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BC-CPE-HOMOSEXUAL-BENEFITS

By KEVIN CROMBIE

HALIFAX (CP) - When Brian Mossop wanted to take the day off four years ago to go the funeral of his common-law spouse's father, his employer wouldn't let him.

That's because Mossop's spouse is another man, and as far as most employers are concerned, Mossop and his lover of four years don't constitute a family.

"A lot of heterosexuals don't believe there is such a thing as a gay couple, because they're invisible for the most part," says Matt Hughes, who spearheaded a successful fight for benefits for his partner at Nova Scotia's Acadia University two years ago.

That battle was one of the first in Canada and provoked a firestorm of angry calls and letters from conservative Baptist groups that founded the university more than 100 years ago.

"(It was) a very traumatic time for the administration, but they didn't bend," Hughes recalls. "They withstood it and of course it's no issue at all today."

While the question hasn't even occurred to many employers, unions and gay and lesbian groups warn it's fast becoming a major issue.

Several challenges are on their way to the Supreme Court of Canada, hoping to use equality guarantees under the Charter of Rights to prove gay and lesbian couples do constitute families, and are entitled to the same benefits as unmarried heterosexual couples.

The most high-profile of these is the case of Karen Andrews, a Toronto librarian who wanted to get her unemployed lover's children covered under her employer's medical plan.

After a number of union and legal challenges the City of Toronto agreed to find an insurance company that would provide Andrews and others like her medical and dental benefits.

But Andrews case against provincial Medicare rules ground to halt earlier this year when the Liberal government did away with Medicare premiums, slicing the offending section out of the Act.

Osgoode Hall law professor Bruce Ryder says there has been a push in the last couple years to set a legal precedent that settles the question of whether Section 15 of the Charter of Rights guarantees equal rights for gays and lesbians.

"It's recognized almost unanimously by governments who have studied the scope of Section 15, or legal analysis that have been written on it, that sexual orientation is indeed a grounds for discrimination covered by Section 15," Ryder says.

The case of Brian Mossop ended up before the Canadian Human Rights Commission, even though federal legislation doesn't provide any protection from discrimination on the basis of sexual orientation.

But it does protect discrimination on the basis of family status, and after hearing testimony from a prominent sociologist about what constitutes a family, the commission determined Mossop's family had been treated unfairly.

Mossop's employer, the federal Treasury Board, is appealing the decision to the federal court.

Out of the legal arena, many unions are taking an aggressive stance on getting employers to extend the scope of benefits.

The Canadian Union of Public Employees -- who is also battling the Karen Andrews case -- is finding itself flooded with requests from locals for information on the issue and how to word clauses in contracts to avoid problems.

"Make it very clear in your contract that benefits be equally available to same sex partners," advises CUPE researcher Margaret Evans. "Because of the problems we've had, you have to spell it out in your collective agreement."

"At least for now, while these things are before the courts."

Although the Ontario Human Rights Code was rewritten in 1987 to include protection for gays and lesbians, the code still defines spouse as a person of opposite sex.

That contradiction has stymied many attempts in that province. CUPE lost a case involving Carleton University, after the arbitrator cited the code's definition.

"That runs completely contrary to the approach the Supreme Court of Canada has taken, where it has consistently held that human rights legislation is to be interpreted liberally and broadly in order to extend protection," argues lawyer Steve Barrett, who is also handling the Karen Andrews case. "The definition of spouse has nothing to do with the prohibition of sexual orientation discrimination; they're simply not related."

Past battles for benefits have involved a courageous few individuals who spoke out and stood their ground. But not everyone walked away a winner.

Anne Bishop was working for Canadian University Services Overseas (CUSO) in 1985 when she helped organize a drive for benefits for gays and lesbians.

Shortly after the new contract was signed, with benefits in place, she was fired for "confidential reasons" which her employer refused to reveal.

"I just strongly suspect that all my activities over that two year period helped, or partially led to that," Bishop says. "But I can't say for sure or accuse them of anything."

Bishop eventually discovered the someone had made an unsubstantiated sexual harassment complaint against her.

Another of her group ended up fighting a series of grievances to clear his personnel file of various unsubstantiated accusations.

The third was repeatedly denied promotions until he discovered that minutes of the gay and lesbian group's meetings had mysteriously found their way to his personnel file.

Matt Hughes, Acadia University, key player

Contract already had a non-discrimination clause for marital status & sexual orientation, just had to convince university it applied to gay couples.

"What would it take to get coverage for gay couples, rather than the question the university always asked, which was do you have coverage for gay couples. Of course the answer would always come back no. So when they were sent the other question the response came back all that one would have to have is for you to ask for it."

Maritime Medical Care Inc., of Halifax

Pension benefits have been extended, but never been tested

"It certainly has paved the way for other universities to ask for this type of coverage."

Bruce Ryder, Osgoode Hall law prof

Push on to get a precedent under the Charter

"So if a gay or lesbian couple is in the same position as a co-habiting heterosexual couple there's now legal grounds to make the argument that that constitutes discrimination."

There are other precedents dealing with discrimination against unmarried, cohabiting heterosexuals that help in the arguments..

"Although the facts are not the same, the principals is the same and they can be relied on in same-sex cases."

"Governments aren't in a hurry to extend benefits to gay or lesbian people given the fact that there's always a small but perhaps vocal and strident opposition."

Money concerns are potentially huge...

Several cases before OHRC, but spouse defined heterosexually

"But that's not discrimination because the Human Rights Code itself defines spouse in a heterosexual manner. That's the issue now for the Ontario Human Rights Code is how to we reconcile the guarantee of protection against discrimination on the basis of sexual orientation with the definition of spouse in the Code itself."

U.S. cities: Madison Wisc; West Hollywood; L.A.; Santa Cruz CA; New York; SF CA

"Something like the Karen Andrews case in Ontario may be just a challenge to the OHIP regulations regarding the calculations of premiums, but if the definition of spouse is altered in that context then it could be altered in... the 70-some pieces of legislation in Ontario that contain the word spouse..."

Margaret Evans, CUPE researchers

Pension problems similar to DFA probs

"It is a private pension plan so from our point of view we should be able to change it any way we want."

Changes to plans must be approved by Revenue Canada under the Income Tax Act

"CUPE is looking at what the options are and following up what kind of appeals, and what kind of options there are."

"It's become an issue amongst our membership. For example we've had a lot of requests for information on contract language, what language do you negotiate to get these kinds of benefits."

Carleton U, CUPE case...denied benefits even tho contract contains no discrim clause...ended up arbitration; grievance denied

"He noted the collective agreement contained a no discrimination clause; but also the agreement contained a definition of spouse later on in the contract, which defines spouse as someone of the opposite sex. He said the parties could have expanded the definition to include same sex spouse had they so wished in previous negotiations."

Also noted the Ontario HRC contains the same clause...

"He stated that it was clear that the Human Rights Code itself, which prohibits discrimination on sexual orientation nevertheless regards a spouse as being of the opposite sex."

Union heading to judicial review...

"If this interpretation of the Ontario Human Rights Code stands up in court, then obviously we're going to have to start lobbying to have the legislation changed again. Most people thought that when sexual orientation was included in the Ontario Human Rights Code that that was the end of the issue. But now there seems to be another roadblock."

"This could end up in the Supreme Court, quite easily. If the federal court rules in Treasury Board's favor, I imagine that Mossop and the Canadian Human Rights Commission would take to the Supreme Court."

"I know there's lots of complaints been made, and a lot of court challenges too."

Challenges range to visiting rights for prisoners...

"There are a number of insurance carriers that will refuse to provide this kind of coverage, and a number who will."

"Our locals go to carriers and they say oh sorry we can't do that, and they say oh yes we do, you did over there or you do it over here and they say oh do we? It seems to me that the insurance companies that do provide coverage, many are kind of reluctant to kind of broadcast the fact that they do."

Companies like Great West Life hide behind legislation or fear of AIDS

"Gay men are still the highest risk group, although I understand that's no longer the case; they would be cancelled out by the lowest risk group -- lesbians. This is just a bit of a red herring, really."

"The whole point of group insurance is that coverage is provided without evidence of insurability -- you don't have to take a medical test; or provide information about health risks. No asks me about drug abuse, or hemophilia or country of origin or any of that stuff. So I don't think we should allow insurance companies to get away with it really."

Anne Bishop, at Canadian University Services Overseas (CUSO)

Began in '85; group of 13; three willing to be public. Began by dealing with problems faced by gays and lesbians overseas

Employer willing but claimed insurance company wasn't; union determined that wasn't true; when confronted

"They said the insurance company had a problem with it; we discovered from CUPE that there are other insurance companies who will, and then we discovered they hadn't even asked. And the third thing that we discovered was that they could have registered spouses of gay and lesbian staff as separate employees so the employer could do it whether the insurance company had a problem with it or not."

"They hadn't even asked; they had just assumed. It was London Life; and after some delay and some looking around, London Life agreed."

"All they would say is well you have a problem with bringing your personal life into the workplace."

Steve Barrett, Sach Charney