

Survivor's Benefits

By Sean McLennan

Same-sex survivor benefits from the Canadian Pension Plan (CPP) have been a contentious issue for nearly a decade. Although it seems that the issue had been largely resolved last March by a Supreme Court ruling, limitations placed on retroactive benefits have left many with mixed feelings.

In 2000, the government extended CPP benefits to the surviving same-sex partner of a pensioner who had died since 1998 on the basis of equality provisions for same-sex couples in the Charter of Rights. However, those provisions came into effect in 1985—there were thirteen years in which same-sex couples were constitutionally protected yet still not eligible for the benefits any other heterosexual couple enjoyed. In 2003, George Hislop, one of Canada's most prominent gay activists, initiated a class action suit charging the government to make survivor benefits retroactively available for the entire duration that same-sex couples have been protected; about 1500 individuals are affected by the lawsuit, most of whom have not lived to see this outcome.

In 2004, the lawsuit ended in victory, but the government appealed the ruling. Finally, the Supreme Court of Canada ruled again in favour of the plaintiffs this March, affirming that the government acted unconstitutionally in not extending benefits to the partners of those who died after 1985. However, they upheld a twelve month limit on retroactive payments and ruled out payments to the estates of deceased claimants—saving the government about \$100-million. Unfortunately, Hislop, who passed away in 2005, was unable to enjoy the victory.

A number of groups, including Egale Canada and the NDP, have challenged the government to voluntarily provide the full amount of retroactive pension benefits rightfully due to the survivors. Egale's Director of Advocacy, Tamara Kronis, stated "In an era of multi-billion dollar budget and pension surpluses, refusing to provide survivor benefits to this relatively small number of people demonstrates a clear lack of compassion, especially given the fact that each of their partners paid into the Canada Pension Plan like any other Canadian.

"It seems wrong in principle that the only recourse these survivors now have to receive the full pension benefits they paid for is to lobby the government. The Charter was in force during the relevant time period, and the courts at all levels have all recognized, not only that sexual orientation is a prohibited ground of discrimination, but they have also specifically ruled that the differential treatment of same-sex couples during this time with respect to pension benefits is discriminatory. You'd think that would mean people would get paid."

The Supreme Court contends that it is more within its domain to ensure that discrimination does not continue going forward than to right past wrongs—in this respect, the outcome is clearly a victory and the four co-plaintiffs that carried on the lawsuit in Hislop's name are content with the ruling and believe Hislop would be too. Andrew McNutt, one of the four, said, "He fought for gay and lesbian rights all of his life. He is one of the few people who is still fighting for them from the grave." ▼

Sean McLennan is a native Calgarian with (nearly) a PhD in Linguistics and Cognitive Science from Indiana University, where he was heavily involved in GLBT education. He currently has a full time gig in software for mobile technology.

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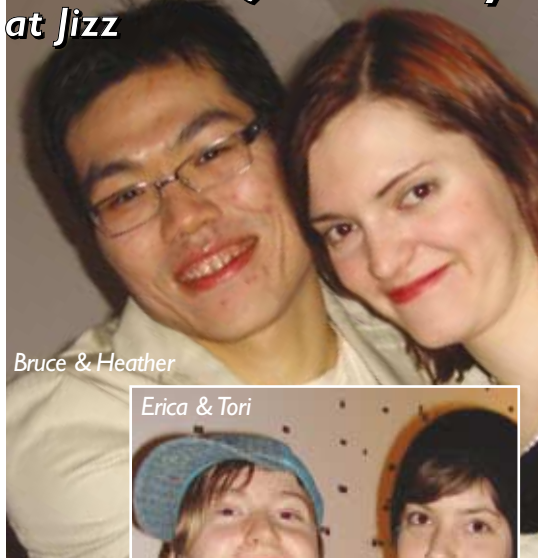
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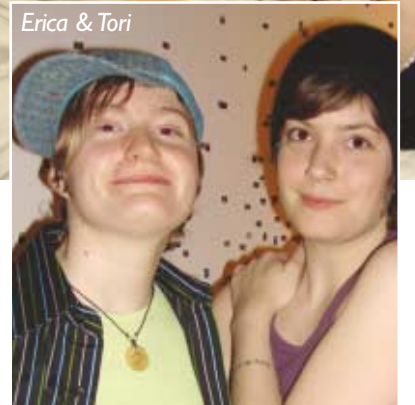
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