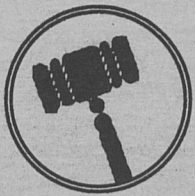


LEGAL



BRIEFS

A Spouse is a Spouse in a Canadian House

BY BETH ROBINSON AND SUSAN MURRAY

Once again, our neighbors to the north have taken a leadership role in the global march toward equal legal rights for gay and lesbian citizens.

On May 20, in the landmark case of *M. v. H.*, the Supreme Court of Canada ruled that a provincial law that defined 'spouse' to include certain unmarried different-sex couples but not comparable same-sex couples was unconstitutional. The court ordered that the law be changed to ensure equal treatment for same-sex spouses.

The case involved a lesbian couple in Ontario, 'M' and 'H,' who had lived together for 10 years before their relationship fell apart. 'M' went to court seeking spousal support (akin to what we sometimes call 'alimony') from 'H.'

The Ontario law regarding spousal support defined 'spouse' to include someone who is actually married, as well as 'either of a man and woman who are not married to each other' and have cohabited for at least three years. 'Cohabit' was defined to mean living together 'in a conjugal relationship, whether within or outside marriage.'

'M' argued that the definition of 'spouse,' including unmarried different-sex couples but excluding unmarried same-sex couples, was unconstitutionally discriminatory.

The Canadian Supreme Court agreed, and concluded that the definition of 'spouse' should include unmarried same-sex couples. The court recognized the legal and economic disadvantage the law imposed on gay and lesbian citizens, noting 'The legislative provision in question...prevents persons in a

same-sex relationship from gaining access to the court-enforced and -protected support system. The denial of that potential benefit...contributes to the general vulnerability experienced by individuals in same-sex relationships.'

The court also understood the invidious message implicit in the law's discrimination, explaining: 'The exclusion of

the same as unmarried heterosexual couples. However, in a nation that provides extensive legal protections to unmarried cohabiting partners, the decision's impact could be far-reaching.

Plus, the court's reasoning would seem to apply with the same force in the context of a marriage case. Perhaps most important for those of us outside

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same-sex partners...promotes the view that...individuals in same-sex relationships...are less worthy of recognition and protection. It implies that they are judged to be incapable of forming intimate relationships of economic interdependence as compared to opposite-sex couples, without regard to their actual circumstances. Such exclusion perpetuates the disadvantages suffered by individuals in same-sex relationships and contributes to the erasure of their existence.'

M. v. H. is not a 'marriage' case; the court's decision merely required that unmarried same-sex couples in Canada be treated

of Canada, the court's decision represents one more (very significant) step in the international trend toward equal legal treatment for gay and lesbian citizens and the families they form. ▼

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury whose practices include general commercial and civil litigation, employment, family, estate, personal injury, and worker's compensation cases. If you'd like our column to cover a particular legal issue of interest to our community, please write OITM or call us at 388-6356.



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