples to marry, noting that such an approach would require redefinition of a legal institution protected and defined by the Covenant itself, and of an institution reflective of the social and cultural values in the State which are consistent with the Covenant.

### **5) Decision**

#### *Merits*

The Committee held that in light of the scope of the right to marry under Article 23, paragraph 2, of the Covenant, the Committee could not find that by mere refusal to provide for marriage between homosexual couples, the State party had violated the rights of the authors under Articles 16, 17, 23, paragraphs 1 and 2, or Article 26 of the Covenant.