

Court in favour of same-sex benefits

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TORONTO -- In what the gay community is describing as a monumental decision, an Ontario court ruled Friday that the federal government has discriminated against same-sex couples by denying pension benefits to survivors whose partners died before 1998.

Such benefits will now be retroactive to April 17, 1985, when equality guarantees were included in the Charter of Rights and Freedoms.

The period from 1985 to 1998 is significant because of the devastating effects of AIDS on the gay community, lead counsel Douglas Elliott said in court hearings in the fall.

The Crown had contended that providing benefits retroactive to Jan. 1, 1998, was generous, and in step with the evolving legal status of same-sex relationships.

But on Friday, Justice Ellen Macdonald ruled against the federal government.

"I can find nothing generous in codifying a mechanism for discrimination that has been in existence since at least the advent of the charter," Macdonald said.

One lawyer involved in the case said the judgment will affect 1,500 gays and lesbians, with survivor benefits worth about \$100 million.

Quebec was the only province not represented in the \$400-million lawsuit because it operates a separate pension plan.

One gay man who fought for a survivor's pension after the death of his partner described the court decision as monumental for the gay community.

"I'm very, very happy," said Albert McNutt, of Truro, N.S., whose partner Gary Pask died in 1993. "This is a huge step for the gay community in Canada."

McNutt said when he was denied Pask's pension benefits, he felt as though he was being told his relationship was unimportant.

"When I first applied for my deceased partner's benefits and I was denied I felt I didn't matter, that I didn't count," he said.

"It tore me apart. This is a real victory not only for me, but for my partner."

Friday's ruling makes him feel, "fully included in the race of human beings," he added.

McNutt said he hadn't worked out the financial benefits, saying it wasn't the reason he fought the case.

His Halifax lawyer, Dawna Ring, said she hoped that under Paul Martin's leadership the federal government

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won't appeal the decision.

"We hope that Mr. Martin will not choose to have federal government lawyers, paid for out of taxpayer's dollars, fighting against the people of Canada," she said.

"Do the right thing and treat these Canadians as equals under the constitution of Canada."

The nationwide class-action lawsuit, approved nearly a year ago to proceed in Ontario Superior Court, focused on Canada Pension Plan benefits.

The suit alleged discrimination against same-sex couples by denying survivor pension benefits to gays and lesbians whose partners died before Jan. 1, 1998.

The federal government imposed the 1998 cutoff date when it introduced Bill C-23, which granted a variety of rights to same-sex couples in 2000.

"The court has now put me on equal footing with every other Canadian who has lost a spouse," said lead plaintiff George Hislop, 76, who had a 28-year relationship with partner Ronnie Shearer.

"When I was denied the survivor pension, I thought the government was treating my relationship with Ronnie as second-class."

Hislop, a lifelong gay rights activist, said he lived on Shearer's income.

The Crown had argued that extending benefits to the class-action group would have implications for other marginalized groups.

Same-sex unions have been a contentious topic for the federal Liberals since courts in Ontario and British Columbia allowed gays to marry in June by declaring traditional marriage laws unconstitutional.

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