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Canadian gay-rights case irks province

High court knocks down Alberta law

By Randall Palmer
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OTTAWA — A landmark homosexual-rights decision by Canada's Supreme Court last week has reignited a firestorm that has raged on both sides of the border over how far the judiciary can go in overruling elected legislatures.

The Canadian high court effectively rewrote the human rights law of the western province of Alberta by banning discrimination on the basis of sexual orientation. Alberta's legislature, unlike other Canadian provinces, had specifically declined to offer protection against discrimination of homosexuals.

The case centers on Delwin Vriend, a lab instructor who was fired in 1991 from a Christian college in Alberta because of his homosexuality. When Mr. Vriend went to the Alberta Human Rights Commission for redress he found he had no protection. He eventually went to the country's highest court, and the nine judges sided with Mr. Vriend and ruled Alberta's code was discriminatory.

Justice Frank Iacobucci anticipated the lively exchange of views that would take place in Alberta and in Canadian papers when he wrote the unanimous decision on Thursday.

"It seems hardly a day goes by without some comment or criticism to the effect that under the Charter courts are wrongfully usurping the roles of legislatures," he wrote, referring to the Canadian Charter of Rights and Freedoms on which the decision was fought.

"I believe this allegation misunderstands what took place and what was intended when our country adopted the Charter in 1981-82."

Justice Iacobucci proceeded to argue that the Charter, a rough modern-day equivalent of the U.S. Bill of Rights, was designed to force legislatures to conform to "newly conferred rights and freedoms."

Numerous letters to newspapers hailed the Vriend decision as protecting homosexuals and bringing equality throughout society.

Others said it was a sign of judicial activism run amok. It also set off a huge wave of protest in Alberta, which has strong conservative, rural roots.

"The power of Alberta's duly elected legislators has been usurped by an overreaching and rapacious Supreme Court," Garry Keller wrote in a letter to the Toronto Globe and Mail newspaper.

"Now the court is literally writing law. Without batting an eyelash, it has taken this brand-new responsibility. This gives hope to all special-interest groups," said David Buchanan in another.

A columnist for the Southam news chain, Andrew Coyne, defended the decision.

"Was it usurping the authority of the legislature?" he asked. "No. It was applying the law. Somebody has to. If we left it to the legislatures, we would be defeating the whole purpose of the Charter, which was, remember, to limit discretion."

But the Ottawa think tank Center for Renewal in Public Policy noted that the House-Senate committee that helped draft the charter voted 22-2 against including "sexual orientation."

"Iacobucci's claim to upholding 'democratic values and principles' in overruling the legislatures rings completely hollow," the center's Iain Benson and Brad Miller wrote in a commentary.

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