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Legal Briefs

By Susan Murray & Beth Robinson

In light of the rancorous debate and the efforts of some at the Vermont Statehouse to demean gay and lesbian relationships by eliminating the civil union law (and thereby take away the small measure of respect g/l couples have gained with the new law), it's heartening to remember that our efforts to reach full equality in the marriage laws is inevitable. Why? Because other countries are already light years ahead of us. To our north, Canada is debating gay marriage rights. Several European countries (including Denmark, Sweden, Iceland and France) have had partnership laws on the books for years now. And one country, the Netherlands, has finally eliminated all discrimination in its marriage laws, by allowing gay and lesbian couples to enter into civil marriages, just like opposite sex couples.

Just three years ago, in 1998, the Netherlands had been one of a handful of northern European countries which had already passed a so-called "registered partnership" law, allowing gay and lesbian couples to register their relationships and receive some but not all of the benefits of civil marriage. In other words, the Netherlands had a law that was similar to Vermont's civil union law, only heterosexual couples could enter into civil marriage, but g/l couples could enter into one of these registered partnerships. It was a situation which one Dutch legal expert has referred to as "marriage apartheid."

Remarkably, in just three years the Dutch Parliament came to realize that it was discriminatory and nonsensical to have two parallel systems, in which civil marriage was limited only to opposite-sex couples. It therefore overwhelmingly passed a law which declares, simply, that "a marriage can be contracted by two persons of different sex or of the same sex." The Dutch legislature's progressive and historic vote stands in stark contrast to the hysterical behavior of Nancy Sheltra's "sex pack" and the other anti-civil legislators in the Vermont legislature. It also points up an interesting difference between the Netherlands' journey toward equality in the marriage laws and Vermont's as-yet incomplete journey: while the Vermont legislature took up the issue only after the Supreme Court's Baker decision, and passed the civil union law by the slimmest of margins and only after rancorous debate, the Dutch elected legislature (its Parliament), not its courts, have taken the lead in this civil rights struggle.

There are two differences between a Dutch marriage of an opposite-sex couple and a same-sex couple. First, the presumption that both parents in a marriage are the biological parents of a child born during that marriage will not apply for same sex marriages, since it is (as yet) biologically impossible for two women or two men to be the biological parents of the same child. Therefore, gay and lesbian married couples in the

Netherlands who have a child through the use of fertility clinics or surrogacy will have to go through the adoption process in order for both of them to be considered legal parents. (By the way, g/l couples in Vermont who have civil unions should also obtain adoption to confirm that both parents have legal parental rights to children born to either parent during the civil union.)

Second, g/l married couples in the Netherlands will not be able to adopt internationally. Since most Dutch adoptions are international, the Parliament was apparently afraid that other countries will opt not to place their children with Dutch couples because of prejudice against g/l couples, thereby eliminating adoption possibilities for all Dutch couples. Gay and lesbian Dutch couples will, however, be allowed to adopt Dutch children, and will be allowed to adopt each other's children.

Finally, rules on residency and citizenship apply: while a Dutch citizen can marry a non-Dutch citizen (and that foreigner does not even have to live in the Netherlands), non-Dutch couples cannot get married in the Netherlands unless one of them is a resident of the Netherlands (in other words, an American lesbian who lives and works in Amsterdam can legally marry her same-sex partner in the Netherlands, but two Americans who live in the U.S. cannot fly to the Netherlands to get married).

In passing this historic law, the Dutch Parliament was aware of the fact that this was a "first" in the world, and that gay and lesbian Dutch marriages may not be recognized in other parts of the world, at least at first. But that didn't stop the government from doing what was right. Thus, at midnight on April 1, 2001, the mayor of Amsterdam presided over a joyous, emotional ceremony at City Hall: seven same-sex couples became the first couples in the world to become legally married.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.

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