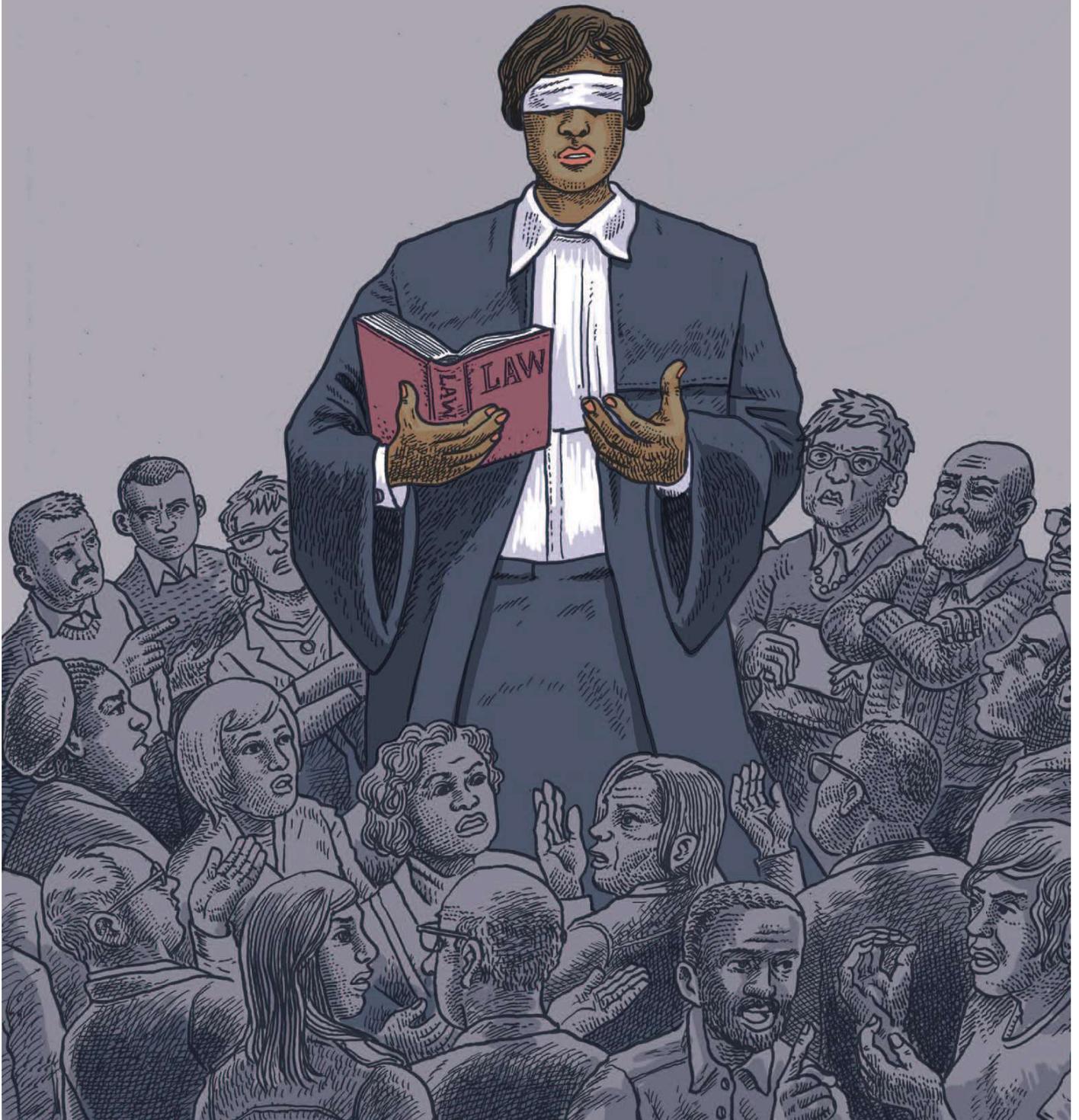


THE CAB RANK RULE



In January 2021, retired Judge Edwin Cameron issued a widely publicised¹ statement calling upon Ms Dinah Rose QC to return her brief in the appeal that was to be heard before the Judicial Committee of the Privy Council (JCPC) *sub nom. Day and another (Appellants) v The Government of the Cayman Islands and another (Respondents) (Cayman Islands)*. Ms Rose was counsel for the Government of the Cayman Islands in the appeal. She was also at the time the President of Magdalen College, one of the constituent colleges of Oxford University. Judge Cameron's criticism was broadly speaking that she would be advancing a homophobic cause and this was incompatible with the duty she owed to the college, as well as to its LGBTIQ members, to uphold its equality policy.

Ms Rose QC issued a statement explaining why she would not step away from the matter.²

This elicited a public debate – which *Advocate* here advances – on the meaning and ambit of the cab rank rule.

We place both the statements of Judge Cameron and Ms Rose QC. So, too, there is an exposition of the history of the rule as well as contributions by Craig Watt-Pringle SC, chairperson of the GCB (see p 3), and Gilbert Marcus SC, of the Johannesburg Bar, and Geoff Budlender SC, of the Cape Bar.

Advocate offered Ms Rose an opportunity to respond to Mr Marcus, which invitation was not taken up.

We invite members to take part in this ongoing debate in the next edition.

The issues in the matter

On 23 and 24 February 2021, the Judicial Committee of the Privy Council – the five members being Lord Reed, Lord Hodge, Lady Arden, Lord Sales and Dame Victoria Sharp – heard oral arguments in the appeal of a lesbian couple, Chantelle Day and Vickie Bodden against the Government of the Cayman Islands in the matter of *Day and another (Appellants) v The Government of the Cayman Islands and another (Respondents) (Cayman Islands)*.

There were two issues for determination.

The first was whether the Bill of Rights in the Constitution of the Cayman Islands provides a right for Ms Day and Ms Bush to access the institution of marriage.

The second issue was, if the first question were answered in the affirmative, whether the order of the Grand Court of the Cayman Islands – which modified the Marriage Law so as that “marriage” is defined to mean “the union between two people as one another’s spouses” – should be restored.

The facts and curial history of the matter

Ms Chantelle Day and Ms Vickie Bodden Bush are two adult women in a committed relationship. They live with their daughter in the Cayman Islands, and wish to marry there. In 2018, the Deputy Registrar refused their application for the appropriate marriage licence, on the basis that the Marriage Law of the Cayman Islands defines “marriage” to mean “the union between a man and a woman as husband and wife”.

They sought to challenge the Marriage Law and the Deputy Registrar's decision as incompatible with the Bill of Rights in the Constitution of the Cayman Islands.

At first instance, they prevailed.

The Grand Court of the Cayman Islands – the court of first instance – found that there were violations of their right to private and family life, their freedom of conscience and freedom to manifest their belief in marriage, and their freedom from discrimination in the enjoyment of their rights. The Court exercised its power under the Constitution to modify the Marriage Law so as that “marriage” was defined to mean “the union between two people as one another's spouses”.

The Deputy Registrar and the Attorney General successfully appealed against that decision to the Court of Appeal of the Cayman Islands.

It decided that the right to marry under the Caymanian Constitution does not extend to same-sex couples.

The Court of Appeal did, however, declare that Ms Day and Ms Bush were entitled to legal protection functionally equivalent to marriage.

Thereupon, Ms Day and Ms Bush appealed to the JCPC.

At the time that this edition goes to print, the ruling of the JCPC is still awaited.

(This account of the facts is a lightly edited version of the facts to be found at www.jcpc.uk/cases/jcpc-2020-0033.html; further reading might start here: en.wikipedia.org/wiki/Same-sex_marriage_in_the_Cayman_Islands)

Notes

- 1 The statement was first published in *The Cherwell* student newspaper at Oxford University on 27 January 2021 and, thereafter, on the website of the Oxford Human Rights Hub, at the Law Faculty of that university. It was also widely reported on in the London media.
- 2 The statement was quoted in an article in *The Cherwell* newspaper on 7 February 2021 as well as in the blog of the legal commentator Mr Joshua Rozenberg.