



A M E R I C A N  
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A Global View:  
Domestic Partnership Laws  
in Other Nations

*Special Report to the Vermont Legislature*

Presented to the  
House Judiciary Committee  
January 27, 2000

Special Report No. V-2

# Domestic Partnership Laws in Other Nations

No nation in the world has completely opened up its marriage laws to same-sex couples, nor has any state in the United States of America. However, several nations have devised methods to eliminate marital status discrimination against same-sex couples or other couples who are unmarried but who are living together in a family unit.

In *Baker v. State*, the Vermont Supreme Court suggested that the Legislature might look to some of these jurisdictions as it considers the possibility of creating a "domestic partnership" system parallel to marriage. The court stated:

"We do not purport to infringe upon the prerogatives of the Legislature to craft an appropriate means of addressing this constitutional mandate, other than to note that the record here refers to a number of potentially constitutional statutory schemes from other jurisdictions. These include what are typically referred to as "domestic partnership" or "registered partnership" acts, which generally establish an alternative legal status to marriage for same-sex couples, impose similar formal requirements and limitations, create a parallel licensing or registration scheme, and extend all or most of the same rights and obligations provided by the law to married partners."

## Statutes Enacted into Law

### **Denmark:**

Denmark was the first nation to enact a comprehensive set of legal protections for same-sex couples. The Danish "Registered Partnership Act" became effective June 1, 1989. It created a statutory scheme parallel to marriage, making most of the benefits and obligations of marriage apply to registered same-sex partners. Notable exceptions included: (1) adoption of foreign children; (2) artificial insemination for female couples; and (3) church weddings in the official church of the state. Another distinction from marriage included a requirement that one of the partners must be a Danish citizen or the couple must have resided in Denmark for two years.

### **Norway:**

Norway adopted a similar "Registered Partnership Act" in 1993. It is virtually identical to the law passed in Denmark.

### **Sweden:**

Sweden passed a "Registered Partnership Act" in 1994. It is similar to the laws adopted in Denmark and Norway with the exception that it contains a provision giving reciprocity to similar partnerships entered into in other nations. Sweden has a separate "Domestic Partnership Act" for unmarried heterosexual couples.

## **Iceland:**

Iceland passed a "Registered Partnership Act" in 1996. It is similar to the laws in Denmark, Norway, and Sweden, and contains the same exceptions, but goes farther in one aspect. The law in Iceland allows for a second-parent adoption of children born to a partner in a previous opposite-sex relationship.

## **Hungary:**

In 1995, Hungary's Constitutional Court declared unconstitutional a law giving various rights and protections to opposite-sex "common law" couples but denying them to same-sex couples. It ordered the Parliament to cure the problem by March 1, 1996. The court made it clear, however, that it was not dealing with ceremonial marriages authorized by civil law. Parliament removed the restriction in 1996, thereby placing unmarried same-sex couples on the same par as unmarried opposite-sex couples.

## **Netherlands:**

A "Registered Partnership Act" became effective in the Netherlands on January 1, 1998. This law is broader than the others in two respects. First, it is explicitly open to heterosexual couples as well as gay and lesbian couples. Second, there is no restriction for artificial insemination. The law, however, does not automatically make a partner the legal parent of his or her partner's biological child as marriage law does for a heterosexual married couple. A separate procedure for joint custody is available to the registered partners.

During the first year of operation, the registered partnership law was fairly popular with same-sex couples as well as heterosexual couples. Nearly 4,000 couples registered in 1998, including 1,200 female couples, 1,500 male couples, and 1,300 heterosexual couples.

A bill was introduced in 1999 to take the next step, namely, removing the gender restriction from the marriage laws. It is expected the bill will pass this year and become effective in 2001 or 2002. This would make the Netherlands the first nation to legalize same-sex marriage. Under the bill, however, registered partnership would not be abolished. All couples regardless of gender would have the option of registered partnership or marriage, and the bill contains a provision that would allow couples to transfer from registered partnership to marriage or vice versa.

The Netherlands has also taken steps to accommodate the needs of couples who want some legal protections but not all of the rights and obligations of marriage. Couples may enter into a cohabitation contract to spell out their rights and obligations to each other, without assuming obligations to third parties as required by marriage or registered partnership.

## **Belgium:**

Belgium has started the process of reform by passing a "Cohabitation Contract Act." Such a contract may be formed by two unmarried adults of the same sex or opposite sex, even if they are related by blood. The contract must be signed by a notary public and registered with a city clerk. While the contract is in effect, both parties are jointly responsible for the expenses incurred in their life together and all reasonable debts contracted for this purpose. The law does not affect parental authority over children, inheritance without a will, taxes, or immigration rights.

## **France:**

A new relationship known as a "Civil Solidarity Pact" was recognized by the law in France effective November 15, 1999. Passage of this legislation was the result of a ten year process.

The civil solidarity pact is a contract binding two unmarried adults of the same sex or of different sexes, in order to organize their common life. Partners must register the contract with the local court where they live. The pact may be dissolved by common consent of the partners, by marriage of one of them, by death, or after a three months delay at the request of one of the parties.

Partners are eligible for joint taxation benefits after three years. Inheritance rights exist after two years. A tenant's lease may be transferred to a partner if one of them leaves or dies. The health benefits one partner are available to the other.

## **Canada:**

Numerous statutory protections and benefits for "common law spouses" have been enacted over the years in Canada. These legal protections exist at the federal level as well as in the provinces. All of these statutes have had a clause limiting their scope to persons "of the opposite sex."

The law in Canada does not recognize "common law spouses" as legally married couples. It has merely attempted to eliminate marital status discrimination against unmarried heterosexual couples who have been living together as though they were married.

But not all statutory protections of marriage were extended to "common law spouses." Unmarried heterosexual couples won a victory in the Supreme Court of Canada in 1995. In *Miron v. Trudel*, the court ruled that marital status discrimination violated the federal Charter of Rights and that excluding common law couples from various marital protections violated equal protection.

Same-sex couples have mounted many legally challenges to their exclusion from these statutes. After winning some cases in administrative tribunals and in provincial courts, they finally secured a victory in the Supreme Court of Canada in 1999. In *M v. H*, the Supreme Court ruled by an 8 to 1 vote that the exclusion of same-sex couples from the protections afforded by "common law spouse" statutes was unconstitutional.

As a result of this ruling, the federal and provincial Parliaments have been considering measures to cure this constitutional defect. The Law Revision Commission of Canada will also study the feasibility of extending these protections to all adult relationships of dependency and not merely those which have a sexual component. If such a recommendation is made and adopted, any two unmarried adults, including blood relatives, would be protected equally by the law.

## Legislative Proposals

### **Spain:**

Domestic partnership bills have been pending in the federal Parliament in Spain each year since 1996. They would extend various protections and benefits to unmarried couples of the same sex as well as the opposite sex. One of the bills came close to passing in 1997 when a tie vote occurred.

In the meantime, two provinces in Spain have granted domestic partnership rights to their residents to the extent that local governments have the authority to do so. Catalonia passed such an act in 1998. Aragon followed in 1999. The laws in both regions apply equally to all unmarried couples whether heterosexual or homosexual.

### **Portugal:**

A domestic partnership bill was introduced in Portugal in 1997. The law would give legal protections to same-sex and opposite-sex unmarried couples. Partners living together would receive the same benefits as married couples.

### **Finland:**

Finland has lagged behind the other Scandinavian nations with respect to registered partnerships. A proposal was introduced in 1996 and again in 1997 but to date it has not been enacted. The proposals in Finland are similar to those adopted in Norway and Sweden.

### **Germany:**

A registered partnership bill was introduced in Germany in 1999. It would apply many of the benefits and protections of marriage to registered partners. From reading the bill, it is unclear whether it is limited to same-sex couples or whether unmarried heterosexual couples would also be eligible.

### **Australia:**

Bills are pending at both the federal and provincial levels of government in Australia to give more legal protections and benefits to "de facto" spouses. In some cases, the law already gives many protections to unmarried heterosexual couples. Some of these laws have been extended to same-sex couples. There is a growing movement to expand these laws further and to apply all of them to "de facto" spouses regardless of gender. The proposals under consideration do not require couples to register their relationships but are premised on proof that the couple is living together in a marriage-like relationship.

# Recognition of gay & lesbian partnerships in Europe

See also the ILGA World Legal Survey

## Existing partnership laws

A law on registered partnership could be defined as giving a same sex couple the same rights, benefits and obligations as a married couple with some specific exceptions.

These countries have passed partnership laws:

- Denmark 1989 (Greenland 1996) - amended in 1999
- Norway 1993
- Sweden 1994, in force as of 1995
- Iceland 1996
- The Netherlands 1997, in force as of 1998
- France (PACS) 1999, in force ?

### *Denmark*

The law enables two persons of the same sex to register their partnership and gives them apart from some exception the same rights and responsibilities as a heterosexual married couple.

In a registered partnership one of the partners must be a Danish citizen or a citizen from a country with similar legislation. Two foreigners, who have lived in Denmark for two years, can also be registered..

A partner in a registered partnership can adopt the children of her/his partner unless the child is adopted from a foreign country.

The differences from marriage are

- adoption of foreign children is not possible
- artificial insemination is not possible for a lesbian registered couple,
- there is no possibility of church wedding, but church blessings are possible

Apart from these exceptions the conditions are exactly the same as for heterosexual marriage. The wedding procedure is the same as for civil marriage and the divorce regulations are the same.

### *Norway*

The law enables two homosexual persons of the same sex to register their partnership and gives them apart from some exception the same rights and responsibilities as a heterosexual married couple.

The exceptions are

- a registered couple can not adopt children,
- artificial insemination is not possible for a lesbian registered couple,
- there is no possibility of church wedding and
- one of the partners in a registered partnership must be a Norwegian citizen and live in Norway.

Apart from these exceptions the conditions are exactly the same as for heterosexual marriage. The wedding is the same as for civil marriage and the divorce regulations are the same.

### *Sweden*

The Swedish law is also similar to the Norwegian one, but includes a clause that means that similar partnerships founded in other countries are automatically recognised in Sweden.

### *Iceland*

The Icelandic law is similar to the Norwegian law, but gives the possibility of joint custody of children for a registered couple.

The Nordic ministries of justice have agreed that in practice partnerships from one of the countries will be recognised in the other, but as all four laws do have the citizen prerequisite some rather odd situations can occur. E.g. an actual case exists of two Swedish gay men, who have been living together in Norway for 25 years and can not register their partnership either in Norway (because both are non Norwegian citizens) nor in Sweden (because they do not live in Sweden).

### *The Netherlands*

The Dutch law was passed in July 1997 and comes into force January 1998. It is build over the same model as the Scandinavian laws, but registered partnership is open also for two persons of the opposite sex.

Update on the Dutch situation can be found at this URL:

<http://www.xs4all.nl/~nvihcoc/marriage.html>

### *France*

(See: <http://www.france.qrd.org/actualites/991015/index.html> with relevant links)

The law contains the following main provisions:

- **Beneficiaries:** any two adults, regardless of their sex, provided they are not close relatives and neither of them is married, nor already bound by a PACS.
- **Procedure:** Joint submission of a written notification to the local Court.
- **Duties:** The persons bound by a PACS owe each other "mutual and material help" and

is a provision of bringing a spouse with you if you as an EC citizen go to another EC country to have a job, your same sex spouse is not in general permitted to stay in the country.

## Regional partnership benefits

In Catalunya (Spain) a law was passed 30 June 1998 dealing with both hetero- and homosexual couples. The text of the law can be found at this URL:

<http://biblioteca.udg.es/fd/jornades/PLRdC.htm> and more information on this URL:

<http://www.redestb.es/triangulo/leycatin.htm>

Also in Aragon (Spain) there are possibilities for domestic partnership:

<http://www.redestb.es/triangulo/leyarin.htm>

## Partnership laws to come?

These countries are considering partnership laws or similar legislation at a parliamentary level:

- Finland
- Portugal
- Switzerland
- Germany
- Luxembourg
- Belgium
- Spain

The Finnish proposal is similar to the other Scandinavian laws, and so is the German and the Spanish one.

## Domestic partnerships

Rules on 'domestic partnership' gives specified rights and benefits to two persons living together in some specific situations.

Sweden has a cohabitation law giving some rights and benefits to two persons (opposite or same sex couples) living together - but it grants fewer rights and benefits than marriage and registered partnership.

In May 1996, Hungary has amended a existing law on non-married (heterosexual) couples living together in an economic and sexual relationship (common-law marriage) to also cover same-sex couples. The reform became necessary by a 1995 decision of the Hungarian constitutional court which declared the limitation of the law to opposite-sex couples unconstitutional. The law is giving some specified rights and benefits to two persons living together. But the rights and benefits are not automatically given - you must apply for them in each case.

In many cities in Belgium, The Netherlands, France and Spain same sex couples can obtain

certain rights concerning housing, health insurance, tax benefits etc.

## **A Worldwide Summary by IGLHRC**

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Texts/  
Denmark

# Denmark : Registered partnership act, 1989

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[Amendments]

## THE REGISTERED PARTNERSHIP ACT

D/341- H- ML Act No. 372 of June 1, 1989

*WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do make known that:-*

*The Danish Folketing has passed the following Act which has received the Royal Assent:*

1.- Two persons of the same sex may have their partnership registered.

### Registration

2.- (1) Part I, sections 12 and 13(1) and clause 1 of section 13(2) of the Danish Marriage (Formation and Dissolution) Act shall apply similarly to the registration of partnerships, cf. subsection 2 of this section.

(2) A partnership may only be registered provided both or one of the parties has his permanent residence in Denmark and is of Danish nationality.

(3) The rules governing the procedure of registration of a partnership, including the examination of the conditions for registration, shall be laid down by the Minister of Justice.

### Legal Effects

3.- (1) Subject to the exceptions of section 4, the registration of a partnership shall have the same legal effects as the contracting of marriage.

(2) The provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners.

4.- (1) The provisions of the Danish Adoption Act regarding spouses shall not apply to registered partners.

(2) Clause 3 of section 13 and section 15(3) of the Danish Legal Incapacity and Guardianship Act regarding spouses shall not apply to registered partners.

(3) Provisions of Danish law containing special rules pertaining to one of the parties to a marriage determined by the sex of that person shall not apply to registered partners.

(4) Provisions of international treaties shall not apply to registered partnership unless the other contracting parties agree to such application.

### Dissolution

5.- (1) Parts 3, 4 and 5 of the Danish Marriage (Formation and Dissolution) Act and Part 42 of the Danish Administration of Justice Act shall apply similarly to the dissolution of a registered partnership, cf. subsections 2 and 3 of this section.

(2) Section 46 of the Danish Marriage (Formation and Dissolution) Act shall not apply to the dissolution of a registered partnership.

(3) Irrespective of section 448 c of the Danish Administration of Justice Act a registered partnership may always be dissolved in this country.

### Commencement etc.

6.- This Act shall come into force on October 1, 1989.

7.- This Act shall not apply to the Faroe Islands nor to Greenland but may be made applicable by Royal order to these parts of the country with such modifications as are required by the special Faroese and Greenlandic conditions.

Given at Christiansborg Castle, this seventh day of June, 1989

Under Our Royal Hand and Seal  
*MARGRETHE R.*



France QRD  
La France Gaie et Lesbienne

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Texts/  
Norway

# Norway : Registered partnership law, 1995 3

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[*norwegian version*]

## Bill on Registered Partnerships

### Section 1

Two persons of the same sex may register their partnership, with the legal consequences which follow from this Act.

### Section 2

Chapter 1 of the Marriage Act, concerning the conditions for contracting a marriage, shall have corresponding application to the registration of partnerships. No person may contract a partnership if a previously registered partnership or marriage exists.

Chapter 2 of the Marriage Act, on verification of compliance with conditions for marriage, and chapter 3 of the Marriage Act, on contraction of a marriage and solemnization of a marriage, do not apply to the registration of a partnership.

A partnership may only be registered if one or both of the parties is domiciled in the realm and at least one of them has Norwegian nationality.

Vaification of compliance with the conditions and the procedure for the registration of partnerships shall take place according to rules laid down by the Ministry.

### Section 3

Registration of partnerships has the same legal consequences as entering into marriage, with the exceptions mentioned in section 4.

The provisions in Norwegian legislation dealing with marriage and spouses shall be applied correspondingly to registered partnerships and registraed partners.

### Section 4

The provisions of the Adoption Act concerning spouses shall not apply to registraed partnerships.

### Section 5

Irrespective of the provision in section 419a of the Civil Procedure Act, actions concerning the dissolution of registered partnerships that have been entered in this country may always be brought before a Norwegian court.

### Section 6

The Act shall enter into force on a date to be decided by the King.

### Section 7

From the date on which the Act enters into force, the following amendments to other Acts shall come into force:

1. The Penal Code, No. 10, of 22 May 1902 is amended as follows: Section 220 shall read:

Any person who enters into a marriage that is invalid pursuant to 3 or 4 of the Marriage Act, or who enters into a partnership that is invalid pursuant to 2, first paragraph, of the Partnership Act, cf. 3 of the Marriage Act, or 2, first paragraph, second sentence of the Partnership Act, shall be liable to imprisonment for a term not exceeding 4 years. If the spouse or partner was not aware that the marriage or partnership had been entered into contrary to the above-mentioned provisions, he or she shall be liable to imprisonment for a term not exceeding 6 years. Complicity shall be penalized in the same way.

Any person who causes or is accessory to causing a marriage or registered partnership that is invalid because of the forms used, to be entered into with any person who is not aware of its invalidity shall be liable to imprisonment for a term not exceeding 4 years.

Section 338 shall read:

Any person who enters into a marriage or partnership pursuant to the Act relating to registered partnership in such a way as to set aside the provisions in force concerning the requirements for a valid marriage or the requirements concerning the registration of a valid partnership, dispensation or other statutory conditions, or is accessory thereto, shall be liable to fines.

2. The Marriage Act, No. 47, of 4 July 1991 is amended as follows: Section 4 shall read:

No person may contract a marriage if a previous marriage or registered partnership exists.

Section 7, first paragraph, litra e shall read:

e. Each of the parties to the marriage shall solemnly declare in writing whether he or she has previously contracted a marriage or a registered partnership. If so, proof shall be presented that the earlier marriage or registered partnership has been terminated by death or divorce, or has been dissolved pursuant to section 24.

Proof that the former spouse or registered partner is dead is, as a rule, presented in the form of a certificate issued by a domestic or foreign public authority. If such a certificate cannot

be obtained, the parties may submit their information and evidence to the appropriate probate judge, cf. section 8, second cf. first paragraph, of the Probate Act. If administration of the estate does not come under the jurisdiction of a Norwegian probate court, the issue may be brought before the probate judge at the place where the fulfilment of the conditions for marriage is verified. The probate court will by order decide whether the evidence shall be accepted. An interlocutory appeal against the order may be made by the party against whom the decision is made. If the evidence is accepted, the probate court shall notify the County Governor, who may make an interlocutory appeal against the order.

Proof that the marriage or registered partnership has ended in divorce or been dissolved pursuant to section 24 may be given by presenting the licence or judgement duly certified to be final. The question whether a marriage may be contracted in Norway on the basis of a foreign divorce shall be decided by the Ministry pursuant to the provisions of section 4 of Act No. 38 of 2 June 1978.

Section 7, first paragraph, litra j, first paragraph shall read:

j. Each of the parties to the marriage shall provide a sponsor who shall solemnly declare that he or she knows the said party, and shall state whether the said party has previously contracted a marriage or registered partnership and whether the parties to the marriage are related to each other as mentioned in section 3.

Section 8, first, second and third paragraphs shall read:

Any person who has previously been married or has been a partner in a registered partnership must produce proof that the estate of the parties to the previous marriage or registered partnership has been submitted to the probate court for administration, or produce a declaration from the former spouse or former partner or heirs stating that the estate is being divided out of court.

This does not apply if a declaration is presented from the previous spouse or partner stating that there was no assets in the marriage or registered partnership to be divided, or from the heirs of the deceased spouse or partner stating that they consent to the survivor remaining in possession of the undivided estate.

If the previous marriage or registered partnership was dissolved in a way other than by death, and if more than two years have elapsed since it was dissolved, it is sufficient that the person who wishes to contract a new marriage states that the estate was divided, or that there was nothing to divide between the spouses or partners.

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*"The Norwegian Act on Registered Partnerships for Homosexual Couples", The Ministry of Children and Family Affairs, Oslo, Norway, April 1993.*

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Texts/  
Sweden

# Sweden : Registered partnership act, 1994

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## THE REGISTERED PARTNERSHIP ACT

Issued on 23 June 1994

*In accordance with the decision of the Parliament the following is enacted:*

### Chapter 1 Registration of partnership

#### Section 1

Two persons of the same sex may request the registration of their partnership.

#### Section 2

Registration may only take place if at least one of the partners is a Swedish citizen, domiciled in Sweden.

#### Section 3

Registration may not take place in the case of a person who is under the age of 18 years or of persons who are related to one another in the direct ascending or descending line or who are sisters or brothers of the whole blood.

Neither may registration take place in the case of sisters or brothers of the half blood without the permission of the Government or such authority as is stipulated by the Government.

Registration may not take place in the case of a person who is married or already registered as a partner.

The right to register a partnership shall be determined according to Swedish law.

#### Section 4

Before registration takes place, inquiry shall be made as to whether there is any impediment to registration.

#### Section 5

The provisions of Chapter 3 and Chapter 15 of the Marriage Code applicable to the procedure for inquiries into impediments to marriage shall apply correspondingly to this inquiry.

### **Section 6**

Registration shall take place in the presence of witnesses.

### **Section 7**

At the registration both partners shall be present at the same time. Each of them separately shall, in response to a question put to them by the person conducting the registration, make it known that they consent to the registration. The person conducting the registration shall thereafter declare that they are registered partners.

A registration is invalid if it has not taken place as indicated in the first paragraph or if the person conducting the registration was not authorized to perform the registration.

A registration which is invalid under the second paragraph may be approved by the Government if there are extraordinary reasons for such approval. The matter may only be considered on the application of one of the partners or, if either of them has died, of the heirs of the deceased.

### **Section 8**

Registration may be conducted by a legally qualified judge of a district court or a person appointed by a county administrative board.

### **Section 9**

In other respects the provisions of Chapter 4, Sections 5, 7 and 8, of the Marriage Code and regulations issued by the Government apply to registration.

Decisions concerning registration may be appealed against in accordance with the provisions of Chapter 15 Sections 3 and 4 of the Marriage Code.

Chapter 1, Sections 4-9, of the Act concerning certain International Legal Relationships relating to Marriage and Guardianship (1904:26 p. 1) apply to international circumstances relating to registration.

## **Chapter 2 Dissolution of registered partnership**

### **Section 1**

A registered partnership is dissolved by the death of one of the partners or by a court decision.

### **Section 2**

The provisions of Chapter 5 of the Marriage Code apply correspondingly to issues concerning the

dissolution of a registered partnership.

### **Section 3**

Cases concerning the dissolution of registered partnerships and cases involving proceedings to determine whether or not a registered partnership subsists are partnership cases. Provisions stipulated by statute or other legislation relating to matrimonial cases also apply to issues concerning partnership cases.

### **Section 4**

Partnership cases may always be considered by a Swedish court if registration has taken place under this Act.

## **Chapter 3 Legal effects of registered partnership**

### **Section 1**

Registered partnership has the same legal effects as marriage, except as provided by Sections 2-4.

Provisions of a statute or other legislation related to marriage and spouses shall be applied in a corresponding manner to registered partnerships and registered partners unless otherwise provided by the rules concerning exceptions contained in Sections 2-4.

### **Section 2**

Registered partners may neither jointly nor individually adopt children under Chapter 4 of the Code on Parents, Children and Guardians. Nor may registered partners be appointed to jointly exercise custody of a minor in the capacity of specially appointed guardians under Chapter 13, Section 8 of the Code on Parents, Children and Guardians.

The Insemination Act (1984:1140) and the Fertilization outside the Body Act (1988:711) do not apply to registered partners.

### **Section 3**

Provisions applicable to spouses, the application of which involves special treatment of one spouse solely by reason of that spouse's sex, do not apply to registered partners.

### **Section 4**

The provisions of the Ordinance concerning Certain International Legal Relationships relating to Marriage, Adoption and Guardianship (1931:429) do not apply to registered partnerships.

This Act enters into force on 1 January 1995.

On behalf of the Government  
*CARL BILDT*

## ILGA Euroletter 42, June 1996

*The Euroletter is published on behalf of ILGA - The International Lesbian and Gay Association - by the Eurosecretariat of the national danish organisation for gays and lesbians (LBL), Teglgaardsstraede 13, P.O. Boc 1023, DK-1007 Copenhagen K. Tel. + 45 33 13 19 48 -- Fax + 45 33 91 03 48, in cooperation with Gay and Lesbian International Lobby.*

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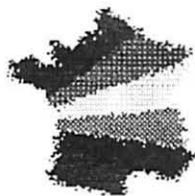
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## PARTNERSHIP LAW IN ICELAND

*By Steffen Jensen*

The Icelandic parliament (Altinget) has June 4th 1996 passed a law on registered partnership for two persons of the same sex. The law comes into force on 'Stonewall-day' June 27th 1996. The law is build on the same principles as the partnership laws in Denmark, Norway and Sweden, i.e. the same legal rights and responsibilities as marriage except for adoption and insemination rights and the provision that one of the partners shall be citizen of the country in question. But the Icelandic law gives a registered couple right to obtain joint custody of children. This brings the Icelandic law in front as the most progressive in the world. [See also Euroletter 41]



Texts/  
Iceland

# Iceland : Recognized partnership law, 1996

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[Changes]  
[Remarks]

1995-96

1065 years since founding the Parliament  
120th legislative assembly

## 564th Bill On the recognized partnership

1

Two persons of the same sex can contract a recognized partnership.

2

What is provided in the Part II of the Marriage Act on the legal prerequisites of marriage shall apply to this Act, as well. However, see subsection 2. A recognized partnership can only be contracted if at least one of the parties is a citizen of Iceland and is domiciled in Iceland.

3

Before a partnership is officially recognized, both parties are to certify that the prerequisites of such a partnership are fulfilled. Part III of the Marriage Act regulates the certification. The Minister of Justice shall issue more precise instructions on the certification.

4

The contracting of such partnerships are to be carried out by heads of a police district or their representatives with a juridical education. Paragraphs 21 - 26 of the Marriage Acts regulate how certificates are to be issued.

5

Persons living in a recognized partnership are to enjoy the same rights as those in a marriage with the exception of what is said in subsection 6. What is said on marriage and legally married spouses in the legislation in force applies to the parties of a partnership, too.

## 6

The subsections on adoption in the Marriage Act shall not apply to the parties of a partnership. Regulations on who are entitled to artificial conception shall not apply to the recognized partnership. What the law says on the sex of a legally wedded spouse shall not apply to the recognized partnership. What is provided in the international agreements, signed by the Republic of Iceland, shall not apply to the recognized partnership unless all parties to the agreement approve of it.

## 7

A recognized partnership is deemed having ended at the death of one of the partners, in the case of cancellation or divorce.

## 8

The regulations on cancellation, divorce and division of property in the Marriage Act shall apply to the recognized partnership, however, with regard to subsections 2 and 3. Otherwise, what is regulated upon the end of a marriage and its legal entailments shall apply to the partnership, too. Despite what is said in subsection 1 of Section 114, it is always possible to proceed with a charge in an Icelandic court on the basis of Section 113, if the partnership has been recognized in Iceland. Despite what is said in Subsection 1 of Section 123 of the Marriage Act, an Icelandic court is always entitled to solve issues pertaining to partnerships recognized in this country.

## 9

These Acts are enacted on 1 July 1996.

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*Translation from Finnish to English is made by Mr. Mika Vepsäläinen. This translation is made from the Finnish text, translated from Icelandic by Steinunn Guðmundsdóttir.*

*The original wording of the Act is using expression "confirmed living together", where "recognized partnership" is used in this translation.*



France QRD  
La France Gaie et Lesbienne

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Date: Thu, 9 Mar 1995 15:23:23 CET  
Reply-To: mszymczy@urm.gov.pl

Hungary high court gives blessing to gay couples

By Blaise Szolgyeny

BUDAPEST, March 8 (Reuter) - Hungary's Constitutional Court struck down a law barring homosexuals from common-law marriage on Wednesday, effectively making Hungary the first East European nation to extend traditional rights to gay couples.

The court ruled as unconstitutional the definition that common-law marriages were "those formed between adult men and women".

"It is arbitrary and contrary to human dignity...that the law (on common-law marriages) withholds recognition from couples living in an economic and emotional union simply because they are same-sex," the court said in a statement.

But the court also ruled that formal, civil marriages are still off-limits to homosexual couples.

"The constitution protects the institution of (civil) marriages, and defines it as a union between a man and a woman," it said.

"Despite growing acceptance of homosexuality...(and) changes in the traditional definition of a family, there is no reason to change the law on (civil) marriages."

The court sent the law on common-law marriages, called Ptk 578/G, back to the legislature, saying the law should be changed or a new legislation should be enacted to extend the common-law rights to gay couples by March 1, 1996.

Under Hungarian regulations, common-law marriage gives virtually all the rights to partners that registered marriages offer, said a constitutional lawyer close to the case who requested anonymity.

Common-law marriages are recognised when a couple live together permanently and are involved in a sexual relationship, he said.

The Constitutional Court wants the legislature to give gays the same economic rights, such as access to social benefits, heterosexual couples now enjoy, he said.

The court might accept a law that bars homosexuals from adopting children, he added.

Hungarian homosexual leaders welcomed the decision.

"I believe that the court's ruling is the first step in a long road," said Lajos Romsauer, a leader and founder of the Hungarian homosexual organisation Homeros.

"The court gave a green light to the parliament and to the government to change the laws." Homeros was one of the groups that petitioned the court to give homosexuals the right to marry in 1993.

Romsauer said he was not concerned that the Constitutional Court barred homosexuals from registering their marriage.

"I don't think it's the name that matters, but the rights," he said.

Denmark, Sweden, Norway, Belgium and the Netherlands have granted same-sex couples similar rights as heterosexuals, he said.

In Eastern Europe, where homosexuality was against the law in many countries until recently, same-sex marriages have not been allowed, he added.

International gay groups have criticised former communist states for intolerance. They said last year Romania kept some 70 people in jail for being homosexual.

**Subject: Re: \*QL\*: International Same-Sex Marriage**

**Date: Sun, 17 Nov 96 15:02:57 PST**

**From: Bob Stock <bstock@ucla.edu>**

**To: queerlaw@abacus.oxy.edu**

--- On Sun, 17 Nov 1996 17:57:14 -0500 (EST) Micheal T McLoughlin <agentq@umich.edu> wrote:

>Hungary recently passed a law to recognise same-sex  
>\*common law\* marriage alongside opposite-sex common law marriage.

>Statutory (legal) marriage, however, remains limited to opposite-  
>sex partners.

After I posted my question, I went to Queer Resources Directory and found:

"Hungary's Constitutional Court struck down a law barring homosexuals from common-law marriage on Wednesday, effectively making Hungary the first East European nation to extend traditional rights to gay couples."

-and-

"The court sent the law on common-law marriages, called Ptk 578/G, back to the legislature, saying the law should be changed or a new legislation should be enacted to extend the common-law rights to gay couples by March 1, 1996."

This Reuter story was dated March 8, 1995. Nothing more on QRD. So, I found this subsequent news story:

"Hungary's gay community welcomed a new law giving homosexuals and heterosexuals equal legal and financial rights in long-term relationships, but said Wednesday there was still room for improvement.

The Hungarian parliament passed the amendment to its Civil Code Tuesday by 207 votes to 73. There were five abstentions.

'We welcome the fact that parliament passed this law,' Geza Juhasz of the gay organization Szivarvany (Rainbow) told Reuters. 'But I don't think this proves that most MPs are more enlightened.'

Opposition politicians voting against the amendment said it contradicts Hungary's values and public opinion.

'The law was actually imposed on parliament by the Constitutional Court,' Juhasz said, adding that his organization said it was too early to talk of same-sex marriages."

Reuters North American Wire, May 22, 1996, Wednesday, BC cycle.

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Bob Stock <bstock@ucla.edu>  
2L - UCLA School of Law  
<http://www.geocities.com/Paris/1206/>  
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\$50 a week, pay her medical insurance coverage, maintain her as a beneficiary on his life insurance, and contribute \$30 a week to her auto insurance, as required by the couple's 1994 divorce decree until such time as she remarried. The article does not describe the judge's rationale for the decision. A.S.L.

### Law & Society Notes

When Cobb County, Georgia, commissioners adopted an anti-gay resolution, they stimulated protests that led to Olympic events being moved out of the county this summer. A copycat resolution by Wayne County commissioners threatened to have the same result, but the commissioners decided on May 6 that they'd rather not sacrifice Olympic glory in favor of right-wing political correctness, and voted 3-2 to repeal their resolution. Commissioners had been concerned that the Olympic torch itinerary would be revised to keep the torchbearers from running through their county, according to an *Associated Press* report published in many newspapers early in May. ●●● Out of solidarity with Cobb County, the Spartanburg County Council passed a similar anti-gay resolution, which sparked an uproar because the Olympic torch was supposed to pass through Spartanburg County and the US gymnastics team was scheduled to use facilities in that county to train for the Games. Within days, the Spartanburg Commission backed down and repealed their resolution, although they passed a substitute resolution supporting state legislation to ban same-sex marriages. There was speculation in the press that the gymnastics team might vote to relocate their training to another county. *Charlotte Observer*, May 15; *Columbia State*, May 18.

The town council of Normal, Illinois, apparently deciding that gays aren't "normal" people, voted 5-2 against adding "sexual orientation" to their municipal anti-discrimination ordinance.

On May 15 the U.S. House of Representatives passed a defense authorization bill for the 1997 fiscal year that includes provisions introduced by Rep. Robert Dornan (R.-Cal.) imposing an outright ban on military services by gays and requiring the medical discharge of any service member found to be HIV+.

In a closely-watched local election, voters in Merrimack, New Hampshire, rejected a religious-right wing candidate and elected Democrat Rosemarie Rung to the school board. The Merrimack board had previously passed a controversial policy that banned any instruction or counseling that has "the effect of encouraging or supporting homosexuality as a positive lifestyle alternative." Rung's election tips the balance on the school board such that repeal of the policy seems likely. *San Francisco Examiner*, May 15.

A special court convened by the Episcopal Church to determine whether charges should be lodged against retired Bishop Walter Righter

due to his ordination of a "practicing homosexual" as a church deacon in 1990 announced May 15 that it found no basis to prefer charges. The court voted 7-2 that the church did not have any core doctrine that was violated by Righter's actions. The bishops whose petition led to the proceeding subsequently announced they would attempt to take the issue to the next General Convention of the church. ●●● Interestingly, the next day it was reported that the retired Archbishop of Canterbury, Robert Runcie, who had been head of the Anglican Church (the English Episcopalians) that any ban on ordination of openly gay clergy was "ludicrous." Runcie indicated that he had ordained many gays, although due to current church practices he would not have ordained them had they been open about their homosexuality. Runcie described the situation as a version of the "don't ask, don't tell" policy. His published comments brought a rather non-directive official statement from the current church hierarchy: "The House of Bishops has made clear its teaching that the Church cannot regard homosexual practice as on a par with heterosexual relationships within marriage. Moreover, the priesthood is a particular calling and the Church is right to require high standards of holiness and discipline from those seeking ordination." *Washington Post*, May 17.

The Glendale, California, school board voted May 7 to reject a proposal that would require high school students to get parental permission to join extracurricular clubs. The proposal was made in response to a request by gay and lesbian students at Hoover High School to form a club. The ACLU, Lambda Legal Defense and People for the American Way intervened to let the school district know that such a policy would be challenged. Instead, the board adopted a policy under which all parents would receive a list of all clubs and activities open to their students, describing fees and other commitments and the purpose of each group. *Los Angeles Times*, May 8.

In a closely watched prosecution stemming from the anti-gay bias-related 1991 murder of Julio Rivera in Queens, N.Y., prosecutors allowed one of the defendants, Erik Brown, to plead guilty to a manslaughter charge. Brown had been convicted of second-degree murder in an earlier trial, but the conviction was set aside by the Appellate Division due to an error by the trial judge, who conducted some voir dire of jurors in chambers in order to ask questions about jurors' feelings about homosexuality. Part of Brown's deal with prosecutors included a promise to testify against co-defendant Esat Bici, whose conviction was also vacated. A third co-defendant, Daniel Doyle, had pleaded guilty to manslaughter before the earlier trial and was the principal witness. Doyle is now serving his prison term, and reportedly unwilling to testify at the retrial, so prosecutors made a deal with Brown in order to be able to try Bici. It was

subsequently reported that Bici failed to report for a court date, and a warrant was issued for his arrest. *New York Times*, May 14.

*Associated Press* reported that a jury in Middletown, Connecticut, recommended a life sentence for Janet Griffin, a lesbian who was convicted of murdering Patricia Stellar, the new lesbian partner of Griffin's former partner, as well as Stellar's nephew, Ronald King, who happened to be present when Griffin confronted Stellar. A telephone answering machine, activated when Griffin showed up at Stellar's home, recorded the murder, including the sounds of the victims pleading with Griffin not to kill them. A.S.L.

### International Notes

The Hungarian parliament, responding to a decision last year by the nation's Constitutional Court, has passed a measure giving same-sex and opposite-sex unmarried couples in long-term relationships the same legal and financial rights. The amendment to the Civil Code passed by a vote of 207-73, according to a May 22 report by Reuters. As in several Civil Code countries in Europe, cohabiting heterosexual couples have long had certain rights as a type of "common law" marriage without benefit of license or state-recognized ceremony. This measure extends the same rights to same-sex couples, but falls short of all the rights and responsibilities of legal marriage. Thus, Hungary might be classified as having done something akin to the Scandinavian countries with their registered partnership laws, although there are undoubtedly differences in the details. A.S.L.

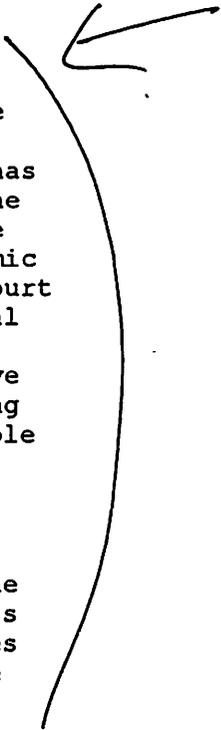
Canada's House of Commons voted 153-76 on May 9 to amend the federal Human Rights Act to add "sexual orientation" to the list of forbidden grounds for employment discrimination. The Act applies to the federal civil service as well as employees of regulated businesses, such as banks, railways, airlines, telecommunications and broadcasting. Seven Canadian provinces already ban such discrimination, but the federal law would extend the protection at least partially into those provinces that have not yet legislated on the matter. The controversial nature of the decision led Prime Minister Jean Chretien to free his party's members from normal discipline to vote their preferences; nonetheless, the bill carried by a substantial margin. Approval by the Senate and Royal Assent were expected in short order, making Canada the first nation in the Americas to adopt federal legislation banning sexual orientation discrimination. *New York Times*, May 10. A.S.L.

The French National Railroad announced that it would extend its fare discount program for married couples and cohabiting heterosexuals to cohabiting same-sex couples. In order to qualify, same-sex couples would have to present documentation that they live together. Many French municipalities now authorize registra-

widespread support in Parliament, specifies a number of new crimes, including environmental pollution, the illegal transportation and storage of radioactive substances, and various economic activities in an effort to combat the black market economy, such as so-called "pyramid schemes," sham insurance policies, and unsanctioned currency exchange. (For more information on the content of the law see EELM: HUNGARY -- APRIL 1996, vol. I, no. 1).

Parliament passed a RESOLUTION ON CENTRAL BUDGET SUPPORT FOR MINORITY ORGANIZATIONS (H/2350), submitted by Parliament's Human Rights Committee, May 21. The resolution calls for Ft 65 million (\$433,000) from the 1996 central budget to be distributed among 128 minority organizations. The resolution's justification says the allowance will cover the organizing and operating costs of national and ethnic minority organizations. Minority organizations incorporated after December 31, 1993, minority local councils (organizations with separate legal status and allowed political representation in some state organizations, which receive funding independently), and organizations piling up public debts will not receive support. The justification for the law states: "To judge the tenders, the committee considered the culture, traditional activities, and the efficient usage of the national allowance given the organization in the previous year."

On May 21, Parliament passed an amendment to the Hungarian Civil Code (T/2074) that provides a legal framework for SAME-SEX COHABITATION. The proposed amendment was submitted by the Justice Ministry, which said the changes are an attempt to determine a notion of a same-sex, common law relationship, missing from Hungarian law that the Constitutional Court has held to be discriminatory. The amendment modifies the 1959 IV. law of the Civil Code that defines common-law couples as "a man and a woman who are not married, share a household and live together in emotional and economic community." The justification of the bill states: "The Constitutional Court in resolution No. 14/1995 (III. 13) explained that it is unconstitutional that resolutions determining rights and responsibilities related to unmarried couples living in emotional, sexual and economic community have legal consequence for only coexistence for a man and a woman... According to paragraph 70/a of the Constitution it is discrimination if among people living in emotional and economic community, laws are not applicable to people of the same sex."



The amendment enjoyed the support of the Alliance of Free Democrats, the Socialist Party and the Young Democrats-Civic Party. Opposition parties expressed their disapproval of the amendment. The Independent Smallholders said the amendment runs against the party's moral stance advocating "God, family and homeland," that it condones sexually deviant practices, and is "offensive to public taste." The Hungarian Democratic Forum (HDF) opposed the amendment because it believes it weakens the role of families in Hungarian society and encourages extinction of the human species.

Parliament voted June 3 on an amendment ON SOCIAL SECURITY BOARD ADMINISTRATION (T/2101) that aims to tighten spending controls on Hungary's two bloated social security funds. Submitted by Parliament's constitutional and health committees, the law forces the National Pension Fund and the National Health Funds to submit annual budgets to the cabinet by August 31 for the following year, the same date the Finance Ministry must submit the state budget.

The bill was supported by Socialist and Free Democrat (AFD) MPs. They hope the August 31 deadline will help halt the two funds' practice of operating without a budget and therefore increase financial discipline within them. If the funds do not meet the deadline, the cabinet is given the authority to submit the social security budget on its own by October 1.

Until now, the government has had to debate the state budget without knowing the social security budget, which accounts for about a



From 1 January 1998 the Act on registered partnership will have the force of law in the Netherlands. A registered partnership - like marriage - is a legally regulated and acknowledged form of cohabitation. It is intended for couples who cannot marry - because they are of the same sex - or couples who do not wish to marry. They can now formalize their relationship in a way it is practically identical to marriage.

There has been a big increase in non-marital forms of cohabitation, particularly in the last twenty years. Until 1 January 1998 only marital cohabitation was regulated by law - though in practice the government formulated laws and rules attaching consequences in certain areas to other forms of cohabitations: e.g.

the tax or social security system.

But a registered partnership encompasses many more aspects: conditions for entering into such a partnership, rights and obligations to each other and to others, separation, etc. This has made the registered partnership a legally regulated form of cohabitation which is equivalent tot marriage.

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## Registered partnership, marriage, cohabitation contract

From 1 January 1998, a person wishing to legally formalise his or her relationship with a partner has at least two options: registered partnership and cohabitation contract. Partners of different sex can also marry.

Registered partnership and marriage are equivalent. The consequences are virtually identical: an important difference lies in the family relationship with the children. The cohabitation contract is something entirely different from the registered partnership and marriage. Such a contract regulates only what the two parties agree between themselves. In a registered partnership and a marriage, the rights and obligations are largely laid down in law.

The maintenance obligation is a good example of this: the obligation applies automatically to a registered partnership and marriage; in a cohabitation contract, by contrast, the two parties decide for themselves whether they wish to make arrangements on this area.

Another important difference relates to the consequences. Like marriage, a registered partnership has legal consequences for the partners, in relation to each other and to other people. An example of a consequence in relation to other persons is the fact that a registered partner cannot be forced to give evidence in a court case against the other partner. A cohabitation contract only has legal consequences for the two parties who enter into it. There are no consequences in the relationship to other persons. The contract can however be accepted by others as evidence of cohabitation, for

example by a pension fund.



## This brochure

This brochure discusses registered partnership. It provides information about the conditions and formalities for entering into a partnership, the rights and obligations and situations in which the relationship ceases to exist.

These rules are virtually identical to those for marriage or have the same effect. Where there are important differences, this is so stated.



## What is registered partnership and for whom is it intended?

A few important features have already been mentioned above.

### Registered partnership:

- is a form of cohabitation;
- is regulated by law;
- is for two people of the same or different sex;
- is formally registered;
- has virtually the same consequences as marriage, with the exception of the relationship with the children.



## Conditions

If two people wish to enter in a registered partnership, can they do so always and in all cases? The answer is no: as with marriage, there are a number of conditions if you wish to enter in an registered partnership:

**With one person** A person wishes to enter into a registered partnership can only do so with one person at a time.

**Not married** A person wishing to enter into a registered partnership cannot be married or have entered into a registered partnership at the same time.

**Over the age of majority** Intending partners must be aged 18 or over. There are a few exceptions possible on the grounds of pressing reasons. The Minister of Justice has discretion here. A minor wishing to enter a registered partnership also requires the permission of his/her parents or guardian. If the latter is unable or unwilling to give that permission, the minor can ask the cantonal court for permission.

**Tutelage** A person who is under tutelage on the grounds of dissipation or alcohol requires the permission of the trustee in order to enter into a registered partnership. What if the trustee refuses that permission? In that case the same rule applies as for minors: the person who is under tutelage can apply to the cantonal court. If a person is under tutelage because of a mental disorder, the permission of the subdistrict court is always required.

**No relation of consanguinity** Parents and children, grandparents and grandchildren, brothers and sisters may not enter into registered partnerships with each other. If a brother and a sister are blood relations through adoption, the Minister of Justice may grant a dispensation.

**Right of residence** Foreigners must have a valid right of residence, in the form of a temporary or permanent residence permit. This condition is designed to prevent people entering into a registered relationship solely in order to obtain a right of residence.

This is a brief summary of the conditions for entering into a registered partnership. Certain conditions and rules also apply to the registration itself.



## How is a registered partnership effected?

**Declaration** Two people wishing to enter a registered partnership must declare this to the competent authorities, in the same way as with a marriage. They must hand over documents showing that they meet the conditions for entering into a registered partnership. Which documents these are depends on the situation. In addition to a copy of the birth certificate, they may for example include proof of the ending of a previous marriage or registered partnership, a deed of consent or a residence permit.

The declaration is made to the Registrar of Births, Marriages and Deaths in the place of residence of one of the two partners. They can also declare that they wish to have themselves registered in a different municipality from that in which they live.

**Period of delay** A deed is drawn up of the declaration.

Registration can take place at the earliest of two weeks after the date of drawing up the deed of declaration.

**Witnesses** As with a marriage, registration requires the presence of witnesses. There must be a minimum of two and a maximum of four witnesses. Their names and addresses must be given at the time of the declaration.

**'I do'** The intending partners give their relationship the seal of officialdom by giving an oath. They do this before the Registrar. In the case of marriage, the form of this oath - the well-known phrase 'I do' - is laid down. In a registered partnership this is not so. The partners must in any event present their consent to the registration.

**Deed** A deed is drawn up of the registration. Once the oath has been given, the Registrar signs this deed of registration. The partners and witnesses also sign.

**Costs** In principle, entering into a registered partnership costs around the same as entering into marriage.

As with marriage, however, each municipality makes available certain times during the week when it is possible to enter into a registered partnership free of charge.



## Rights and obligations

To all intents and purposes, registered partnership has the same consequences as marriage. What does this mean in terms of rights and obligations?

**Maintenance obligation** The registered partners have a maintenance obligation towards each other. They are obliged to support each other financially as far as they are able. In principle, they also share the costs of the household.

**Community of property** In principle, all possessions and debts in a registered partnership are joint. As with a marriage however, it is possible to deviate from this rule. The partners can make different arrangements before or during the registered partnership. Such an arrangement must be laid down in front of a notary-public.

**Pension** Everyone who participates in a pension scheme builds up rights to old-age and surviving dependant's pension, the rights built up during the registered partnership must be divided if the partners separate. Here again, however, the partners can make different arrangements. The surviving dependant's pension goes to the longest surviving partner. The level of this pension depends on the pension scheme of the deceased partner.

**Legal acts** Registered partners require each others's permission in certain cases for entering into commitments or taking decisions. Examples are the selling of the jointly owned and occupied home and entering into a hire purchase agreement.

**Estate on death** On the death of one of the registered partners, the entire estate can accrue to the other partner. For this to occur, the registered partners - just like married couples - must have made a will. The rules on inheritance tax are also the same as for married couples. Inheritance tax is the tax paid by a person on inherited assets.

**Family relationship** Registration creates an official family relationship. The family members of one partner become 'related by marriage' to the other partner. The relatives have certain rights. For example, in certain cases they can refuse to give evidence in court cases against the related partner.

The above summary is not complete. There are many more areas where the consequences of the registered partnership are the same as those for marriage. Examples include taxation and social security.

**No consequences for the family relationship with children** Unlike marriage, registered partnership of itself has no consequences for the relationship towards children. Where a child is born within a marriage, all the relationships regulated under family law automatically exist between the spouses and the child. These relationships always exist between the mother and the child as a result of the birth. The mother's husband is the father of the child under the law. Both spouses are thus parents in the eyes of the law.

In principle, there are no relationships between a child and the person who looks after and brings up the child. Certain relationships can be created, but do not arise out of a registered partnership. A parent and his/her partner can however obtain joint custody. This creates (apart from a custody relation) a number - though not all - of the relationships between the parent's partner and the child. A few examples: the partner of the parent has a maintenance obligation with respect to the child; the child can acquire the surname of that person; the inheritance tax purposes the child is regarded as his/her own child. This brochure does not discuss joint custody any further.



## When does the registered partnership end?

A registered partnership terminates on death. In addition, it may be terminated because one or both of the partners wish to dissolve it. This can take place by mutual consent without involving the court, or as a result of an order imposed by the court.

**Mutual consent** If both partners agree, they can end the registered partnership without the involvement of the courts. This 'mutual consent' must be demonstrated and properly regulated. The partners are therefore required to draw up an agreement, which must as a minimum state that the registered partnership is permanently disrupted and that the partners therefore wish to dissolve the registration. Such an agreement must also contain agreements on important matters such as the division of possessions (and debts), alimony, accommodation and the settlement or equalisation of pension rights.

The agreement must be drawn up with the help of a lawyer, who declares to the Register of Births, Marriages and Deaths that the agreement ending the partnership has been drawn up. The declaration is signed by the lawyer and by the partners. Entry of this declaration in the Register of Births, Marriages and Deaths must take place within three months of the conclusion of the agreement. The registered partnership ends only when this declaration has been entered in the Register.

**Termination by the courts** The termination of a registered partnership through the courts is the same as divorce proceedings in the case of marriage. A request to the courts to end the partnership can be made by either of the partners. The court's decision is entered in the Register of Births, Marriages and Deaths. Only once this entry has been effected does the termination of the registered partnership take effect.



## Rights and obligations of ex-partners

The registered partnership also creates rights and obligations with respect to the situation after termination of the partnership

**Alimony** When the registered partnership ends, the partner with the greater financial recourse has a duty to pay alimony to the other partner. The arrangements regarding alimony are stated in the dissolution agreement imposed by the courts.

**Pension** The equalisation of pension rights takes place in accordance with the Dutch Pension Rights (Equalisation of Separation) Act.



## Further information

This brochure covers the main topics. If you have any questions or would like to know more you have several options:

- The telephone information line of the joint ministries ('Postbus 51'. Infoline), telephone 0800 8051 (free from within the Netherlands).  
Opening hours: Monday to Friday from 09.00 a.m. to 09.00 p.m.  
Internet: [www.postbus51.nl](http://www.postbus51.nl)  
E-mail: [webmaster@postbus51.nl](mailto:webmaster@postbus51.nl)
- Ministry of Justice  
Information Department, Internal and External Communication Section  
PO Box 20301, 2500 EH THE HAGUE, the Netherlands  
Telephone: +31 70 370 68 50  
Opening hours: Monday to Friday from 09.00 a.m. to 5.00 p.m.  
Internet: [www.minjust.nl](http://www.minjust.nl)  
E-mail: [voorlichting@best-dep.minjust.nl](mailto:voorlichting@best-dep.minjust.nl)
- The Births, Marriages and Deaths section of the municipality where you live.
- The Koninklijke Notariële Broederschap (Royal Netherlands Association of Notaries Public)  
PO BOX 96827, 2509 JE THE HAGUE, the Netherlands  
Telephone: +31 70 346 93 93  
Opening hours: Monday to Friday from 09.00 a.m. to 12.00 noon.



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## ILGA Euroletter 46, December 1996

*The Euro-Letter is published on behalf of ILGA - The International Lesbian and Gay Association - by the Danish National Association for Gays and Lesbians in cooperation with Gay and Lesbian International Lobby.*

### DUTCH SECOND CHAMBER OF PARLIAMENT AGREES ON PARTNERSHIP REGISTRATION

By *Michiel Odijk*

Dutch lesbian and gay couples as well as straight couples will get the opportunity of legal registration of their relationship in city halls. The Second Chamber of the Dutch Parliament (the House) agreed in principle on a bill with this intent.

The Dutch registered partnership will grant the same rights to couples as matrimony, except for legal consequences towards children. Delegates from the parties represented in the coalition government of the social-democrat party (PvdA), the right-wing liberal party (VVD) and the left-wing liberal party (D66) welcomed the arrangement as an important step. This was evident during the debate in parliament on the 4th of December. "This is the first time that government acknowledges that same-sex couples and opposite-sex couples have the same rights," PvdA representative Van der Burg said. "This is a milestone."

She told that there should be no mistake that she would also strive at opening up civil marriage for gays and lesbians. Van der Stoel (VVD) and Dittrich (D66) agreed completely about that. Earlier this year it became evident that there is a majority of delegates in the Second Chamber of Parliament in favour of opening up civil marriage. In April the Chamber adopted a motion by PvdA and D66 that called upon the government to abolish the legal prohibition of same-sex marriage. 81 delegates were in favour, 60 against.

Fundamental opponents of opening up civil marriage are to be found in the christian democrat party and the small christian (right-wing) parties. The christian democrats are in favour of partnership registration, but do not think that this regulation is necessary for couples of opposite sex. Christian democrats do not oppose to living-together, said their representative Bremmer, but they think that straight couples will either marry or stay unregistered.

The debate on opening up marriage will take place separately. The situation is now that a special commission has been appointed by the government to sort out the legal consequences, especially for adoption from foreign countries. The commission will submit its advice to the government in about half a year.

If the Second Chamber of Parliament would agree on opening up marriage, the Senate would also have to approve legal changes before they would become effective (as in every legal change). It seems that the Senate is not as progressive as the Second Chamber of Parliament is.

# EURO-LETTER

No. 68

March 1999

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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Consolidated versions of the basic treaties of the European Union including amendments from the Amsterdam Treaty can be found at this web-site: <http://ue.eu.int/Amsterdam/en/traiteco/en1.htm>

## **SWEDEN: NEW LEGISLATION AGAINST DISCRIMINATION AT THE LABOUR MARKET**

*By RFSL*

The Swedish Parliament did 4 March vote in favour of new legislation against discrimination at the labour market. One of the laws involves a ban on discrimination on the grounds of sexual orientation.

The law will apply to all sections of the labour market as well as all categories of employees including applicants for a job. The ban on discrimination of applicants will include the whole recruiting process even if the applicant is not employed. The ban will also include all the employer's decision concerning promotion, salary, notice and dismissal. Employers also have to investigate and take measures in the case of harassment between employees.

The law is welcomed by RFSL (The Swedish Federation for Lesbian and Gay Rights). Christine Gilljam, RFSL's president, is however concerned about the exception rules of the new legislation. Which might imply that a religious private school can reject a gay or lesbian teacher without violating the law. According to RFSL religious ideology should never be an excuse for discrimination against homosexuals.

The law will come into force on 1 May 1999. At the same time a newly appointed Ombudsman against discrimination on the grounds of sexual orientation will take office.

## **UK: BAN VIOLATES EUROPEAN CONVENTION ON FOUR COUNTS**

*By STONEWALL*

The European Court of Human Rights 26 February declared that the case of the four armed forces personnel, sacked because they were gay, was admissible. The Court found that the blanket ban was a prima facie violation of Article 3, "inhuman or degrading treatment"; Article 8, the "right to privacy"; Article 10, "freedom of expression"; and Article 14, "freedom from discrimination".

There will be a full and final hearing of the case, early this summer, before the full Court. It is likely that the case will be successful. If so, the Ministry of Defence would be forced to lift the blanket ban on gays serving in the military by the end of the year.

Angela Mason, Executive Director of Stonewall, said: "The ban on lesbians and gays serving in the British Armed Forces is inhumane, unnecessary and wrong.

We are delighted that the European Court agrees and is prepared to uphold the rights of lesbians and gay men."

John Wadham, Director of human rights organisation Liberty, said: "We believe that the days of the ban are numbered. There is a real prospect that it will be lifted by the end of the year."

Stephen Grosz, of Bindmans solicitors, said: "The speed at which the ECHR has acted in highlighting the four breaches of the Convention is a measure of the significance it attaches to this case."

Duncan Lustig-Prean, spokesperson for Rank Outsiders, said: "We will now see that there was never any justification for this deeply intrusive, humiliating and degrading policy."

## **REGISTERED PARTNERSHIP FAIRLY POPULAR IN THE NETHERLANDS**

*by Kees Waaldijk (waaldijk@euronet.nl) December 1998*

Since January 1998 Dutch law provides for partnership registration. Both same-sex and different-sex couples can register their partnership. That status has almost all of the legal consequences of marriage (for exceptions and further detail see [www.xs4all.nl/~nvihcoc/marriage.html](http://www.xs4all.nl/~nvihcoc/marriage.html)).

Registrations have normally been possible since mid January, although in some cases of terminal illness registration has been allowed to take place in the first week of the year. Below are the numbers of partnership registrations that took place in the first ten months (the source is the Dutch Central Bureau for Statistics, [www.cbs.nl/nl/cijfers/kerncijfers/sbv0603a.htm](http://www.cbs.nl/nl/cijfers/kerncijfers/sbv0603a.htm)). The figures are per couple (not per person).

In those ten months almost 4000 partnership registrations took place in the Netherlands. A total of almost 1200 registrations were between women (in Denmark it took more than six years, since the introduction in 1989, before such a number was reached), and a total of just over 1500 registrations were between men (in Denmark two years were needed to reach such a number, see [www.lbl.dk/partstat.htm](http://www.lbl.dk/partstat.htm)). A total of almost 1300 heterosexual partnerships have been registered in the Netherlands (in Denmark, Norway, Sweden and Iceland only same-sex couples can register their partnership).

If you take into account that the Netherlands have three times as many inhabitants as Denmark, registered partnership seems equally popular among gay

men in these two countries, and somewhat rather popular among Dutch lesbians than among Danish lesbians.

The Dutch figures:

Month	F/F	M/M	F/M	Total
January	65	119	59	243
February	119	212	159	490
March	120	191	191	502
April	173	175	149	497
May	146	194	145	485
June	146	154	138	438
July	103	143	139	385
August	106	104	106	316
September	130	124	101	355
October	90	91	104	285
Total	1198	1507	1291	3996

#### **SWEDISH PARLIAMENTARY COMMITTEE ON CHILDREN OF LESBIANS AND GAYS**

*By Martin Andreasson*

On 4 February 1999, the Swedish government appointed a parliamentary committee which will examine whether same-sex registered partners should be allowed to adopt children.

The first task of the committee is to examine the situation for children in lesbian or gay families. The committee is supposed to collect existing knowledge about these children and, if needed, commission further studies. The committee shall also find out what kind of support these children and their parents may need from the authorities.

The second task is to decide whether same-sex couples should be allowed to adopt children or become joint custodians. This decision shall be based on the principle of the best interest of the child, and on the findings presented about the situation of children in same-sex families.

Should the committee decide to propose adoption rights for lesbians and gays, it shall also consider whether lesbians should be allowed to be inseminated or receive in-vitro fertilisation at public health clinics.

The committee shall present its report to the Swedish government in early 2001. Mr. Göran Ewerlöf, head of division at the court of appeal of Stockholm, will chair the committee. The rest of the members will be party politicians, selected with respect to the parliamentary strength of their parties. This is in line with normal Swedish political procedures.

Among the Swedish political parties, the Left party (with 12 percent of the seats in Parliament) is the only one to openly support full equality for lesbian/gay parents. Many politicians in the Green and Liberal parties (5 percent respectively) also work for legal reforms. The Social Democratic and Conservative parties (36 percent and 23 percent respectively) have agreed to let the commission examine the issue, whereas the Christian Democratic party (12 percent) is the only party to openly oppose all legal reforms for lesbian/gay parents.

#### **GAY-FRIENDLINESS OF ALL SWEDISH MUNICIPALITIES EXAMINED**

*By Martin Andreasson*

RFSL (the Swedish federation for lesbian and gay rights) has presented a ground-breaking study of the local situation for lesbians, gays and bisexuals in all the 288 Swedish municipalities. It is likely to be the first time ever that all municipalities in a whole country have been examined regarding their gay-friendliness.

In Sweden, very many of the tasks of the public sector are performed by the local municipalities. For example, the child care system, the primary and secondary school system and the geriatric care system are all within the municipal sphere. However, the study by RFSL does not only examine the activities of the municipalities as such, but also the local climate and the social situation in general for lesbians, gays and bisexuals.

The study is based on facts collected from questionnaires to all municipalities (254 out of 288 responded), all counties (21 out of 21 responded) and all local branches of RFSL (28 out of 29 responded). To these questionnaires were added the findings from various research studies made about the local situation for lesbians and gays concerning the fear for hate crimes, the extent of hate crimes and the attitude of the general public towards lesbians and gays. This plurality of sources enabled RFSL to make a fairly accurate description of the situation even in those municipalities where, e.g., the local authorities never replied to the questionnaire.

The findings were translated into figures, thereby making it possible to put all municipalities on a ranking list. The "winner" was Malmö (the third largest city), followed by the capital of Stockholm and the northern university town of Umeå. At the bottom of the list came the town of Hudiksvall in the province of Hälsingland.

# EURO-LETTER

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August 1999

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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SALGUEIRO DA SILVA MOUTA - Portugal (N° 33290/96)  
Decision 1.12.98 [Section IV]  
(See Family life, below).

#### FAMILY LIFE

Refusal to grant custody to a parent living in a homosexual relationship: admissible.

SALGUEIRO DA SILVA MOUTA - Portugal (N° 33290/96)  
Decision 1.12.98  
[Section IV]

The applicant married in 1983. A girl, M., was born to the couple in 1987. Since 1990, the applicant has been living in a homosexual relationship. In the divorce proceedings, the applicant and his spouse concluded an agreement whereby custody was granted to the mother, the applicant being awarded a right of access. However, M. s mother refused him access and the applicant filed a request for custody to be awarded to him. The court acceded to this request in a judgment delivered in 1994 and M. lived with the applicant until 1995, when she was allegedly abducted by her mother (criminal proceedings are currently pending in this connection). His former wife appealed against this decision and the appeal court set aside the judgment, holding that, as a general rule, a young child should not be separated from its mother, but it also added that a homosexual environment could not be considered to be the healthiest for a child s development, given that this was an abnormal situation. Nevertheless, the court awarded a right of access to the applicant, who maintains that it is not being honoured as the whereabouts of M. are unknown. No appeal was filed against this decision. The applicant, relying on Article 8 in conjunction with Article 14, alleges that the appeal court awarded custody to M. s mother on the basis of his homosexuality. He also claims that the appeal court s decision constitutes an unjustified interference with his right to respect for family life, and also with his right to respect for his private life in that it was specified that he must hide his homosexuality in his meetings with his daughter.

Admissible under Article 8 and Article 14 in conjunction with Article 8.

#### ARTICLE 14

#### DISCRIMINATION

Refusal to grant custody to a parent living in a homosexual relationship: admissible.

SALGUEIRO DA SILVA MOUTA - Portugal (N° 33290/96)

Decision 1.12.98  
[Section IV]  
(See Article 8, above).

#### DANISH GOVERNMENT SUPPORTS GAY EU EMPLOYEE IN COURT CASE

*By Steffen Jensen*

The Danish government has decided to support Sven Englund in his case at the European Court of Justice against the EU Council of Ministers.

Sven Englund, a Swedish employee of the EU Council of Ministers, married to another man under the Swedish registered partnership law had asked his employer to treat him (and his partner) like his married heterosexual colleagues (and their spouses) under the terms of the EU Staff Regulations and thus claimed household allowance. The Council refused, so he brought the case before the Court in First Instance which rejected his plaint 28 January 1999.

Sven Englund has appealed the decision of the Court in First Instance to the Court itself. The appeal has been backed by the Swedish government and now also by the Danish government.

#### DUTCH BILL TO OPEN MARRIAGE FOR SAME-SEX PARTNERS

*By Kees Waaldijk*

Below you will find a translation (plus some comments and explanations) that I have made of the bill and explanatory memorandum on the opening up of marriage to same-sex partners.

Soon the text will be available on <http://www.coc.nl/index.html?file=marriage>

*Text of Dutch bill and explanatory memorandum on the opening up of marriage for same-sex partners introduced in Parliament on 8 July 1999 printed as parliamentary paper nr. 26672*

Summary-translation by Kees Waaldijk LL.M.  
Universiteit Leiden, The Netherlands,  
[waaldijk@euronet.nl](mailto:waaldijk@euronet.nl)

Draft-version 23 July 1999

All explanations and comments between square brackets have been added by me. Square brackets are also used to indicate omitted or summarised passages.

For further background information on the lengthy process leading up to this bill, and for future updates

on its passage through parliament and possible amendments to it, see:  
<http://www.coc.nl/index.html?file=marriage>

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Parliamentary paper 26672

Amendment of Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

NR. 2: LEGISLATIVE PROPOSAL

We Beatrix [...];  
[preamble:]

considering that it is desirable to open up marriage for persons of the same sex and to amend Book 1 of the Civil Code accordingly;

Article I  
A and B  
[amendments to articles 20 and 20a, concerning administrative duties of the registrar]

C  
[amendment of article 28, concerning the change of sex in the birth certificates of transsexuals: Being not-married shall no longer be a condition for such change.]

D  
Article 30 shall read as follows:

Article 30  
1. A marriage can be contracted by two persons of different sex or of the same sex.  
2. The law only considers marriage in its civil relations.

[Until now, article 30 only consists of the text of the second paragraph.]

E  
Article 33 shall read as follows:

Article 33  
A person can at the same time only be linked through marriage with one person.

[Until now, the text of article 33 only outlaws heterosexual polygamy.]

F

In article 49a, paragraph 1, the words "with a person of the opposite sex" shall be inserted after the word "marriage".

[This article deals with declaration of non-impediment, to be given to Dutch nationals who want to contract a marriage in another country. Such declarations shall now only be given to Dutch nationals wishing to contract a marriage with a person of the opposite sex.]

G  
A new article 77a shall be inserted:

Article 77a  
1. When two persons intend to convert their marriage into a registered partnership, the registrar of the domicile of one of them shall make a certificate of conversion. If the spouses are domiciled outside the Netherlands and want to convert their marriage into a registered partnership in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.  
2. A conversion terminates the marriage and starts the registered partnership on the moment the certificate of conversion is recorded in the register of registered partnerships. The conversion does not affect the paternity over children born before the conversion. Neither does it affect the consequences of the marriage.

H  
[amendments to article 80a, concerning registered partnership:  
The minimum age for marriage and registered partnership is 18, but for marriage it is reduced to 16, if the woman is pregnant or has given birth; this exception shall now also apply to registered partnership.

Furthermore, annulment of an underage marriage is not possible after the female spouse has become pregnant; the same shall now apply to an underage registered partnership.]

I  
A new article 88f shall be inserted:

Article 88f  
1. When two persons intend to convert their registered partnership into a marriage, the registrar of the domicile of one of them shall make a certificate of conversion. If the spouses are domiciled outside the Netherlands and want to convert their registered partnership into a marriage in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.  
2. A conversion terminates the registered partnership and starts the marriage on the moment the certificate of conversion is recorded in the register of marriages.

The conversion does not affect the paternity over children born before the conversion. Neither does it affect the consequences of the registered partnership.

J

Article 395 shall read as follows:

Article 395

Without prejudice to article 395a, a stepparent is obliged to provide the costs of living for the minor children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his nuclear family.

[Until now this article only applies to marriage, not to registered partnership.]

K

Article 395a, second paragraph, shall read as follows:

2. A stepparent is obliged to provide [the costs of living and of studying] for the adult children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his nuclear family and are under the age of 21.

[Until now this article only applies to marriage, not to registered partnership.]

Article II

Within five years after the entering into force of this Act, Our Minister of Justice shall send Parliament a report on the effects of this Act in practice, with special reference to the relation to registered partnership.

Article III

This Act shall enter into force on a date to be determined by royal decree.

Article IV

This Act shall be cited as: Act on the Opening up of Marriage.

Parliamentary paper 26672

Amendment of Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

NR. 3: EXPLANATORY MEMORANDUM

[The explanatory memorandum is signed by Mr. Job Cohen, State-Secretary for Justice.

It is a lengthy text. Therefore I have only translated some brief passages.]

[...]

Amendments - where necessary - in other books of the Civil Code and in other legislation will be proposed in a separate bill. [...]

1. History

[...]

From the government's manifesto of 1998 (Parliamentary Papers II, 1997/98, 26024-9, p. 68) it appears that the principle of equal treatment of homosexual and heterosexual couples has been decisive in the debate about the opening up of marriage for persons of the same sex.

2. Equalities and differences between marriage for persons of different sex and marriage for persons of the same sex.

[...]

As to the conditions for the contracting of a marriage no difference is made between heterosexuals and homosexuals [...].

[For example, only one of the persons wishing to marry needs to have either his or her domicile in the Netherlands or Dutch nationality. Also, two brothers or two sisters will not be allowed to marry each other, although the bill forgets to amend article 41 accordingly; an oversight which no doubt will get corrected.]

The differences between marriage for persons of different sex and marriage for persons of the same sex only lie in the consequences of marriage. They concern two aspects: firstly the relation to children and secondly the international aspect. [...]

[According to article 199 the husband of the woman who gives birth during marriage is presumed to be the father of the child.] It would be pushing things too far to assume that a child born in a marriage of two women would legally descend from both women. That would be stretching partnership was introduced in the Netherlands on 1 January 1998. In 1998 4556 couples (including 1550 different-sex couples) have used the possibility of contracting a registered partnership [...]. Compared to other countries with registered partnership legislation the interest in registered partnership in the Netherlands is relatively high [...].

The relatively high number of different-sex couples that contracted a registered partnership in 1998 and the results of a quick scan evaluation research [Yvonne Scherf, Registered Partnership in the Netherlands. A quick scan, The Hague: Ministry of Justice 1999; that is the English translation of the original report] make it plausible that there is a need for a marriage-like institution devoid of the symbolism attached to marriage.

Therefore the government wants to keep the institution of registered partnership in place, for the time being. After five years the development of same-sex marriage and of registered partnership will be evaluated. Then [...] it will be possible to assess whether registered partnership should be abolished. [...]

#### 4. International aspects

[...]

As the Kortmann-committee has stated (p. 18) the question relating to the completely new legal phenomenon of marriage between persons of the same sex concerns the interpretation of the notion of public order to be expected in other countries. Such interpretation relates to social opinion about homosexuality. The outcome of a survey by the said committee among member-states of the Council of Europe was that recognition can only be expected in very few countries. This is not surprising. [...]

Apart from the recognition of marriage as such, it is relevant whether or not in other countries legal consequences will be attached to the marriage of persons of the same-sex. [...]

As a result of this spouses of the same sex may encounter various practical and legal problems abroad. This is something the future spouses of the same sex will have to take into account. [...] However, this problem of "limping legal relations" also exists for registered partners, as well as for cohabiting same-sex partners who have not contracted a registered partnership or marriage.

#### 5. Conversion of marriage into registered partnership and of registered partnership into marriage

[...]

#### 6. Adaptation of computerised systems

[...]

#### 7. Explanation per article

[...]

Article I - D

[...] The principle of gender-neutrality of marriage is expressed by [the new article 30, paragraph 1].

[...]

#### Article III

[...] The aim is to let this Act enter into force on 1 January 2001.

[Given the clear commitment of the three coalition parties to this bill, expressed in the government manifesto of August 1998, the passage through the Lower House of Parliament should be politically unproblematic. The bill would probably also get a majority in the Upper House. All this would easily take more than one year, hence the foreseen date in 2001. The greatest risk for the passage of this bill is a possible breakdown of the current coalition of social democrats, liberals, and social-liberal democrats. That could happen over a number of completely unrelated issues. Such a breakdown would normally lead to new elections, and thus at least to delay in the passage of the bill. Furthermore, if then a new coalition would be formed including the christian democrats, the new government might withdraw the bill. But that is mere speculation.]

#### **DUTCH BILL ALLOWING ADOPTION FOR SAME-SEX COUPLES**

*By Kees Waaldijk*

Below you will find a translation (plus some comments and explanations) that I have made of the bill and explanatory memorandum on allowing adoption by same-sex couples, introduced in Parliament on the same day as the bill on the opening up of marriage.

Soon the text will be available on [www.coc.nl/index.html?file=marriage](http://www.coc.nl/index.html?file=marriage)

*Text of Dutch bill and explanatory memorandum on adoption by persons of the same sex* introduced in Parliament on 8 July 1999 printed as parliamentary paper nr. 26673

Summary-translation by Kees Waaldijk LL.M.  
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Draft-version 28 July 1999

All explanations and comments between square brackets have been added by me. Square brackets are also used to indicate omitted or summarised passages.

<http://www.coc.nl/index.html?file=marriage>

The latest news about lifting the ban on marriage for same-sex couples in the Netherlands from the website of N.V.I.H. COC, an organization for gay and lesbians in the Netherlands and the largest and oldest such group in Europe.

### **Dutch Cabinet introduces Bills allowing Same-sex Marriage and Same-sex Adoption**

AMSTERDAM, June 27, 1999 - On 25 June 1999 (i.e. on the eve of "Roze Zaterdag", the Dutch name for the Gay and Lesbian Pride Day) the Dutch Cabinet finally approved the introduction of bills to open up marriage and adoption to same-sex partners. The bills will be formally introduced in Parliament on 29 or 30 June, and only then the texts will become public. Normally it would take both chambers of Parliament at least till the end of the year 2000 to debate and approve these bills. So the first same-sex marriages and adoptions would not take place before 2001. The Netherlands might then still be the first country in the world with full marriage rights for gays and lesbians. Same-sex adoption is already possible in Denmark, in several states in the USA and in several provinces of Canada.

The Marriage Bill does not seek to do away with registered partnership (possible since January 1998, for both same-sex and different-sex couples). For at least five years marriage and registered partnership will exist alongside each other. Registered partners will get the opportunity to convert their partnership into full marriage.

There will hardly be any differences between the legal consequences of a same-sex marriage and those of a traditional different-sex marriage. The only exception will be that if a child is born to a woman in a lesbian marriage, her female spouse will not be presumed to be the "father" of the child. However, through adoption she will be able to become the second legal parent of the child.

The rules of adoption will also be almost identical for same-sex and different-sex couples. The only exception will be that same-sex couples will not be allowed to adopt a foreign child.

Once I have seen the text of the bills and the explanatory memoranda, I will circulate more detailed information.

by Kees Waaldijk  
(law lecturer University of Leiden)

# EURO-LETTER

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The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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The Employment Equality Act (1998), which came into force recently, replaces the employment Equality Act of 1977.

That Act outlawed discrimination in employment or access to training on the grounds of gender or marital status.

However, the new Employment Equality Act differs from its predecessor in that it extends this protection to seven other grounds:

Family status, sexual orientation, religious belief, age, race, disability and membership of the Traveller community.

Discrimination is described as treating one person in a less favourable way than another person has been or would be treated.

Two types of discrimination are identified in the legislation. Direct discrimination is straightforward - the less favourable treatment of one individual when compared with another.

Indirect discrimination, however, may cause more problems for employers. This covers requirements which may not appear to be discriminatory, but which adversely affect a particular class or group of people covered by the legislation. There need not be any intention to discriminate for indirect discrimination to exist.

For example, a requirement that women employees wear uniforms with short skirts, contrary to the religious beliefs of certain groups like Muslims, could be construed as discriminatory, though a case would have to be taken to prove it.

The areas covered by this legislation include not only employers but trade unions, vocational training bodies, employment agencies, collective agreements and advertisements. Also covered are not only access to employment, but conditions of employment, access to promotion and equal pay.

The legislation also extends to harassment of a person on any of the nine grounds and sexual harassment. For the first time in Irish law this is defined by statute. It covers unwelcome, offensive, humiliating or intimidating actions and extends to employers, employees, clients, customers or business contacts.

An employer may take positive action to promote certain groups of people without being open to charges of discrimination. This includes measures to integrate into employment people over the age of 50, with a disability or who are members of the Traveller

community, as well as action to remove existing inequalities affecting opportunities for women.

There are exemptions to the general thrust of the legislation. These include benefits to women in connection with maternity or adoption, where the sex of a person is an occupational qualification for the job, personal services like caring for an elderly person in his or her own home, and employment in the Garda Síochána or prison service.

There is also an exclusion in relation to religious, educational and medical institutions run by religious bodies who are allowed to discriminate to maintain their religious ethos.

Those who feel they have been discriminated against should initially raise the issue with their employer. If this fails to resolve the issue, they can go to the Equality Authority for advice and help and then pursue a claim for redress through the office of the Director of Equality Investigations.

## STATUTORY COHABITATION CONTRACT IN BELGIUM

*By Alan Reekie*

Any two adults, neither of whom are already married or bound by another Cohabitation Contract, may bind themselves by the statutory Cohabitation Contract, regardless of whether they form a same-sex or opposite-sex couple or whether they are kin or not. Eg: a brother and sister, or two unrelated men or women.

To be valid, the contract must be signed in the presence of a notary public and entered in the Register of Population of the municipality where they are living together.

While the contract is in effect, both partners are jointly responsible for the expenses incurred in their life together and all reasonable debts contracted for this purpose, in proportion to their means. Each benefits individually from his or her earned income.

All heritable property and other assets acquired while the contract is in effect are deemed to be owned jointly, in the absence of proof of individual title.

Notwithstanding any contract, each partner:

- remains liable to submit an individual income tax return.
- retains parental authority over his or her children. The existing legal provisions regarding family membership and guardianship of minor children are similarly unaffected.



- remains regarded as an individual for the purpose of adoption and medically assisted procreation.
- remains regarded as an individual so far as social security and pension rights are concerned.

Furthermore, the contract has no impact on:

- the existing legal provisions regarding inheritance and the various rates of taxation payable by the legatees.
- the existing legal provisions regarding the nationality and right of abode of either partner.

The contract can be terminated at any time by agreement between the partners, or at the initiative of either of them, without necessarily undertaking any legal proceedings; however, the local Magistrates Court is competent to rule in the event of any dispute on the practical aspects in this context, eg occupation of accommodation, settlement of accounts, division of jointly-acquired property.

#### **LANDMARK UK RULING ON INTERPRETATION OF 'FAMILY'**

From <http://news.bbc.co.uk/>

Ruling recognises status of "long term" same sex relationships

Gay couples are celebrating a House of Lords victory in a battle to gain equal housing rights with heterosexual families.

Former Royal Navy serviceman Martin Fitzpatrick, who lived with his gay partner for almost 20 years until his death in 1994, won his appeal for the same tenancy succession rights as a husband or wife.

In a case marking an important advance in gay rights, the Law Lords ruled by 3-2 that Mr Fitzpatrick was a member of his partner's family, for the purposes of the Rent Act laws.

Mr Fitzpatrick, whose partner John Thompson was the official tenant of their west London flat, was served notice to quit by a housing association after Mr Thompson's death. He took his case to the House of Lords after the Court of Appeal ruled in 1997 that he could not succeed his partner's tenancy because the law did not recognise the rights of same sex partners.

The couple had shared a devoted and monogamous relationship, meeting in 1969 and living together in the flat at the centre of the case from 1976. Mr Fitzpatrick looked after Mr Thompson, a silversmith, for the last nine years of his life after he suffered irreversible brain damage from a fall downstairs.

#### *'Intimate mutual love'*

Lord Nicholls, allowing the appeal, said the question in the case was whether a same sex partner was capable of being a member of the other partner's family for the purposes of the Rent Act legislation.

#### *Ruling is an advance in gay rights*

"I am in no doubt that this question should be answered affirmatively. A man and woman living together in a stable and permanent sexual relationship are capable of being members of a family for this purpose.

"Once this is accepted, there can be no rational or other basis on which the like conclusion can be withheld from a similarly stable and permanent sexual relationship between two men or between two women. He added: "Where sexual partners are involved, whether heterosexual or homosexual, there is scope for the intimate mutual love and affection and long-term commitment that typically characterise the relationship of a husband and wife."

Lord Clyde and Lord Slynn also allowed the appeal. But Lord Hutton and Lord Hobhouse delivered dissenting judgments. While he fully recognised the strength of the argument that Parliament should change the law to give same sex partners equal rights, Lord Hutton said that only Parliament could change the law.

#### *'A wonderful victory'*

After the ruling Mr Fitzpatrick said: "I am thrilled that after a five-year battle their Lordships have taken a stand against discrimination. "I only wish that it had not taken so long and that John was alive today to share this event with me."

Reacting to the ruling Stonewall, which campaigns for gay and lesbian equality, said it was the first time that lesbian and gay relationships had been defined as a family. Angela Mason, executive director, said: "This is a wonderful victory for Martin and for all the lesbians and gay men in this country." She added: "This country has lagged behind the developments. This case and the introduction of the human rights act will give a new chance for lesbian and gay partners to achieve recognition."

The full text of the ruling can be found at this URL:

<http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd991028/fitz01.htm>

**Scotland: SCHOOL'S GAY BAN TO BE LIFTED**  
From BBC News Friday, October 29, 1999



October 14, 1999

## The French registered partnership law: the civil solidarity pact

The French National Assembly passed the civil solidarity pact ("pacte civil de solidarité", or PaCS) by 315 votes to 249, in its last and definitive reading on Oct. 13, 1999. The Constitutional Council ruled it conformed with the Constitution Nov. 9. The law was signed Nov. 15 by President Chirac, Prime Minister Jospin and seven ministers (Social affairs, Justice, Interior, Foreign affairs, Economy, Housing, Public administration) and published the day after in the Journal Officiel. A "user manual" was released Nov. 10 by the minister of Justice in order to explain the content of the law, the registration process and to specify the documents which must be provided. According to instructions sent to the courts, the law is immediately effective, without waiting for the government decrees (still necessary to implement some provisions of the law). This means that couples may get registered from Nov. 17th.

### A ten year long process

In 1989, the "Cour de Cassation" (the highest civil law court in France) ruled that a homosexual couple cannot benefit the few advantages which are given to cohabiting heterosexual couples, especially the transfer of a tenant's lease. The first registered partnership law proposal followed in 1990. Two years later, the "Contrat d'Union Civile" (CUC) was the aim of a new law proposal signed by eight deputies; rewritten and named "Contrat d'Union Sociale" (CUS), it was broadly supported by the gay and lesbian and AIDS-related organizations. The CUS was the main thema of Paris lesbian and gay pride March in 1996, and one of the demands of next year's Europride in Paris, the largest political demonstration of that year in France (300,000 participants).

It was only in June 1997 that a ruling coalition had this project in its electoral agenda, and three law proposals were registered soon after the 1997 elections. In January 1998, Catherine Tasca, president of the law committee of National Assembly asked MPs Jean-Pierre Michel (MdC) and Patrick Bloche (PS) to write a synthesis of previous proposals. In April, a petition against gay marriage, signed by 15,000 mayors, was published ; it was impressive enough to incite the government to keep the registration of the future contract away from town halls, while it

was the place proposed until then. Dissenting voices from the homosexual movements were also heard : Aides Federation (the main AIDS organisation in France, whose president was Arnaud Marty-Lavauzelle), and a few local but highly visible groups demanded the opening of marriage to homosexual couples, and branded as discriminatory the ongoing parliamentary project. Other projects were brought to public attention, by sociologist Irène Théry (a cohabitation statute) and by jurist Jean Hauser ("Pacte d'Intérêt Commun"), leading to strong debates in the medias.

In May 1998, the first draft of the PaCS, written by Michel and Bloche was published. In June, Justice Minister Elisabeth Guigou gave the government's agreement to this draft, against They's and Hauser's projects. Two days later, Paris Lesbian and Gay Pride march gathered 100 000 people under the slogan "Nous nous aimons, nous voulons le PaCS". The same day, President Jacques Chirac (not in charge of the government, because of a contrary majority in the Assembly) said he opposed any imitation of the marriage. After the appointment of Michel and Bloche as "rapporteurs" and the extensive hearings they organised, the law proposal came into discussion October 9, 1998 and was rejected because of a strong mobilisation of the opposition, and the defection of the majority. A new law proposal had then to be prepared.

The Assembly passed this new law proposal 316-249 on December 9, in first reading. On January 31, a demonstration gathered nearly 100,000 people against the PaCS ; some strongly homophobic slogans were heard, such as "les pédés au bûcher". The law proposal was then rejected by the (conservative) Senate by a vote of 192 to 117 on March 18. However, the Senators adopted an alternate proposal that includes in the civil code a definition of cohabiting couples, but declined an amendment, sponsored by the Left, specifying that the two people making a couple may be of any gender. In second reading, the Deputies ignored the Senate proposal, restoring the Assembly proposal, but they added a definition of cohabitation with the any gender mention on April 7. This text was then rejected by the Senate on May 11 (with no reading), adopted by the Assembly on June 15 and rejected again by the Senate on June 30. Only the last (and fourth) reading by the Assembly can overwrite the Senate rejection. It occurred on October 12 and 13, and the law was adopted by 315-249.

### **Contents of the law**

The civil solidarity pact is a contract binding two adults of different sexes or of the same sex, in order to organise their

common life ; contractants may not be bound by another pact, by marriage, sibling or lineage. Adults under custody cannot contract.

The contractants have to register a common declaration by the local court where they set their common residence, if in France and by the consular authorities, if abroad.

Partners commit to mutual and material help; modalities of this help are specified by the common declaration. They are jointly responsible for debts due to ordinary expenses for the household.

A pact can be dissolved by a common statement of the partners by the court (or consulate), by the death or the marriage of one of the partners, or after a three months delay, at the request of one of the partners.

Partners are eligible for joint taxation benefits after three years (which is interesting only in case the incomes are not equal). But special allocations for people having low income are suspended or reduced as soon as the pact is signed. Also, the tax on large assets is due from the first year on. Donations, but only after two years, and inheritance from a partner to the other benefit a tax abatement. Life insurance capital can be paid to the surviving partner.

The tenant's lease can be transferred to the partner if the other partner leaves their common home or dies.

A partner who does not have a social protection (health benefits) may enjoy the other partner's social protection.

French nationality is not required to sign a pact ; the signature of a pact must be considered by the administration when a foreigner asks for immigration rights, but the pact does not give these rights by itself.

Public servants (from national or local administrations) may ask another position from their employer in order to get closer to the other partner.

Cohabitation is also defined in this law as a de facto stable and continuous relationship between two persons of different sexes or of the same sex living together as a couple.

Moreover, the pact does not countain any clause regarding lineage, adoption or custody.

### **Comments on the law**

The law does not achieve the equality of homosexual and heterosexual couples. Actually, heterosexual couples may cohabit, sign a pact or marry ; homosexual couples may only cohabit or sign a pact. Rights, benefits and obligations can be compared : minimal for cohabitation, they are larger for PaCS, and still larger for marriage.

Moreover, the registration by a court, the delays to get taxation benefits, especially when combined with the immediate reduction of low income allocations, and the non-automaticity of immigration rights are strongly criticised by the supporters of the law.

However, the law is in itself an equality law, because it does not contain any discrimination against homosexual couples, for instance there is no denying of adoption or insemination as in some other partnership laws. Such discriminations do exist in other parts of the legislation (for marriage, adoption, etc), but not in the PaCS. Only married couples or singles may adopt; therefore, heterosexual as well as homosexual partners in a pact will not be eligible for joint adoption, but one of the partners (a single because not married) will be eligible for single-parent adoption. Artificial insemination with donor is available only on medical prescription to heterosexual couples cohabiting since two years; having signed a pact will not change the availability conditions.

For the first time, a law recognises the very existence of non-married couples and states the equivalent value of homosexual and heterosexual couples. Moreover, it recognises the plurality of life styles : marriage is now only an option and no longer the norm. This is both why the pact has been welcomed by the society, definitely less attracted to marriage, and fought by the conservative and religious movements.

The PaCS, once read as stating an equality principle in the Law, sheds a new light on other parts of the Law and on practices which may now appear as quite discriminatory. This side effect of the new law has already been understood by its opponents, who even think that, maybe with the help of European Law, adoption and marriage will sooner or later follow from the PaCS. As the government is preparing another law concerning family and bioethic issues, which will be discussed within the next year, the road is open for new advances.

#### **Comments on the process**

Seven readings in the Parliament, 120 discussion hours,

thousands of amendments made of this law proposal one of the most debated of the last years. Although it was expected to be a non-partisan law, with support from the progressive right to the left (as it was the case for the abolition of the death penalty, or the laws on contraception and abortion), the right chose to strongly oppose the law, even if some leaders of the right were privately in favour of the pact. Never since 1982 (for the equalisation of ages of consent) homosexuality has been said to such extend in the Parliament. Only two MPs from the right voted for the law, one of them being long-standing supporter Roselyne Bachelot-Narquin.

This was also an open field for homophobia : both in speeches, in street demonstrations, and in the media. Some MPs did not hesitate to speak of registrating the pact at a veterinary service or to ask for the sterilisation of homosexual couples. MP Christine Boutin, the standard-bearer of the religious right and the leader of the January demonstration (where demonstrators shouted that fags should be burned), displayed a bible in the Assembly and uttered despising words in the guise of compassion. Most people were revulsed by such behaviours; the leaders of the opposition, still very low-voiced, understood that they have made a mistake. As a result, the very concept of homophobia is now well-known from the medias and the politicians, and almost unanimously rejected. A law banning homophobic speeches will probably be planned. A stronger and more conscious acceptance of homosexuality has been obtained through one year of public debate.

The process is in itself a proof of the entry of lesbians and gays into the political age. The concept of the pact was designed by homosexuals, it has gained the support from a large number of non-governmental organisations (trade unions, human right associations, student associations, women organisations, family planning, and many more), and it will eventually benefit all. Such a wide support is partly due to the efforts of an association, the "Collectif pour le PaCS", and of its president, Jan-Paul Pouliquen, to meet every possible social leader in France. It turned out that the "civil society" definitely won against experts (sociologists, jurists, psychoanalysts, anthropologists) which were called on by the opponents of the pact and were deliberately ignored by the law-makers. The result is that gays and lesbians have now secured their own place in the civil and social dialogue in the French society.

*R. Lalement*

[France QRD] [Documents] [Partnership]

## **Gays in Canada Link Equality Rights with Heterosexual Unmarried Partners, Not Formal Marriage**

**Subject:** \*QL\*: Domestic partnership, Foray - Canadian comments

**Date:** Wed, 9 Jun 1999 07:52:43 EDT

**From:** RDElliott@aol.com

**To:** queerlaw@abacus.oxy.edu

Greetings US friends:

Although this is your debate in your unique social and legal context, allow me to make some comments from Canada, a country where I believe more progress has been made for the LGBT community than in the USA.

In the late 1960's and early 1970's in Canada, the influence of the "sexual revolution" was in full swing. Private homosexual acts were decriminalised nation-wide, and divorce was made easier. In the 1970's, a series of high profile cases where "common law" husbands appeared to treat their "common law" wives unfairly resulted in law reform in some Canadian provinces, notably Ontario, our most populous province. This provided some legal rights such as alimony to enduring common law relationships, although such couples were not given all the same rights as married couples. Over the years, the recognition of "common law" relationships has infiltrated many statutes provincially and federally, although some provinces like Alberta continue to be a legal wasteland for straight common law couples.

This development reached a legal milestone in our Supreme Court in 1995. In the case of *Miron v. Trudel*, it was held that marriage was not an appropriate "marker" of distinction. An Ontario law which limited rights to married couples, and did not offer the same benefits to common law couples, violated our constitution's equal protection guarantee.

As a result of these developments, the debate over same sex couples' equality in Canada, unlike in the USA, has not centred on marriage. Marriage remains a hot button for many straight people, even in Canada - our Parliament just passed a resolution confirming existing law that limits marriage to opposite sex couples. We have been able to defuse some of the religious opposition to our movement here by noting that common law couples live without benefit of clergy, too. We have also been able to state honestly that our demands for equality have nothing to do with the institution of marriage.

Canadian legal challenges have focused on eliminating discrimination against us as individuals, such as the ban on gays in the military, and on eliminating the distinctions between common law opposite sex couples and same sex couples. This line of cases culminated in this year's landmark Supreme Court of Canada decision in *M v H*. In this case, the Court ruled that the original Ontario family law which had opened the door to common law couples in 1978 violated our constitution's equal protection clause, because it did not also include same sex couples.

The struggle for recognition of common law couples' rights (and obligations) was spearheaded by women in the feminist movement concerned with the exploitation of straight women by straight men. They paved the way for us in Canada, and we are grateful to them. It is noteworthy that the original law was introduced by a conservative government, who sold it on the notion that a spouse should provide support so that women and children were not forced to look to social assistance following family breakdown. Make the deadbeat dads pay, not the taxpayers, was the slant. Interestingly, the law was worded in gender neutral language, not because women often are called on to support men, but because of the important equality principle this reflected, as well as its recognition of the evolving nature of modern families. This gender neutral language helped us a great deal later in arguing for same sex couples' rights in *M v H*.

It is no surprise to many of us that resistance to same sex couple recognition is greatest in places like Alberta, where there is also resistance to legal recognition of opposite sex common law couples. I note in passing that there are no "registry" requirements in these "common law couples" laws. Social conservatives who are resistant to the rights of women and who condemn "living in sin" are unlikely to skip over those concerns and embrace legal rights for same sex couples.

Interestingly, conservative Canadian governments have now adopted the original feminist arguments in opposing our legal actions. They assert that these laws are needed to protect women from men, and that our couples lack structural gender power imbalance and therefore need no state intervention. Alberta conservatives are now promoting domestic partnership registries open to all as the solution to the demands of the LGBT community (being open to all, there are no "special rights"), and as a means of ensuring that they can build a constitutional fence around marriage to protect it from the Supreme Court.

I cannot say whether *Foray* was rightly decided. I also understand those who might feel that getting benefits for "our people" should be the focus. However, the view from here is that your religious right will always be more effective as long as you have to reach for the brass ring of marriage. Incrementalism has worked for us.

It is right that our movement should support equality and oppose irrelevant legal distinctions, such as marital status. In particular, the struggle for women's rights is our critical ally in our quest for an end to discrimination. Our Canadian experience would suggest that US LGBT organisations would be not only philosophically correct, but tactically wise, to support efforts to win legal recognition of rights for common law couples.

Best of luck to you in your quest for equality.

Douglas Elliott  
Counsel to the Foundation for Equal Families in *M v H*  
Toronto, Ontario  
Canada

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## Liberals ponder rights for roommates

### Benefits could extend to all 'relationships of dependency'

Janice Tibbetts

Justice Minister Anne McLellan says the federal government, which is planning to extend legal rights to same-sex couples, is also prepared to revive the dormant idea of including other couples in relationships of economic dependency.

The move, which would build on a Supreme Court ruling to extend benefits to gays and lesbians, is the cornerstone of a conference this week at which academics, politicians and government officials will debate the merits of including couples such as old army buddies or widowed siblings in equality laws.

"I think the question of relationships of dependency, how we recognize and acknowledge those relationships in Canadian society is an important issue and it is one that we as a government will look at and continue to look at," said Ms. McLellan.

The Liberal government, in light of several court rulings, is already planning to amend almost 60 federal statutes to include gays and lesbians, including pension and income tax laws.

Legal scholars say the next frontier in the country's courts will be including other cohabitants as well, so governments should start planning now instead of being blind-sided in another five years or so.

The Law Commission of Canada, a federal agency that advises the

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federal government on law reform, is currently examining the prospect of extending benefits to all relationships and plans to issue a report next year.

The commission is co-sponsoring the conference this week with Queen's University in Kingston, where about 100 participants will examine the prospect. One idea would be to create registered domestic partnerships, in which couples could be legally recognized simply by signing up. Several European countries have already adopted such partnerships and the idea has also emerged in some provinces, including British Columbia and Alberta.

But laws currently vary, with some being exclusive to gays and lesbians and others including other relationships as well.

Conference participants will examine both prospects.

The idea of registered partnerships comes at a time that provinces are already scrambling to amend their family laws to include gays and lesbians, following a May 20 Supreme Court ruling involving two Toronto lesbians known as M and H, which effectively changed the definition of spouse to include a same-sex partner. The court gave Ontario six months to change its impugned Family Law Act.

Governments across Canada have had little time to focus on future court decisions because they are still struggling with the Supreme Court ruling. But a poll commissioned by the federal Justice Department last year signals the government is looking beyond the issue of how to treat gay and lesbian partners.

The survey, conducted by the Angus Reid firm to measure public opinion on same-sex benefits, also suggested that 71 per cent of Canadians either strongly or somewhat agreed that benefits should not depend on spousal relationships, but on any relationship of economic dependency in which people live together.

The prospect was floated briefly by former justice minister Allan Rock in 1994, a pitch that was perceived as providing potential relief from the moral debate of extending benefits only to same-sex couples.

"I think some organizations would see registered partnerships as a less controversial way to eliminate discrimination against same-sex couples than marriage," said Martha Bailey, a Queen's University law professor and conference organizer.

Martha McCarthy, a Toronto lawyer who will speak at the conference, said it is wrong that lawmakers would consider lumping gay and lesbian couples in with other relationships of economic dependency. "I find it offensive that we say now that the gays and lesbians are in, it's a



free-for-all," said Ms. McCarthy, who represented the winning party in the M and H ruling.

"Regardless of our sexual orientation, to compare my intimate relationship with my spouse to the relationship that I have with my brother or my university roommate, both of whom I love dearly, is totally offensive to the primary crucial nature of my spousal relationship."

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# OPINION

Saturday 24 July 1999

## Not so odd couples

The Gazette

The logic seems inescapable. If it is appropriate to give partners in homosexual relationships the pension and other rights enjoyed by traditional married couples, then why not extend those rights to other couples like, say, pairs of retired sisters or old army buddies?

Quite rightly, Canadian society has moved beyond using marriage as the criterion for granting such rights and benefits. Heterosexual common-law partners widely enjoy them. So, increasingly, do homosexual partners; in May, the Supreme Court of Canada ruled that Ontario's Family Law Act was discriminatory in denying homosexuals the right to sue for support when a relationship breaks down, just as heterosexuals can.

The door to extending these rights even farther is now swinging wide open, and marching through it is the Law Commission of Canada. A federal agency that advises Ottawa on modernizing the law, it wants to hold a national conference in the fall to debate how still other unmarried couples could benefit. Good.

Opponents fear such a reform would compromise the sanctity of marriage, though surely that sanctity is threatened more by people who do marry, only to forswear their vows when it suits them a little later. In any event, the couples the law commission is focusing on are not claiming to be married, even in an unconventional way.

What all these people do share - the husband and wife, the gay couple, that pair of old army buddies - is a commitment to live together indefinitely, economic interdependence and, if not love, then surely at least some degree of mutual regard. The result is a household - indeed, it may not stretch the meaning of words too much to say a family. The stability implicit here is of inestimable value to society, and we should feel no compunction about seeking to foster it. This the law commission is doing.

The question of cost may be tricky. But Rod Macdonald, the McGill University law professor who heads the commission, cites preliminary studies indicating the charge on taxpayers would be trivial. In any event, how much should cost be an impediment to doing what is right?

May's Supreme Court ruling has gravely undermined the legitimacy of provincial and federal laws denying same-sex couples the property, pension, adoption and other rights that heterosexual couples have. Can - or should - other couples now have long to wait?

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## FEATURE STORY

July 12, 1999

**GAY RIGHTS ACTIVISTS AROUND THE WORLD ARE CHEERING A  
CRITICAL LEGAL VICTORY.**

# Same-Sex Spouses in Canada

by E.J. GRAFF

See below for background and related information.

 [E-mail this story to a friend.](#)

On May 20, leaving its southern neighbor in the dust, Canada took a breathtaking leap forward in lesbian and gay rights. In what one advocate calls a "monumental" decision, Canada's Supreme Court declared 8 to 1 that for the purposes of family law, same-sex partners must be considered "spouses."

That doesn't mean Canadian lesbian and gay couples can now marry. Since 1978 Canada's provincial and federal family laws have recognized two categories for different-sex couples: full marriage, for which you register and exchange vows, and "common-law marriage," imposed on pairs who live together "conjugal" for several years. The decision, which confers common-law status on cohabiting same-sex couples, is the culmination of Canadian activists' decadelong strategy of appealing to Canada's young Constitution and Equality Charter--which guarantees the right to "human dignity"--to win, one after another, "common law" responsibility and benefits for same-sex pairs.

*M v. H* started out as one of those cases: After M moved out of their ten-year relationship, H changed the locks on their properties, took M's name off their joint business and warned their accountant and clients not to speak to M. Instead of the six months it would have taken to clear things up had H and M been male and female, it took six years in front of thirty judges for M to get the right to a family law judge's oversight. But now Canada's Supreme Court has ruled definitively that same-sex partners must be included under the term "spouse"--so for better or worse, Canadian lesbian and gay couples now have to worry about such things as alimony, child support, shared taxes and separation oversight, while gaining the rights to shared pensions, wrongful-death benefits, immigration, hospital visitation and much more. The decision's wording was so strong that every Canadian provincial government but Alberta--and the Canadian federal government as well--has agreed to open those second-tier spousal rights and responsibilities to same-sex partners.

How did Canada's gay activists bring this about? In part, by avoiding the veil-trailing,

hymen-breaking, hysteria-inducing M-word. "We argued throughout the case that this had nothing to do with marriage," says Martha McCarthy, M's Toronto-based counsel. That meant the Canadian court could stay away from a word that turns out to be electrically charged, so dense with religious and historical symbolism that linking it with same-sex couples makes otherwise fair-minded people blanch. In fact, while the Canadian federal government agreed to amend its laws to count same-sex partners as common-law "spouses," it also voted to ban same-sex partners from "marriage"--despite a June 1999 *Globe and Mail* survey, which found that 53 percent of Canadians are willing to say "I do" to same-sex marriage.

That's what's happening in most of the West: Courts and legislatures are granting piecemeal or de facto or second-tier recognition--and then inching forward toward marriage. After a few years with a second-tier status, the Netherlands may soon be the world's first nation to offer same-sex couples full marriage--even use of the wedding-cake word. The Scandinavian countries have a special status for same-sex couples called "registered partnership," which includes almost every marriage responsibility and benefit, and which most citizens call "gay marriage." South Africa's ruling African National Congress formally endorses same-sex marriage, and its courts are steadily recognizing one right and responsibility after another. Hungary's common-law marriage includes same-sex couples. In early June, the legislature in New South Wales, Australia's most populous state, amended its De Facto Relationships Act to cover same-sex as well as different-sex couples. Finland, the Czech Republic, France, Spain and Germany are all seriously debating something similar. Other Western countries with specific same-sex partnership recognitions include England, Israel, Brazil, New Zealand and two Spanish provinces.

And the United States? Our country has passed laws--both at the federal level and in twenty-nine states--forbidding recognition of same-sex marriage, laws that are being used to threaten even the most toothless domestic-partnership statutes.

So should American lesbian and gay activists be adopting the Canadian strategy--delaying the push for full marriage, instead picking off individual rights and benefits in one suit after another? It might not be possible here; the United States is a much rougher playing field. We have no constitutional protection for "human dignity." Our states have spent this century dismantling--instead of creating--common-law marriage forms, so we have no recent legal history of recognizing families that don't start with wedding bells. And, perhaps most important, ours is the only Western country with a powerful obstructionist, fundamentalist bloc. The United Church of Canada (the country's largest Protestant denomination, which includes the Methodists, Presbyterians and Congregationalists) actually testified in favor of opening spousal recognition to same-sex partners. The Roman Catholic Archbishop of Toronto, Aloysius Cardinal Ambrozic, issued a statement saying that *M v. H* "cannot be good"--but added that Canada should offer "basic legal protections to individuals involved in non-traditional domestic relationships." Imagine that from John Cardinal O'Connor.

Besides, according to Evan Wolfson, director of the New York City-based Lambda Legal Defense and Education Fund's Marriage Project and co-counsel in the Hawaii marriage case *Baehr v. Anderson*, the piecemeal strategy has already been tried here. And every time lesbian and gay lawyers tried to win specific recognitions or benefits, judges and right-wing organizations all but spat, as if extending pensions to same-sex partners would sully the sacred territory of marriage. Says Wolfson, "We have not had the luxury of defining the

battle." Only when Hawaii's Supreme Court made its surprise 1993 decision in the Hawaii case, then known as *Baehr v. Lewin*--and forced the country to debate the prospect of same-sex marriage--did the American public finally start telling pollsters it would be only fair to offer lesbian and gay couples such things as inheritance, pensions, hospitalization and so on.

In *M v. H*, Canada's Supreme Court wrote, "Certainly same-sex couples will often form long, lasting, loving, and intimate relationships." Says McCarthy, "The decision is carefully reasoned. It contains a lot of strong language. There are quite a few very moving passages. Other courts around the world are going to have to take notice."

[E-mail this story](#) to a friend.

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*E.J. Graff, an affiliated scholar at Radcliffe's Schlesinger Library, has just published her book What Is Marriage For? The Strange Social History of Our Most Intimate Institution (Beacon).*

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## Background and Related Information

### "Matthew's Passion"

By Tony Kushner in *The Nation*, November 9, 1998.

### National Gay and Lesbian Task Force

NGLTF is the front-line activist organization in the national gay and lesbian movement. It serves as the national resource center for grassroots lesbian, gay, bisexual and transgender organizations that are facing a variety of battles at the state and local level. It helps local groups combat anti-gay violence and battle the Radical Right and its anti-gay legislative and ballot initiatives.

<http://www.nglft.org>

### Gay and Lesbian Alliance Against Defamation

GLAAD's mission is to promote fair and accurate representation of gay people in the media. The site provides information about issues related to same-sex marriages and anti-gay violence, among many other things.

<http://www.glaad.org>

### Gay and Lesbian Activists Alliance

GLAA, an all-volunteer, nonpartisan, nonprofit political organization, was founded in 1971 to advance the equal rights of gay men and lesbians in Washington, DC. It is the nation's oldest continuously active gay and lesbian civil rights organization.

<http://www.glaa.org/index.html>

### ACLU on Religious Liberty

The ACLU has an in-depth section on gay and lesbian rights, including information on the Religious Liberty Protection Act (described in [Doug Ireland's editorial](#)).

<http://www.aclu.org/issues/gay/hmgl.html>

**Subject: [Fwd: [QUEERLAW-CAN] Response to BC Law Institute Recommendations]**

**Date: Mon, 22 Mar 1999 06:48:30 -0600**

**From: "William B. Kelley" <wbkelley@ibm.net>**

**To: coleman@singlesrights.com**

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**Subject: [QUEERLAW-CAN] Response to BC Law Institute Recommendations**

**Resent-Date: Sun, 21 Mar 1999 13:47:34 -0800 (PST)**

**Resent-From: queerlaw-can@egale.ca**

**Date: Sun, 21 Mar 1999 13:41:36**

**From: Lawrence Aronovitch <ila@islandnet.com>**

**Reply-To: queerlaw-can@egale.ca**

**To: egale-l@egale.ca, queerlaw-can@egale.ca**

FOR IMMEDIATE RELEASE

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"Finally: a template for equality of families", said Lawrence Aronovitch of Rainbow B.C., commenting on the release of the study by the B.C. Law Institute of laws which affect family rights. Rainbow BC is a provincial coalition of groups supporting equality for lesbians, gay men, bisexual and transgendered people in B.C.

The comprehensive report released Friday recommends that provisions in the laws governing family be made consistent and that they extend to same sex relationships and also to relationships between people who, though not sexual partners, live together as family. The report also recommends that a Domestic Partner Registration Act be enacted, which would permit the registration of same-sex and non-sexual family relationships. Upon registration the partners in those relationships would have the same rights and responsibilities as married people. The province does not have the authority to extend the right to marry, which is a federal responsibility, but can govern the effect of registration of relationships.

Said Gail Owen, of the Canadian Task Force for Transgender Law Reform, "we are very pleased that transgendered people will be able to take advantage of this proposed legislation along with lesbian and gay families, and chosen families, and chosen partnerships which are not sexual in nature."

Asked whether he thought that the proposed legislation would be politically saleable, Craig Maynard of the December 9 Coalition said that he was confident that it would be. "In B.C. this government has already taken the first giant steps toward legislated equality for lesbians and gay men within their families, with changes to adoption laws and the Family Relations Act. So the most controversial work has already been done. "Domestic partnership" was the term favoured by those few members of the legislature who voted against the changes to the Family Relations Act, and seems to be politically acceptable even in Alberta, which is perhaps the most homophobic jurisdiction in the country."

Added barbara findlay of the December 9 Coalition, "We are especially

pleased that the BC Law Institute has not restricted itself to relationships of people who are sexually involved. Our coalition has always called for equality among all forms of chosen family, including those of lesbians, gay men, bisexual and transgendered people. And these recommendations go past form to the substance of equality for all families."

For further information:

Lawrence Aronovitch 250 475-0811  
Craig Maynard 604 831-5664  
Gail Owen 250 213-5263  
barbara findlay 604 687-4635

#### BACKGROUND

The B.C. Law Institute

Attorney General's Request

The Attorney General asked the BC Law Institute to review the statute law of British Columbia and make recommendations for legislative changes necessary to provide legal recognition to the variety of family relationships in the province, and to address the rights and obligations that should attach to those relationships.

The request from the attorney General followed amendments made by the legislature to the Family Relations Act in 1997, which recognized certain marriage-like relationships.

#### Activist Groups

Rainbow B.C. is a provincial coalition of people from activist groups working on issues affecting lesbians, gay men, bisexual and transgender people. People from more than twenty groups are represented directly or through the December 9 Coalition, a Vancouver-based coalition of people from lesbian/gay/bisexual/transgender action groups.

The Canadian Task Force for Transgender Law Reform is the only national transgender action group in the country.

#### Overview

The report proposes:

- the enactment of a Family Status Recognition Act, which would define relationships and set out rules of general application respecting status, rights and obligations, as well as for determining when such relationships arise and when they end

- the enactment of a Domestic Partner Act, which would allow two adult register a joint declaration that they are domestic partners and, as such, have status, rights and obligations like those that accrue to people who are married, and

- numerous ancillary amendments throughout the statutes to ensure that legislation applies fairly to traditional and non-traditional family relationships

*The Euro-Letter is published on behalf of ILGA - The International Lesbian and Gay Association - by the Danish National Association for Gays and Lesbians in cooperation with Gay and Lesbian International Lobby.*

## **SPANISH SOCIALIST PARTY HAS SUBMITTED A PARTNERSHIP LAW TO SPANISH PARLIAMENT**

*By Cesar Cleston*

On The Socialist Party (PSOE) has submitted to the Spanish Parliament a draft for a partnership law which would grant pension, inheritance, fiscal and other similar benefits to heterosexual as well as to gay lesbian partnerships. Nevertheless, the right of adoption for unmarried couples has been not included. On the other hand, at virtually at the same time, the Party in Office, the conservative MP Bernarda Barrios, member of the christian-based Popular Party (PP) has made public that the Government and her party were ready to pass such a law, though, like the socialist draft, his party stood against the right of adoption.

Since the beginning of this legislature, at the beginning of 1996, when the socialist lost office after thirteen years, and when the conservatives gained power, the Fundacion Triangulo has already held talks with virtually all the parliament groups in order to have a partnership law passed.

Hereinafter, the summary of such talks Izquierda Unida (mainly communists and socialists) ERC (catalan leftist independentists, Bloque Nacionalista Galego (galician leftists independentists) PNV (christian-democrat basque nationalists) and PSOE - socialists formerly in office, were completely in favour.

CiU (liberal and christian democrat liberal catalans) and Coalicion Canaria (Canary Islands Regionalists) said they were in favor of having such a bill passed but, since they are a part of the coalition in Parliament with the PP, the party in office, said they would not vote such a bill unconditionally if the government were to submit their own draft. They nevertheless acknowledged to representatives of the Fundacion they would be voting in favor of the socialist bill should the government not submit a bill of their own.

It should be stressed that the current government is in minority and depends on the votes of CiU and Coalicion Canaria; such votes added to those of the other parties in the opposition would be enough to have the bill passed without the party in office voting in favor.

So far, the PP -the party in office- has held talks with the Fundacion Triangulo at different levels: The General Secretary for Social Affairs, Ms Amalia Gomez and the MP Maria J. Camilleri. They both stated the Partnership Bill was no priority to their government. However, on oct. 28, when it was clear the socialists were to submit their own bill, Ms Barrios, a PP MP said the media the Government was in favor of providing some legal solution for partnerships, whether gay or straight. Ms Barrios also said the Fundacion Triangulo the Partnership Bill would be passed within this legislature, before year 2000.

Some Spanish lesbigay groups have jeopardized the partnership bill when stating they would be dismissing any project not including adoption; this even led the socialist to consider not presenting their bill in order not to attract criticism from gay groups. Such is not the position of the Fundacion Triangulo. >From our point of view, passing such a Law -also without adoptions- would be such a great step forward; The Fundacion will increase their very best efforts to have such a law passed, also trying the party in office not to vote against.

The great risk now is that parliamentary procedures take so long we might be racing against time and loosing, as it already happened when the Socialist Party was in office.

# EURO-LETTER

No. 51

July 1997

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by The Danish National Association for Gays and Lesbians in co-operation with Gay and Lesbian International Lobby.

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An Italian translation of EuroLetters from no 47 can be found at <http://www.geocities.com/~pride/el.htm>

You can find a link to Euro-Letters at <http://www.inet.uni-c.dk/~steff>

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The Action Plan and other documents relating to ILGA-Europe can be found at ILGA-Europe's homepage

<http://inet.uni-c.dk/~steff/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at <http://www.inet.uni-c.dk/~steff/survey.htm>

#### Article 12 (Estate of Property)

The estate for property applied to unmarried couples living together is separate estate. However, other options are possible if the members of the union declare their intention in a contract.

#### Article 13 (Regulation)

Government will approve, 90 days after the publication of the present diploma, the necessary legislation to provide its execution.

#### Article 14 (Coming in force)

The present diploma comes in force with the approval of the budget for the economic year of 1998.

### **THE SPANISH PARLIAMENT DECIDES A PARTNERSHIP BILL WILL HAVE TO BE PASSED WITHIN THIS LEGISLATURE**

*By Cesar Cleston*

As you may recall from preceding message (sent on march 20th), on march the 18th, after two tie votes, the Lower House of Parliament dismissed taking into account two bills submitted by the Spanish Socialist Party (PSOE) and Izquierda Unida (IU) - United Left, a coalition integrated by the communist party plus many left-wing and green groups. The aim of such bills was certainly important: providing partnerships (gay or straight) with some sort of legal recognition stressing meanwhile the fact that non-married unions of either sex are also families.

The actual result was: 161 for, 163 against. The votes against came from the party in office, Partido Popular, as well as from CiU, a Catalonia based coalition in office at the regional government. All other parties voted in favour, including the Basque Nationalist Party - PNV -, who has consistently taken sides in favour of having such law passed.

As we said in such message, not all the battle was lost. Actually, the very day after such vote (which also served to put under the spotlight the fact that the ruling Popular Party - PP - was in a too narrow minority), that is, on march 19th, the PSOE and IU submitted AGAIN the same bills. The party which actually defeated the tie vote, Coalición Canaria, who has two seats in Parliament, declared bitterly that not only weren't they against the fact of having partnerships recognised but actually they were going to submit their own partnership bill to Parliament, which they actually did a few days later.

May the 27th the three bills actually submitted were voted again. On procedural reasons (for each party had submitted its own text), the vote (whether the bills should be taken into consideration or dismissed

took place on three phases: one per bill. Not unexpectedly, the two bills submitted by the PSOE and IU were defeated by a reasonable margin, for PP, CiU and PNV voted against. The third bill to be voted was the one submitted by Coalición Canaria (CC for short)... and incredible as it may sound, this bill (whose actual resemblance with the socialist text was almost 100 %) was passed. The only parties to vote against were the christian-based PP, now in office, and the PNV. The actual vote was 165 in favour and 159 against

Votes in favour came from virtually all the opposition parties, mainly PSOE and IU, plus CC (quite remarkable for they usually take sides with the Government).

Another vote in favour came from one MP of the party in office, Ms Celia Villalobos, the major of Malaga. This is most remarkable for one of the main features of Spain's Parliamentary system is the party discipline at parliament votings.

The votes against came from the Party in office, PP and the PNV, one of its usual allies. The most remarkable thing is that the PNV had voted in favour on march 18th! The explanation is that just last week, the two parties signed a substantial agreement on finances for the Basque Country which improved largely their financial resources.

What made the most remarkable difference was the vote of the CiU Catalan nationalists. This is a coalition integrated by two parties (Convergència and Unió) who has been ruling as such coalition in Catalonia since 1979 and who has been supporting the PP minority government since 1996. For the first time we can recall, the coalition splitted. The Unió MP's (more conservative) voted against, while -and that MADE the difference- the more progressive minded MP's of Convergència (9 MP's) voted in favour.

Only two abstentions were recorded. Most of the MP's attended the vote

#### *Our assessment:*

It must be said that this has actually been a major setback for the PP administration at all levels. Either from the point of view of the gay movement or from a general point of view this is a historical moment. The party in office has lost its first vote in Parliament after 1 1/2 years of rule.

The Fundación Triángulo views this as a major development in the fight for civil rights and equality of citizens and this fact confirms our strategy: applying for marriage downright was a wrong

strategy. This step-by-step procedure may seem slower but is certainly fruitful.

The Fundación has always been and will always be against segregated laws for homosexuals one way and heterosexuals another way. Also, our approach of non-married couples of either sex was definitely right. This is the way the Spanish society views the problem and this is the way the issue must be faced. With this approach, we also managed to gain the support of the civil rights movement for the focus was not considering it as a lesbigay issue but as a civil rights issue.

The bill to be passed still has got to undergo all the parliamentary proceedings: in other word, still a year will have to go (at least) before the bill is no longer a bill and becomes a law. Majorities are in any case too narrow and there is still a lot of work to be done. We are sure the party in office will commit its very best resources (and thereby some of the nation's most likely) to have a law they can better live down, i. e., not recognising homosexuals and/or heterosexuals as families. But the fact is that the Parliament has now an explicit obligation to produce such a law before the end of the legislature. We will also commit our very best efforts not to allow them to do so. And we hope to rely on your co-operation!

### **POLISH CONSTITUTION WITHOUT ANTI-DISCRIMINATION FOR G/L**

*By Slawek Starosta*

The people of Poland has approved by majority of 56,8% the new Constitution.

It is not the best Constitution for lesbians & gays you can imagine.

The Art. 18 says: "The marriage as a relationship between woman and man, the family, motherhood and parenthood are under protection and care of Republic of Poland." That does not mean it forbids registered partnership between the people of the same sex, but certainly defines marriage as a heterosexual one.

Then art. 32 part 2 reads:

"Nobody can be discriminated based on any ground in political, social or economical life". In the draft of the Constitution the sexual orientation was mentioned as one of the grounds. Now all the grounds were removed.

On the other hands the new Constitution guarantees all the democratic rights and freedoms the people and

organisations enjoy in democratic societies. And it is certainly better then the old, communist one.

### **NEW PENAL CODE IN POLAND**

*By Slawek Starosta*

On the 6th of May Polish Parliament approved the new penal code which legalise pornography consenting, non-violent pornography (only children, animal & violent pornography will be prosecuted). We would like to thank you for your letters, faxes & e-mails to the Speaker of the Parliament.

We definitely needed this new Code since I learned a week ago that an investigation is in process in the city of Pulawy (south-eastern Poland) against another gay magazine - FILO. FILO is a gay & lesbian lifestyle & news magazine and never showed anything more than just male nude (without erection). We hope that under the new code both: case against NOWY MEN and investigation against FILO will be dropped.

In spite of this victory in Parliament there is still a proposal to create a black list with publications contenting pornographic materials, encouraging to prostitution, violence, war, nazism and anarchism. The special commission should decide which publications contain the forbidden matters. These publications should be sold only at special closed sections in certain bookshops where minors would have no access.

Fortunately this bill is contrary to

- a/ the new Constitution
- b/ the new Penal Code
- c/ the Press Code.

So I personally think it does have no chances to become a law.

### **GAYS IN THE MILITARY:**

### **EUROPEAN COURT DECIDES THAT BRITISH GOVERNMENT HAVE A CASE TO ANSWER**

*By Mark Watson*

Labour government must decide whether or not to defend the blanket ban on lesbians and gay men in the british armed forces

The applicants in the armed forces cases being supported by Stonewall and Rank Outsider have now won the first round in their application to the European Court of Human Rights.

Jeanette Smith, a RAF nurse, John Beckett, a naval rating, Duncan Lustig-Prean, a former Lt. Commander in the Royal Navy and Graeme Grady, a



Queer News You Can Use

## Spain Will Enact DP

NewsPlanet Staff

Wednesday, May 28, 1997 / 09:56 AM

**SUMMARY:** *The vote in the lower house was a tight squeeze, but now the Spanish Parliament will have to pass a domestic partnership bill by the end of June.*

The Madrid-based [Triangle Foundation](#) (Fundacion Triangulo por la Igualdad Social de Gais y Lesbianas) reports that the lower house of the Spanish Parliament, the Congress of Deputies (Congreso de los Diputados), on May 26 narrowly approved a measure establishing legal registered domestic partnerships. The bill introduced by the Coalicion Canaria party would recognize both heterosexual and same-gender relationships for a range of legal and economic purposes. Fundacion Triangulo will be supplying further information, but says the bill's approval means that a partnership bill will have to be passed before the end of the legislative session. The parliament will begin summer break on June 30.

In mid-March, initial consideration of [domestic partnership proposals](#) introduced by the PSOE (Spanish Socialist Party) and the IU (Izquierda Unida party) resulted in two unprecedented tie votes in the Congress of Deputies when the Canary Islands deputies largely abandoned the opposition mounted by the ruling PP (Partido Popular). Although the third vote shelved the bills after two absent deputies were rounded up, the PSOE and IU immediately reintroduced them and the PP agreed to establish a committee to study partnerships which would report by June 30. The Canary Islanders had said then that they would not only support partnership legislation, but would introduce their own proposal if action was not taken in a timely fashion.

The partnership issue has come to top the political wish list of Spanish gays and lesbians, including 10,000 who made a February demonstration the nation's largest in about 20 years.

## NEWSPLANET ARCHIVE

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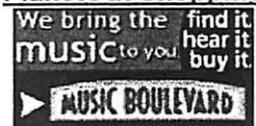
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# EURO-LETTER

No. 61

July 1998

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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A French summary is available at [www.france.qrd.org](http://www.france.qrd.org)

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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage

<http://inet.uni2.dk/~steff/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at

<http://inet.uni2.dk/~steff/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at

<http://inet.uni2.dk/~steff/partner.htm>

Consolidated versions of the basic treaties of the European Union including amendments from the Amsterdam Treaty can be found at this web-site: <http://ue.eu.int/Amsterdam/en/traiteco/en1.htm>

## CATALONIA HAS GRANTED DOMESTIC PARTNERSHIP RIGHTS

*By Cesar Leston*

On June 30, the Parlament de Catalunya passed the first partnership bill in all the Southern European Region. This is the first text in Spain and in all the Mediterranean area granting rights to non-married couples, gay or straight.

The text allows couples living maritally but non-married to gain couple status in the eye of the Law, within the matters Catalan law is competent. Thus, such law provides no measures regarding Social Security, widowhood pensions or labour legislation (excepted the staff working for the regional government).

There are indeed differences in terms of the rights granted to gay or straight couples. In some cases, to the advantage of heterosexual couples, as in adoption, a right vetoed for same-sex ones. Nevertheless, same-sex couples gain more advantages, such in testamentary / will issues, for the partner of the deceased member of the same-sex couple is automatically entitled to 1/4 of the estate, when no will has been made. According to the legislative text, such difference is based on the fact that straight couples can always apply for matrimony, a possibility beyond reach for same-sex couples.

The changes this law entails to lesbian / gay couples are dramatic. Hereunder come a few examples:

For the first time ever, our legislation considers what it calls a "homosexual stable union" defined as "a permanent basis couple integrated by same-sex partner living as spouses" and who state their willingness to be covered by this law.

For the first time ever, in case one of the members of the couple is declared legally under age by a court, his/her partner will be the first person qualifying to stand as tutor of the person he/she has shared his/her life with.

For the first time ever, in case one of the partners of the couple dies, the other is automatically deemed as the owner of the assets of the common home (jewels or artistic / historical value items excluded); this leaves behind so very apinful situation leading to the family of the deceased partner pillaging his/her home, virtually robbing it from the other member of the union.

For the first time ever, the member of a same-sex union in an unequal economic situation after the

couple has broken is entitled to an allowance payed by the other member of the couple on a regular basis, for a certain time, in order to allow him/her to rebuild his/her life.

The Catalanian Partnership bill has been agreed by all the groups in the Catalanian parliament but the Popular Party (PP), in office at the federal government.

The Fundacion Triangulo por la Igualdad Social de Gais y Lesbianas has been working for many years for DP rights; during this time we have had a good deal of understanding for the positions of CiU (in office in Barcelona) and we were the only l/g/b/t group to support the bill for, far from perfect, it sure means a big step forward.

### *Our assessment*

We must say we are very happy to see lesbian and gay family units legally recognized as couples; we are also happy to see that the discrimination of non-married straight couples is somehow diminished.

We must bear in mind though that the Catalan law, which we support, is not a perfect one. To our opinion, homosexual and heterosexual couples should be regulated under the provisions of the same law, allowing adoption for same-sex couples.

This Catalan law should trigger similar measures in the rest of Spain and the Mediterranean region. The almost-unanimous vote at the Catalan legislative assembly shows that the Popular Party (PP) and its more ultra-conservative wings, are alone. When the actual decisions are made by the more church-linked sectors of the party, there is no point in trying to provide a socially liberal image for the party. The statements made by the ruling party in Catalonia, crucial for all alliances at a federal parliament levels, are very encouraging on the prospects for such a law (entering much more crucial issues such as pensions or adoptions which depend on the federal law) to be passed. The parties who voted for this law in Catalonia have enough seats at the federal parliament to have this DP bill passed.

The PP has lost positions in Catalonia, while the ruling party in Aragon, the PAR - Partido Aragones Regionalista has left the PP (with whom they rule in coalition) and supports a DP rights bill; in the Spanish Fed. Parliament, the DP Bill can only be stopped with legal tricks; if it were voted, they would lost again. All partnerships, either same-sex or not, will bear in mind that all parties can agree and vote to get our rights granted but the PP.

# EURO-LETTER

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April 1999

The Euro-Letter is published on behalf of ILGA-Europe - The European Region of the International Lesbian and Gay Association by Gay and Lesbian International Lobby in co-operation with The Danish National Association for Gays and Lesbians.

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<http://www.steff.suite.dk/partner.htm>

## **SWEDEN APPOINTS GAY OMBUDSMAN**

*By RFSL*

The Swedish Government in an extraordinary meeting today (26-03-1999) appointed Hans Ytterberg Ombudsman against Discrimination on the Ground of Sexual Orientation (Swedish abbreviation HomO). By that Hans Ytterberg becomes the first HomO in the world.

Hans Ytterberg is a lawyer and has worked in Swedish courts, the Swedish parliament, and currently holds a post in the Ministry of Justice. Mr. Ytterberg was for several years president of the Swedish Federation for Lesbian and Gay Rights (Swedish abbreviation RFSL).

The new authority takes up its duties on 1 May 1999 when the law against discrimination in the labour market on the ground of sexual orientation enters into force. HomO will supervise the new law and bring alleged cases to court. The Ombudsman will however not be limited to fight discrimination in the labour market. Rather it might also deal with other important fields of life such as education, tourism etc. 'Sexual orientation' is interpreted as homosexuality, bisexuality and heterosexuality.

Deputy Minister of Industry Ms Mona Sahlin  
Comments:

- We know there exist discrimination on the basis of sexual orientation. If Sweden is to grow as a nation we have to recognise the rights of everyone on the labour market and in the rest of society. The Government's decision to appoint an Ombudsman now is an indication that homosexuals and bisexuals are of the same worth as heterosexuals and that society does not accept people being discriminated against because of their sexual orientation.

## **SWEDEN MAY ALLOW FOREIGN GAY COUPLES TO REGISTER**

*By RFSL*

Swedish Ministry of Justice today (19-03-1999) announced a proposal on improvement of the Registered Partnership Act. Non-Swedish same-sex couples are suggested to have the right to register their partnership. If parliament approves the proposed law reform the new Registered Partnership Act can enter into force on 1 March 2000.

To register a partnership today one of the parties have to be a Swedish citizen AND domiciled in Sweden. Non-Swedish same-sex couples who have lived in Sweden for a long time and perhaps have the

intention to stay there for the rest of their lives can therefore not become registered partners. Not even if they are citizens of a state with a law on registered partnership.

The Ministry of Justice now proposes that persons who have lived in Sweden for at least two years should have the possibility to register their partnership in Sweden.

The Ministry of Justice also proposes that citizens from countries with legislation similar to the Swedish Registered Partnership Act should have the same rights as Swedish citizens to register their partnership in Sweden. This concerns Denmark, Iceland, the Netherlands and Norway. This would mean that two Danes can register their partnership in Sweden without the requirement of domicile for two years.

## **SWEDISH GOVERNMENT BACKS EU COURT CASE**

*By RFSL*

The Swedish Government decided in its weekly meeting on 25 March to appeal against the Court of First Instance ruling in the Sven Englund case.

The Swedish Government is of the opinion that Community law does not stipulate the notion of marriage. That notion is on the contrary defined in the national legislation.

It is now for the Court to finally decide the matter.

## **DOMESTIC PARTNERSHIP BILL PASSED IN ARAGON**

*by Cesar Leston, Fundacion Triangulo*

The Regional Parliament of Aragon passed on March the 12th their domestic partnership bill.

This is the second such law in Spain after the one passed by Catalonia in June last year. Spain is divided in 17 different regions, 2 of which only have very specific provisions on civil law and who are thus able to implement such law. Although some attempts have been made in other regions, they are unlikely to reach a good end as in the case of Aragon and Catalonia for they lack the legal competence to do so.

Still, the rights / duties regulated by such laws are rather limited. Catalan or Aragonese civil law regulates basically the mutual obligations between private persons and not between such individuals / partnerships and the governments. In other words: for

instance: while the law foresees the possibility of a "divorce pension" in case the partnership splits, it does not (it can not actually) provide regulation for "widowhood" pensions for such is up to the central government to provide legislation for. Basically, rights granted by such law are the same for straight and for same-sex couples, but the right of adoption, same-sex couples not being eligible for adopting.

Politically, the same scenario which took place in Catalonia has been reproduced in Aragon but with even more dramatic changes: in Catalonia the regional-scope party (CiU) holds all the position in government and is usually supported by the ruling party at federal level, Popular Party (PP), christian-democrat. the bill was supported by all parties in chamber and the abstention of the PP.

In Aragon, the bill was introduced by the socialist party. regional left-wing nationalists (CHA) and communists wanted it to include adoption rights but eventually the idea was dropped in order to attain a support the wider the better to the bill.

The government of Aragon is a coalition between PP and PAR (a regional-scope christian-democrat party) who seat together in Parliament. When the voting came, the government coalition splitted: the PP voted against each of the articles of the law, while everyone else in chamber (left-wing regionalists, socialists and communists MP's) voted in favor of the bill. A funny thing is that the very president of the regional party in office, Mr Gomez de las Rocas, failed to attend the vote for he did not want to vote in favor; nevertheless, the MP's of his own party, who had been given freedom to vote what they wanted, voted all in favor.

Once again, after Catalonia, the pure truth is that all parties, including conservative-minded ones, vote in favor of domestic partnership bills. The party in office at federal level, PP, has only managed to stop the advances of such a law at a federal level by all kind of not-too-moral tricks failing thus to serve the demands of society and that includes the demands of many of their own voters. With the current allocation of seats at the federal parliament, should such a law be voted today, they would loose.

Please find hereinafter the full text of the domestic partnership bill, in English

### *UNMARRIED COUPLES LAW IN ARAGON*

#### Preamble to the Unmarried Couples Law

The Spanish society in general and the Aragon society in particular has been demanding normative

regulation of the so called unmarried couples for a long time.

Since the first and only Congress about unmarried couples took place in 1982, with auspice from the Europe Council, many European Union countries have been adopting their respective legislation in one way or another to this phenomenon, tending to equal, totally or partially, these couples to married couples.

In Spain, although there is some shy normative regulation in that respect, like the new Urban Leasing Law, in the last years it is the justice tribunals and especially the Constitutional Tribunal the ones who have been applying conjectural or emergency solutions to the specific cases that arrive; solutions that do not fully satisfy anyone.

Because it does not seem like it is Justice who must substitute the legislator in this aspect, since it is the legislator who has been constitutionally attributed the normative faculty and who must solve, through the viable legislative treatment, the questions these types of situations bring up.

Also, next to the stable heterosexual couple, there is another similar phenomenon, although of a very different nature and consequences, which is the stable marital homosexual couple living together, now ceasing to be something strange and marginal. The individual freedom principle that the Constitution fundaments, and which has traditionally constituted the essence and base of Aragon civil Right, forces the legislator to accept that every person has a right to establish a relationship according to their own sexuality.

It is in both cases a growing phenomenon, generally accepted and assumed by society, which legislative oppression only generates problems with tough solutions, and causes important injustices: in some cases, for the members of the couple; in others, and this is much graver, for the couple's progeny.

Not knowing the phenomenon from the legislative point of view implies worsening these situations of injustice that today only the Justice Tribunals try to solve.

Also, and even when the Spanish legislator tries to regulate the phenomenon from a general point of view, given the singularities of the Aragon civil order, it seems that the Aragon Courts still can't arrange the special treatment that these types of relationships need to have in our Community. That is what in a special way justifies this Law.

## Articles of the Unmarried Couples Law

### Article 1.- Area of application.

The present Law will be applied to non minors who, meeting the requisites and formalities established in it, are part of a stable unmarried couple in which there is a relationship of mutual affectivity.

### Article 2.- Administrative registry.

Every stable unmarried couple must be inscribed in a Registry of the Aragon General Depute for the administrative measures regulated by the present Law to be applied, as well as noted or mentioned in the competent Civil Registry if the state legislation foresaw it.

### Article 3.- Existence of unmarried stable couple.

1.. It is considered a stable unmarried couple when the marital couple has lived together for an uninterrupted period of two years, at least, or there is a petition to constitute it through public writing.

2.. The credit of the existence of a stable unmarried couple and the course of the two reference years, if there wasn't public writing, can be done through any means of proof admitted in law, especially, through the notoriety act or judiciary document that credits cohabitation.

### Article 4.- Capacity requirements.

The following will not be allowed to constitute a stable unmarried couple of those regulated in the present Law:

- a) Those who are linked in matrimony.
- b) The parents in straight line of descendancy or adoption.
- c) The collateral from descendancy or adoption to the second degree.
- d) Those who form a stable couple with another person.

### Article 5.- Cohabitation regime and supplementary application norms.

1.. The cohabitation of the couple and the corresponding rights and obligations can be regulated in its persona aspects and patrimonies through the convene stated in the public writing, guided by the the liberty of pacts principle, as long as they don't intrude in the rights or dignity of any of the receivers, and are not contrary to the imperative norms applicable in Aragon.

2.. The temporal character or condition of a stable unmarried couple cannot be agreed to.

3.. In case of a lack of agreement, the members of the stable couple will contribute to the maintenance of the home and common spending with their recourses, in proportion to their respective incomes and, if they are insufficient, according to their patrimonies, without

harming the capability of keeping their property, administration and enjoying their own belongings. Self-maintenance and that of common or not children that live with them, including the right to food, education, medical/sanitary attention and home will be considered common spending.

4.. Both members of the couple respond with solidarity to third persons to the obligations acquired by the spending to which the previous number refers, if social uses are made adequate; in any other case, only the person acquiring the obligation would respond.

### Article 6.- Causes of extinction.

1.. The stable unmarried couple extinguishes:

- a) When one of the members dies.
- b) Through mutual agreement.
- c) Through unilateral decision.
- d) In case of separation for more than a year.
- e) In case of matrimony of one of its members.

1.. Any member of the stable couple can proceed, unilaterally, to its revocation, notifying the other person.

2.. Both members of the couple are to cancel the public writing if it was issued, whether separately or not.

3.. In case of an end of cohabitation, the parts can't formalize a stable unmarried couple again through public writing until six months have passed since the previous cohabitation public document was canceled.

4.. The extinction of the stable unmarried couple implies the revocation of the powers that any of the members gave in favor of the other.

### Article 7.- Patrimony effects of extinction in life.

1.. In case of extinction of the stable unmarried couple for a cause different to death or declaration of death, and if the cohabitation has caused a situation of patrimonial unfairness between both cohabitants that implies an unjust enrichment, an economic compensation for the affected cohabitant can be required in these cases:

a) When the cohabitant has contributed economically or with his/her work to the acquisition, conservation or improvement of any of the common or private goods of the stable unmarried couple.

b) When the cohabitant, without retribution or with insufficient retribution, has dedicated his/her time to the home, or the common children or the other cohabitant, or has worked for him/her.

1.. At the time of the extinction of the cohabitation for the foreseen causes, any one of the cohabitants can ask for a pension from the other, if it was needed, in the supposed case that the care of the common children didn't allow for the performance of work activities or made them seriously difficult. The pension will extinguish when the care of the children ceases for any reason, or when they become legal aged or emancipate.

1.. The reclamation by any of the members of the couple of the rights regulated in the previous paragraphs must be formulated in the maximum time period of a year counted from the time of extinction of the stable unmarried couple, calculated in respect to the duration of the cohabitation.

**Article 8.- Common progeny.**

1.. In the case of rupture of the cohabitation with a cause different from death or declaration of death, whatever the couple has accorded in terms of the custody of the common progeny and visits, communication and visits regime is what will be done. Either waym the judge can equally moderate what was agreed, when in his/her judgement it is gravely harmful for any of the members or the common progeny.

1.. In case of failure to agree, the judge can agree what he/she feels appropriate in respect to the common progeny, in benefit of the children and with their presence if they have enough judgement or are twelve years of age or older.

**Article 9.- Rights in case of death of one of the cohabitants.**

In case of death of one of the members of the couple, the survivor will have the right, whatever the content of the constitution writing, the testament or the successor pacts, to the furniture, utensils and instruments of work that constitute the habitual home, excluding only jewelry or artistic objects of extraordinary value or those goods of family precedence. Also, the survivor can, no matter what hereditary right he/she was issued, reside freely in the habitual home for the time period of one year.

**Article 10.- Adoption.**

Unmarried heterosexual stable couples can adopt together.

**Article 11.- Representation of the absent.**

In case of judicial declaration of the absence of a member of the couple, and to the effects of his/her representation and administration of patrimony, the other will occupy the same position of the mate, in the terms foreseen in article 8 of the Aragon Compilation of Civil Law.

**Article 12.- Guardianship permission.**

In the supposition that one of the members of the couple was declared judicially incapable, the other will occupy the first place in the order of preference for guardianship.

**Article 13.- Right to food.**

The members of the couple are compelled to share food, with preference to any other people legally compelled.

**Article 14.- Non-existence of relativity.**

The stable unmarried couple does not generate any relative relationship between its members and the relatives of the other.

**Article 15.- United testament.**

The members of the stable unmarried couple can testament as united in conformity conforming to what is exposed in the Aragon succession legislation.

**Article 16.- Pacts of succession.**

The members of the stable unmarried couple can give pacts of succession in the terms foreseen in the Aragon succession legislation.

**Article 17.- Trust.**

Each member of the stable unmarried couple can order the succession of the other through trust according to what is regulated in the Aragon succession legislation.

**Article 18.- Public Rights Aragon Normative.**

The rights and obligations established for the couple in the Public Rights Aragon Normative, without a tributary character, will be of equal application for the members of the stable unmarried couple.

**First additional disposition.- Matrimonial Capitulation.**

The regime of cohabitation and rights and obligations of the stable unmarried couple, agreed in public writing, will acquire the value of matrimonial capitulation, in the case that the members of the couple married, if they had so accorded it expressively in the writing.

**Second additional disposition.- Time for the creation of the administrative Registry.**

In the time period of six months since the publication of this Law, the General Aragon Deputy will regulate the creation and regime of functioning of the administrative Registry of stable unmarried couples.

**Final disposition.- Beginning of the Law application.**

The present Law will be applied six months from its publication in the Aragon Official Bulletin.

**FRENCH SENATE DUMPS PARTNERS BILL**

*By Rex Wockner*

The French Senate March 18 rejected a measure passed by the National Assembly in December that granted unmarried couples - gay and straight, romantic or not - many of the rights and benefits of matrimony.

# EURO-LETTER

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Welcoming the agreement with the government Angela Mason, Director of Stonewall said

"We believe this is an historic step forward. We have always argued that this issue is a question of human rights and we are delighted that the Commission has endorsed this view. A free vote in Parliament will be an opportunity to break with the centuries of discrimination and bigotry and begin the process of accepting gay men and lesbians as equal citizens in society. We would like to pay tribute to Euan Sutherland, Chris Morris and their families and to thank the Home Secretary and his colleagues who have worked for a speedy and just settlement of these claims.

Stephen Grosz of Bindman & Partners, solicitor for Euan Sutherland and Chris Morris said

"The Human Rights Commission has decisively rejected the last Government's attempt to justify discrimination against homosexuals, and we would expect the Court to do the same. We are delighted that the Home Secretary has approached this issues in a constructive and enlightened way with the clear aim of enhancing the protection of gay rights in this country. The object of these applications to Europe will be achieved only when the age of consent has been reduced to 16, and we hope that the government will move quickly to achieve this end."

Over the coming months Stonewall will be organising a campaign to ensure a resounding victory when Parliament votes on the age of consent.

The full text of the Commission's decision can be found through a link from ILGA-Europe's homepage: <http://inet.uni2.dk/~steff/ilgaeur.htm>

## **UK TO RECOGNISE SAME-SEX COUPLES IN THE IMMIGRATION RULES**

*By Mark Watson*

From Monday 13 October same-sex couples in long term, committed relationships will be able to apply for residency in the UK

The Immigration Minister, Mike O'Brien, has today announced that he will introduce a policy to allow same-sex couples in long term, committed relationships to stay in the UK. The policy will come into affect as from Monday 13 October.

Mike O'Brien said:

"The position we inherited for common-law and same-sex couples was unsustainable and may have breached human rights law.. We have therefore decided to introduce a concession outside the Rules in

respect of these couples.. Under this concession a couple must show that they have been living together for four years or more and intend to continue to live together permanently. Once admitted they will have to show that the relationship has subsisted for a further year before being granted settlement.'

Applicants will have to show that:

- they have a relationship akin to marriage with a person (of either sex) who is present and settled in the UK (or is here in a category leading to settlement or has been granted asylum);
- any previous marriage (or similar relationship) by either partner has permanently broken down;
- they are legally unable to marry (other than by reason consanguineous relationships or age);
- they have been living together in a stable relationship which has subsisted for four years or more; and they intend to continue to do so permanently;
- they can maintain and accommodate themselves adequately without recourse to public funds.

Mark Watson, Chair of the Stonewall Immigration Group, said today: 'We are very pleased that the Immigration Minister recognises that the policy of the previous government was unjust and unsustainable. We have had a very difficult struggle for the right to live with and love the partner of our choice. This has been won because a number of courageous couples have been prepared to fight for the right to live with the partner of their choice and demanded that their relationships be treated with equal respect.

However we are disappointed that the criteria are so strict and much tighter than for those who can marry. The previous common-law policy required that couples be together for only two years. Many same-sex couples will still face an uncertain future because the Immigration Rules will prevent them developing a relationship for four years.'

## **PARTNERSHIP IN PORTUGAL?**

*By Goncalo Diniz*

As mentioned in a earlier press release, Portugal is moving towards recognition of gay and lesbian couples.

Excluding homosexual couples from adoption rights, this bill is a huge step forward. A revolutionary aspect in this bill is the rights of aliens in a partnership for at least two years (article 7). Foreigners may stay in

the country without the usual bureaucracy if they can prove that they are in a relationship with a Portuguese national for at least two years.

In the last month, three parties proposed individual bills on registered partnerships: The Green Party, The Communist Party and the Socialist Party. The first parliamentary discussion took place on June the 25th, having the Green and Communist Bills failed the vote on the 26th. The Socialist Bill, (which is copied in this mail), will probably only be discussed in parliament after the summer break, and voted upon early next year.

In the past few weeks, this bill has been subject of a national debate over gay and lesbian registered partnerships, on television, newspapers, radio etc.

Associacao ILGA-Portugal is confident that the positive atmosphere surrounding the whole issue will provide a passing of the bill in early 1998. There are, however, still a few socialist MPs reluctant on the vote.

The Socialist government holds a majority in Parliament but will need the other left votes (communist and green) to get this bill passed.

As the national Lesbian and Gay organisation, we initiated a postcard campaign in early June directed at the Prime-minister Antonio Guterres regarding this bill. We are also very happy that the lobbying aimed at the Prime Minister before the Amsterdam IGC bore its fruits with the inclusion of Sexual Orientation in the European Union Treaty.

This is the draft text of the Portuguese Socialist Party Partnership Bill:

#### Article 1 (Aim)

This diploma equalises the rights of members of a family living together to married couples, in what concerns civil, fiscal, social and labour matters, maintaining however the specificities of either situation.

#### Article 2 (Application)

1. The present diploma applies to those who, having attained majority or being emancipated, notoriously live in a situation similar to married couples for at least two years.

2. What is stated in the preceding item does not apply to those who still maintain marriage links or those subjected to marriage impediments specified in the Civil Code.

#### Article 3

(Extension of rights in civil matters)

Partners living together receive the same benefits of protection the married couples do, and rights such as:

- a) transmission of lease rights
- b) adoption
- c) nourishment
- d) right of residence

The 85th article of the Urban Lease Regime will be changed as follows:

#### Article 85

(Transmission of lease rights)

1. Lease contract will not end by death of the first tenant. Not even with the death of the person in the following situation: consort not judicially separated or person living in union with the first tenant for at least two years, when the tenant is not married or judicially separated. (...)

#### Article 4

(Adoption)

1. Heterosexual couples living together for a minimum of four years and being at least 25 years old may adopt, according to article 1979 of the Civil Code, if they are not married or judicially separated.

2. Couples living together may also adopt each other's children.

#### Article 5

(Rights related to the end of the union of unmarried couples living together)

1. The members of the union in this situation will be subjected to the same condition of married couples in what concerns nourishment and according to the items stated in the Civil Code.

2. In the situation mentioned above, the court may give lease to each of the members of this union, if required, the family residence if it belongs to the other partner, considering the interests of their children.

#### Article 6

(Rights related to the end of the union due to the death of one of the partners)

1. If one of the members of this union dies, and he is the owner of the family residence, the other member has the right of keeping it if there is not anything against this in a Will.

2. The right of residence ends when the surviving member remarries or begins a new relationship.

Article 7

(Legislation related to foreigners and the right of asylum)

In what concerns legislation about entry, exit or expulsion of foreigners from the national territory and the rights to asylum, members of a union have the same rights of consorts when notoriously living together for at least two years.

Article 8

(The same fiscal rights)

Registered union of unmarried couples living together, as stated in article 1 of this document, will benefit, in what concerns taxes, of the same rights established for married couples.

Article 9

(The same social rights)

In social security matters, registered unions of unmarried partners living together will benefit the same way married couples do.

Article 10

(The same rights in working matters)

As for holidays and absences from work, registered unions of unmarried couples living together have the same rights of married couples.

Article 11

(Register)

1. Due to what is expressed in articles 11 through 13 of this diploma, the unions above mentioned have to be registered in a book existing in Regional Social Security Centres of the members of the union's area of residence.

2. The above mentioned register depends on the testimony, under oath, attesting the existence of the union.

3. Members of the union may cancel the register anytime, declaring this intention together or individually.

4. It is not possible a new register without cancelling the previous one.

Article 12

(Estate of Property)

The estate of property applied to unmarried couples living together is separate estate. However, other options are possible if the members of the union declare their intention in a contract.

Article 13

(Regulation)

Government will approve, 90 days after the publication of the present diploma, the necessary legislation to provide its execution.

Article 14

(Coming in force)

The present diploma comes in force with the approval of the budget for the economic year of 1998.

The MPs of the Socialist Party.

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1997 will go down in Portuguese history as the year of the gay and lesbian awakening. During the current year, several major events have irreversibly changed the Portuguese lesbian and gay community and given it the largest visibility ever. During 1996 the first gay and lesbian organisation became official, and started immediately working with the community.

In mid 1996 our organisation started political lobbying in order to equalise the age of consent between homosexual and heterosexual sex and to push for a partnership law that would recognise the rights of homosexual couples.

In January 1997, while the country's first (national) gay and lesbian newspaper celebrated its first birthday, the government approved the new penal code contemplating the same age of consent between homo- and heterosexual sex (16 y.o.). On May 4th 1997, roughly 400 people marched down Lisbon's Liberty Avenue remembering those lost to AIDS in the "First AIDS Candlelight Memorial and March". In early June, after more than a year of lobbying and a national campaign directed at the Prime-Minister, the government party announces a domestic partnership bill to recognise the rights of homosexual couples (excluding adoption), sparking a national debate over the issue. The voting on the bill, for political reasons, was postponed till January 1998. Later, on June the 28th, in Lisbon again, Portugal's first Pride Festival was held successfully attracting an attendance of close to 3000 people. In August, the first AIDS awareness and prevention leaflets targeting the gay and lesbian community in Portugal, were published by our organisation with the financial aid of the Health Ministry.

Currently, from September 13th to September 28th, Europe's largest Gay and Lesbian Film Festival (in terms of the number of films shown - 66 different films), the "Lisbon's First Gay and Lesbian Film Festival", is attracting large crowds to theatres, selling-out almost all the screenings in this 15-day festival. The festival is being staged in three different theatres across the city and has the patronage of the Lisbon Mayor. By the end of the film feast, we predict that approximately 5000 people will have attended the event.



# Finland : Same Sex Partnership Bill draft, 1996

The Bill was handed to the Parliament on the 28th of May and the debate on it took place on the 5th of June. Next step will be taken in the Committee of Law, which has to decide if it is taken into handling.

[*explanatory part*]

## ACT ON THE SAME SEX PARTNERSHIP

According to the decision of the Parliament it is stipulated that

### 1. Prerequisites of a partnership

Two persons of the same sex (parties of the partnership) may have their partnership recognized according to what the law stipulates. Before the act of recognition, it shall be established that there is no legal objection to the recognition, as set forth in the Marriage Act (234/29). What is prescribed on how it is established that there is no legal objection to a marriage, shall apply to partnerships. A person of under 18 years of age must not enter a partnership. The Minister of Justice, however, may grant a person of under 18 years of age the permission to recognize a partnership. Before the decision is made, a chance to be heard shall be provided to the guardian of the person seeking the permission, if the guardian's domicile can be located with a reasonable effort.

### 2. Procedure of recognizing a partnership

The partnership shall be serviced by an authority entitled to service civil marriages in the attendance of relatives or other witnesses. In the procedure, the parties of the partnership shall be simultaneously present. Further regulations on the procedure shall be stipulated in a decree.

### 3. Dissolution of a partnership

A partnership is dissolved when one of its parties dies or is declared legally dead. The parties of a partnership are entitled to have the partnership dissolved after a period of reconsideration according to what is prescribed in the Marriage Act (324/29).

The parties of a partnership have, however, the right to dissolve the partnership without any reconsideration period if they have uninterruptedly lived in separation for the preceding two years. In cases to dissolve a partnership contacted under this Act, only Finnish courts of jurisprudence are competent authorities. Otherwise, what has been stipulated on divorce, shall apply. 4. Legal effects of a partnership

The recognition of a partnership has the same legal effect as contracting marriage. Prescriptions on marriages and spouses shall apply to the recognized partnership if it has not been otherwise stipulated. As regards application of the Act on adoption and prescriptions by virtue of it, parties of a partnership are not regarded as legal spouses.

What is prescribed in the Marriage Act on wedding shall not apply to the recognition of a partnership.

### 5. Coming into force

This Act shall be enacted on this ..... day of .....month 199\_.

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Translation:

Mr Mika Vepsalainen

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France QRD

La France Gaie et Lesbienne

Last modified: Fri Apr 24 21:37:40 MET DST 1998

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# EURO-LETTER

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Documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://www.steff.suite.dk/ilgaeur/>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at

<http://www.steff.suite.dk/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at

<http://www.steff.suite.dk/partner.htm>

## Germany: REGISTERED PARTNERSHIP BILL PUBLISHED

By Gerald Pilz

The ministry of justice in Berlin has published the official bill for the registered partnership. It is a first draft and includes only some aspects. Many GLBT organizations criticized this first draft because it excludes important rights.

### Summary of the registered partnership bill:

The law will be called registered partnership law (Lebenspartnerschaftsgesetz - abbreviation: LPartG).

1. The registered partnership will be declared at the registrar's office (the same procedure as for straight marriages - church weddings as an institution with legal consequences do not exist in Germany, they have only a symbolic meaning). Persons who are already married or are registered are not admitted to the registered partnership. The same applies to minors, close relatives, sisters and brothers, and people with a restricted mental capability, who are not allowed to sign legal contracts.

2. Legal consequences of the registered partnership  
The partner can determine a common name for the registered partnership (for example: if Thomas Maier and Michael Schmid are registered Thomas can choose a name: Thomas Maier, Thomas Schmid, Thomas Maier-Schmid, Thomas Schmid-Maier).

During the partnership and after a divorce the partners are obliged to grant maintenance for the livelihood if the other partner is ill or unable to work.

The registered partners can choose a property status. There are three possibilities: a common property status (in the case of a divorce every partner gets 50 percent), a separate property status (after a divorce everyone keeps his own property and earnings) and an acquired property status (after a divorce only the property and the income acquired during the partnership is shared). For straight marriages the legislator provides the acquired property status as the regular status. For registered partnerships the separate property status is the regular one. If the couple wants to change the regular status and choose another, they need a public notary contract for this change.

If one partner dies, the other will get one fourth of the estate. Normally the widows/widowers of a straight marriage get 50 percent. In registered partnerships it would be necessary to mention this explicitly in the last will.

GLBT organizations think that it does not make sense to use other legal provisions for registered partnerships. It could be to the detriment for the same-sex couples and lead to discrimination. A divorce will be conducted at the same court as for straight marriages. Concerning the tenant's lease for apartments the legal provisions for straight marriages will be applied to the registered partnerships (with one exemption). Registered partners are entitled to deny to testify against each other in a criminal trial.

All other important legal aspects like taxation laws (joint taxation, inheritance taxes), social insurances (health insurance, pensions) and immigration rights for binational couples (residence permits, labour permits) have not been added to the draft. The ministry of justice explained in a short reference that other ministries are responsible for these legal provisions (like the ministry for home affairs, the ministry for labour issues).

Many GLBT organizations are rather disappointed that this draft does not lead to a real equality and that it does not include a comprehensive solution for registered partnerships. You can find the bill for registered partnerships (more than 10 pages in German) at the website of the Lesbian and Gay Association (LSVD): <http://www.lsvd.de> (section Aktuelles - Aktuelle Infos).

## LITHUANIAN PENAL CODE DRAFT INCLUDES SEXUAL ORIENTATION

By *Eduardas Platovas, LGL Vilnius*

Lithuanian Ministry Of Justice published a revised version of the new draft Penal Code. Article 160 "Discrimination on the basis of nationality, race, sex, origin, religion or other group membership" provides for imprisonment of up to 3 years for "acts, which were aimed to prevent population group or its member to participate equally in political, economical, social, cultural or work activity because of their nationality, race, sex, sexual orientation, origin, religion or other group membership". Although the authors omit "sexual orientation" in the article's title it is included in the text for the first time in the legal history of the country.

Article 161 of the draft document "Instigation against national, racial, ethnic, religious or other population group" provides for up to 3 years imprisonment for persons and companies which jeer, disdain or otherwise show bias towards belonging to national, racial, ethnic, religious or other population group. Lithuanian Vice-Minister of Justice Gintaras Svedas told BNS news agency, that notion "other population group" also comprises sexual minorities.

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# Legal Recognition of Same-Sex Relationships: Where to from Here?



Stevie Clayton

Co-convenor, Gay and Lesbian Rights Lobby (NSW)

Click on the image at left for a 2.1 MB QuickTime video clip of Stevie Clayton speaking. You will be prompted to install the necessary QuickTime plugins for Netscape if they are not currently installed on your machine.

## Introduction

1. It may seem like a strange title 'Where to from here?', because really we are starting at ground-zero and have an incredibly long way to go, but at the same time we have progressed enormously in the last five years. In terms of actual legislative reform, only the ACT has made any progress but in terms of societal attitudes, which are a necessary precursor to legislative reform, society is becoming increasingly accepting of gay men & lesbians, more aware that we actually have meaningful relationships, and appalled at the discrimination we experience.
2. The title also suggests several obvious questions which are in fact at the heart of the matter Where are we at now? Where do we want to get to? How do we get there? These are questions which gay men & lesbians throughout the world are grappling with right now and which may well have different answers in different situations.

## Where are we at now in Australia?

3. Generally speaking few pieces of legislation in Australia single out gay men & lesbians for discrimination. In fact there are few which even mention lesbians and the main ones which overtly discriminate against gay men are the Crimes Acts in each State.
4. Parts of the criminal codes dealing with issues like age of consent have been written in such a way as to include lesbians with heterosexuals and only single out gay men for special, and usually harsher treatment.
5. This is not to suggest that gay men & lesbians are not discriminated against in education, employment, provision of goods and services etc because of our sexuality but that such discrimination, whilst being wide-spread and systemic, is generally not legally sanctioned.

6. The areas where we continue to be legally discriminated against as individuals tend to be the same areas where all single people are discriminated against in preference for couples or the few areas of exemption in anti-discrimination acts such as independent schools and religious bodies,
7. These acts, regulations, policies and practices which give preference to couples are the largest and most far reaching area of discrimination we suffer. And that's for two reasons: firstly, they almost invariably only recognise heterosexual 'marriage-like' relationships; and, secondly, they cover things which impact on almost every aspect of our lives and deaths. They do not say lesbians & gay men are not included but they use definitions of husband/wife, de facto spouse, partner, defendant etc which only apply to a heterosexual relationship.

### **What types of legislation are we talking about?**

8. There are many gay men & lesbians, (and solicitors) who really have no idea about the extent of the discrimination experienced by people in same-sex relationships, or about the sheer volume of legislation which makes our relationships invisible. Many of them have never had recourse to the law; or have never had a lover unconscious in hospital; or die of a terminal illness; or had a relationship breakdown that ended in court. It is easy for people in such situations to think that we are better off not having our relationships recognised. After all, who wants the state interfering in their relationship. The problem is that the state already does interfere, its just that some of us have been lucky enough not to have been impacted by it ... yet!
9. There are several publications which go through in detail the different types of legislation and, if you can get hold of them, I would particularly recommend 'Lesbians and the Law' a joint publication of the Women's Legal Resources Centre and the Gay & Lesbian Rights Lobby (GLRL) put out in 1991 but unfortunately still current. 'The Bride Wore Pink 1994' from the GLRL's Lesbian & Gay Legal Rights Service, and the GLRL's more recent papers: 'Legal Recognition of Same-Sex Relationships' and 'Superannuation and Same-Sex Relationships'.
10. Whilst the actual names of the various Acts vary from State to State, the types of legislation occur almost uniformly across the country.

#### **1. Legal Status**

11. The law through the Federal Marriage Act or State-based de facto legislation confers a certain legal status on heterosexual relationships from which various rights & responsibilities flow. Neither of these are available to gay men or lesbians so our relationships are essentially made invisible by the law.
12. The one exception to this is the ACT which passed a Domestic Relationships Act in 1994 which deals with property and financial distribution on the breakdown of a relationship and was the first piece of legislation in Australia to give equal standing to gay & lesbian relationships.
13. Queensland does not have a de facto relationships act but, prior to the last election there was a proposal to hand over responsibility for de facto relationships to the Family Law Court. The now Government is yet to act on this proposal.

14. Likewise, Victoria does not have a 'de facto relationships act' per se but it does recognise heterosexual de facto relationships in a whole range of legislation.
15. The Commonwealth Sex Discrimination Act and State-based anti-discrimination acts protect heterosexuals against discrimination on the basis of marital status but at law, our marital status is always 'single' so we are not afforded this protection.
16. A case before the NSW Equal Opportunity Commission in 1965 in which two gay male couples complained because QANTAS would not put them on the married couples roster, established the precedent that, when discriminated against because of our relationships, we could not complain under either the homosexual or marital status provisions.
17. A 1995 case against NIB Health Fund in NSW was successful in forcing the Fund to accept a gay male couple and their child for family membership but the case was argued on the definition of 'dependant' not 'spouse' and so has only really provided a 'backdoor' avenue to recognition of our relationships. It is interesting to note, however, that this new definition of dependency as being more than just financial and including co-dependency, is being picked-up on in other arenas.

## 2. Death of a Partner

18. A heterosexual partner of someone who dies automatically has certain rights. Lesbian or gay male partners do not:

- a. Disposal of the body

Decisions about funeral arrangements, organ donation, postmortems even what happens to the ashes after a cremation are made by the executor of the estate or the 'senior available next of kin' which excludes same-sex partners.

- b. Inquests

Relatives have a right to request that an inquest be held with a jury. 'Relative' does not include a gay or lesbian partner.

- c. The estate

There are acts in each State which provide for family members to receive shares of the estate including a significant proportion for the surviving spouse. These provisions do not include same-sex partners.

Again, the one exception is the ACT which passed legislation in 1996 giving equal standing to same-sex relationships in the event of one partner dying intestate.

The 'Family Provision Act' does allow same-sex partners to challenge the estate distribution but not as recognised partners and only if they can pass dependency and cohabitation tests that are not imposed on heterosexuals.

- d. Victims Compensation

If a person dies from an act of violence, compensation can be paid to 'close relatives', this does not include a same-sex partner. The same goes for the 'Compensation to Relatives Act' which provides for damages for economic loss if someone died as a result of another's negligence.

### 3. Incapacity of a partner

19. If a heterosexual person becomes unable to handle their own affairs, and they don't have a legal guardian, their partner automatically becomes the 'person responsible'. A gay or lesbian partner has to apply for appointment as their partner's guardian before they can make decisions about things like medical treatment.

### 4. Ending a Relationship

20. Distribution of property and financial matters on the breakdown of a relationship can be resolved under the 'Family Law Act' for married couples or State-based de facto legislation (where it exists), for other heterosexual couples.
21. The Family Law Act also provides for counselling and mediation.
22. Gay or lesbian couples have to go to the expense and added difficulty of pursuing such matters as Civil Claims, where our relationships are treated as legal contracts and without the counselling and mediation provided in the Family Law Court.
23. Heterosexual couples who end a relationship and transfer property do not have to pay stamp duty whilst gay or lesbian couples do.

### 5. Criminal Law

24. In deciding whether or not to grant bail a court has to consider the protection of 'close relatives' this does not include a partner of the same sex.
25. A heterosexual spouse cannot be compelled to give evidence in relation to communications between spouses. And courts are compelled in certain circumstances to give protection to spouses and family. Neither of these provisions apply to same-sex partners.

### 6. Children

#### a. Adoption

Acts covering the adoption of children generally provide for 'stranger' adoption by married couples, and in some special needs cases by heterosexual de facto couples and individuals. These acts do not recognise same-sex relationships.

In NSW there have been cases of lesbians being allowed to adopt but one partner has had to apply as an individual,

Adoption of a partner's child in a heterosexual relationship is covered by the 'Family Law Act' and is almost automatic. It only covers opposite-sex partners.

## b. Guardianship & Custody

In the absence of a court order both biological parents are regarded as guardians and as having joint custody.

Gay men & lesbians can be granted custody of their children and it is now rare to see the Family Law Court discriminating against gay or lesbian parents. But same-sex co-parents have no legal standing ie cannot make decisions about medical treatment, schooling etc unless the court gives them joint custody and that has to be consented to by both biological parents in most cases.

## c. Conception

The law provides that if a child is conceived in a heterosexual marriage or de facto relationship the male partner has the rights and responsibilities of a parent. If conceived by donor insemination a child does not legally have a father, but this can be altered by an acknowledgment in writing from the donor.

In neither case does a same-sex partner have any legal standing.

## 7. Employment

### a. Superannuation

Super schemes often pay a higher rate of benefit on retirement if there is a heterosexual spouse, And most pay a death benefit or spouse's pension to the surviving spouse. Few schemes recognise same-sex partners.

### b. Employee Benefits

Many employers provide benefits such as payment of relocation expenses but in most companies, these apply only to heterosexual partners.

### c. Workers' Compensation

Both Federal and State compensation law's allow for compensation to dependents if someone dies as a result of a work-related injury. Both use definitions of husband, wife, family etc which exclude same-sex Partners.

## 8. Health Insurance

26. Until recently most Health Funds failed to recognise same-sex relationships. In 1995, a gay male couple successfully complained to the NSW Anti-Discrimination Board about the refusal of NIB Health Fund to grant them family membership. NIB has appealed this decision and the case has yet to be heard. In the interim they will not be granting other same-sex couples family membership.

## 9. Taxation

27. A heterosexual couple can claim a dependent spouse rebate or housekeeper's allowance but this is not available to same-sex couples. The same goes for various tax concessions such as those around superannuation.

### **10. Social Security**

28. This is one of the very few areas where failure to recognise our relationships actually provides for preferential treatment and therefore is one of the most contentious in any discussion of legally recognising same-sex relationships. Because we are regarded as individual units by DS; one of a couple can get benefits including Supporting Parents Benefit while the other is employed or both can receive the single rate of benefit which amounts to more than the married rate.

### **11. Immigration**

29. From 1 July 1995 the Migration Regulations have provided for gay men and lesbians to sponsor a partner from overseas under similar conditions to those applying to heterosexual couples.
30. If your partner is already in Australia you have to prove that the relationship has existed for at least 6 months and your partner will be granted a temporary visa for 2 years. If you are still together after 2 years they *will be* granted permanent residency. If your partner is overseas when you apply, and you can prove that you have been in a relationship for at least 6 months they will be granted permanent residency in Australia.
31. The bad news is that the new Immigration Minister has announced his intention to change the rules for heterosexuals applying from overseas to bring them in line with on-shore applications ie 2 year temporary residency, and this will undoubtedly flow on to the Interdependency Regulations which impact on us.

### **What are the options available to us for recognition?**

32. Having considered the areas of discrimination being experienced, there are obviously several avenues open to us for future action, all of which create both benefits and dilemmas. Do we want to have our relationships recognised by the law at all? Some say 'no', but we believe that the majority of lesbians and gay men say yes.
33. If we do want them recognised, what form should that recognition take? Do we simply want to be included in existing legislation with all of its problems or do we want something new and different? If we go for something different will it leave us as third class citizens behind married couples and heterosexual de factos? How politically feasible would it be to get something different anyway?
34. There is certainly no consensus in the gay & lesbian community on the way forward, and nor will there ever be. Attempting to get consensus within the gay & lesbian community is like trying to get a 'yes' vote at a referendum. Lesbians and gay men come from all walks of life and are so varied that they will never all agree on anything. Having said that, we still need to make every effort to determine what the majority want and we believe that we have done that in NSW. Still, it is worth considering all of the options:

#### **1. Maintain the status quo**

35. We could choose to do nothing, leave things the way they are and just find ways around the law when and where we can.
36. This approach is most often favoured by two particular groups in the community:
  - a. Those who like to be alternative, underground, outside of society. Legal recognition threatens their whole image of how they and other lesbians fit (or not) into the broader community.
  - b. Those who feel strongly that they do not want the law interfering in their relationships. Which, of course, it already does, but in a uniformly negative way.
37. The problems with this approach are that there are not always ways around the areas of discrimination and for those who care about equality, it doesn't help.

## **2. Seek new and different legislation**

38. We could seek new legislation dealing only with same-sex relationships which doesn't repeat the perceived problems of the existing de facto legislation eg a 'Registered Partnerships Act'.
39. This type of legislation is preferred by people who want to make the choice about whether or not to have their relationships included within the ambit of legislation,
40. This approach is most often argued for by people who own property and want to ensure that their partner doesn't get their hands on it in the event of the relationship breaking down, and usually with the argument that a 'De facto Relationships Act is needed by women in heterosexual relationships because of the inherent power imbalance but that same-sex relationships are based on equality.
41. To that argument I have to say: 'dream off'. It is simply not true. One only has to look at the high rate of domestic violence in the community to realise that inequality exists in our relationships too.
42. The problems with this approach are:
  - i. The overseas experience has been that people simply don't register in large numbers either because they are opposed to a concept so like marriage, or they live in areas where they are in fear of outing themselves, or they just never get around to it and the relationship breaks down, then it is too late.
  - ii. We would be asking the Government to enact legislation that doesn't just give us equality but puts us in a privileged position over heterosexual couples and this is unlikely to be agreed to in any political climate.
  - iii. We would be trying to introduce a third piece of legislation dealing with relationships, which would undoubtedly be number 3 in the hierarchy.
43. Whilst it would resolve many of the problems it would still give out the message that gay & lesbian relationships are third rate.

### 3. Marriage

44. We could go straight for amending the Marriage Act. In our consultation process, it was generally as you got further out of the inner-city that more people preferred this approach, but with what appears to be a boom in commitment ceremonies at the moment there may now be greater support for this option.
45. There are, of course, those who are violently opposed to this option as just mimicking the worst of heterosexual relationships and who don't want to see our relationships defined in those terms.
46. The other obvious problems with this approach are:
  - i. It would at least require an amendment to Federal legislation and the Federal Government is more conservative than many State Governments, certainly more conservative than the current NSW Government.
  - ii. There is some debate about whether such a change would in fact require constitutional amendment which would necessitate a referendum with little chance of success.
  - iii. It would still exclude probably the majority of lesbians and gay men who would simply not take up such an option.
  - iv. Finally, the very mention of gay marriage provokes an emotional response in the general population much different to that generated by any discussion of legal recognition and would almost undoubtedly lead to a strong backlash against the gay & lesbian community.

### 4. Inclusion in existing de facto legislation

47. This means inclusion of gay & lesbian relationships, in all of the pieces of legislation in each State which assign particular rights or obligations to couples.
48. This is the approach favoured by the majority of lesbians and gay men consulted by the GLRL in formulating our position. So what are the pros and cons of such an approach?
49. Pros:
  - Financial benefits during the relationship
  - Protection for the weaker partner on the break down of the relationship cheaper mechanisms for resolving disputes
  - Same-sex relationships would be recognised as equal to heterosexual de facto relationships
  - Partners would have access to enforceable cohabitation and separation agreements
  - Access to the Family Law Court for counselling, mediation etc where there are children involved
  - It is likely that all dispute resolution concerning de facto relationships will ultimately be transferred to the Family Court and we would be included
  - We would have access to the marital status provisions of anti-discrimination legislation.

50. Cons:

- Agreements cost money and the courts can still override them
- Can the judiciary really understand our relationships?
- It may be difficult and costly to prove that a relationship did or did not exist
- Do we want our relationships compared to marriage?
- The ultimate impact on DSS payments
- It won't include people in long-term relationships who don't cohabit.

51. This last point can be resolved by States replacing existing de facto relationships acts with legislation Mirroring the ACT Domestic Relationships Act which recognises a broader range of relationships and does not require cohabitation.

### **5. Significant Personal Relationships**

52. In part to cover relationships where people don't live together, but also to include a broader range of relationships, we could also propose amendments to some particular pieces of legislation to recognise 'significant personal relationships'.
53. The sort of legislation where you might include this broader definition are victims' compensation, Coroners' Acts, compensation to relatives and workers' compensation.
54. So the answer to the 'where do we want to get to?' question is: the same legal standing, within the same pieces of legislation, as heterosexual relationships but we want to see all relevant legislation amended to include a broader range of relationships irrespective of someone's sexuality.

### **How far have we come?**

55. Obviously there is still a long way to go but at least there are some glimmers of hope:
- The ACT is the only State which gives any form of legal recognition of same-sex relationships.
  - The Labor Opposition in SA attempted to change to their 'de facto Relationships Act' to include same-sex relationships but were defeated.
  - The NSW Government has promised to move on some form of legal recognition in their first term in office and it is likely to happen in September 1996.
  - The Federal Government has indicated they are willing to at least examine discrimination in the area of superannuation and have instituted a Senate Inquiry into sexuality discrimination.

### **Where to from here?**

56. The legal recognition of same-sex relationships will be the most significant change for lesbians and gay men in recent times, not just because it requires major legislative reform or because it changes laws which impact on our daily lives, but because it will change both the way society looks; at us and the way that we look at ourselves. As long as society can say to us 'We don't legally recognise your relationships because they don't really exist or of no importance' we will continue on some level to view ourselves in the same way.

57. The problem is that to change laws we have to be able to convince sufficient numbers of politicians both that the changes we are asking for are fair and just, and that the majority of people in society support that change. The only way to do this is to have prominent people, opinion leaders in society speak out about the injustice of the current system and in support of legislative reform; to have supportive articles in the media to help educate the people and sway public opinion; to produce articles and discussion papers; and to have active lobbying organisations in every State arguing for reform.
58. Most importantly we need to have people in the legal system who understand the issues, who will challenge the current laws and who have the courage to make rulings which dispense justice rather than simply applying the rules.

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BACK

same sex



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## report by the victorian equal opportunity commission. march 1998

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### overview

Following around 500 submissions from the public and almost 12 months of research, the Commission released a major report on same sex relationships and the law on 12 March 1998. The Report, presented to the Attorney-General for consideration, outlined

- the ways in which people in same sex relationships are treated differently by the law
- provides an overview of submissions received in response to a discussion paper on this issue
- looks at options for addressing discrimination against people in same sex relationships
- lists the relevant sections of Victorian legislation that treated people in same sex relationships differently to those in married or defacto relationships

The Report does not claim new rights for people in same sex relationships, it simply outlines the laws which might be changed in order to afford those in non marital or same sex relationships the same rights and responsibilities, where appropriate, as those in heterosexual relationships.

On the basis of submissions received and the Commission's research, the most appropriate form of recognition outlined for consideration in the Report appears to be two tiered - first, extension of legislative definitions of de facto relationship to include same sex couples and second, the establishment of a relationship register available to both same sex and heterosexual couples.

A majority of submissions did not support extension of marriage rights to people in same

sex relationships, reflecting a lack of broad based support from either the community at large, or the gay and lesbian community, for marriage between same sex partners.

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## executive summary

### 1 background and consultation process

The Victorian Equal Opportunity Act 1995 introduced 'lawful sexual activity' as a ground of unlawful discrimination in Victoria. The Attorney General, in her second reading speech, said this new attribute " is intended to protect homosexuals, lesbians and heterosexuals ... from discriminatory actions." The Act, which became operative on 1 January 1996, therefore renders discrimination against gay men, lesbians, bi-sexuals and heterosexuals unlawful in many areas of public life. After the introduction of the Act, however, the Commission became aware, through inquiries and complaints and the advice of its Gay and Lesbian Reference Group, of many instances of differential and less favourable treatment of gay and lesbian people on the basis of non recognition of their relationships. Much of this discrimination results from provisions in other Victorian or Commonwealth legislation.

A Discussion Paper exploring the extent and effect of the law's recognition and non recognition of same sex relationships was disseminated widely to the Victorian public. The Discussion Paper outlined the differences between the rights and responsibilities conferred upon people in recognised heterosexual relationships and those conferred upon people in unrecognised same sex relationships. The paper indicated that there were certain forms of discrimination that are covered by the Act and certain forms that are not. The Discussion Paper also outlined options for addressing differential treatment currently permitted by other legislation. During May -July 1997, almost 1000 copies of the Discussion Paper were distributed to members of the public and just under 700 were downloaded from the Commission's web site.

### 2 submissions

Approximately 500 submissions were received by the Commission. Many outlined the areas in which people in same sex relationships are treated differently and adversely to married couples and those in de facto relationships. The submissions received by the Commission also indicate that same sex relationships are a reality which the law should recognise. With the exception of a few contentious issues, the submissions received reflected strong and broad based support for the elimination of many instances of discrimination against people in same sex relationships. A number of submissions highlighted areas of discriminatory practice which are currently unlawful. The Commission can, and will, act to ensure that these practices are discontinued.

Whilst many submissions advocated reform of all discriminatory legislation affecting same sex couples there were two extremely contentious areas of discrimination - access to reproductive technology and adoption. Many submissions opposed extending access to adoption, reproductive technology and marriage to same sex couples, these submissions, nonetheless, supported reform in all other areas of discrimination highlighted by the Discussion Paper.

### 3 areas of discrimination

Submissions received by the Commission outlined many of the rights and responsibilities attached to the formal recognition of relationships which do not, as a matter of legislative definition and policy interpretation, extend to people in same sex relationships and, in some instances, people in de facto relationships. The legislative definition and interpretation of terms such as 'spouse', 'relative' and 'next of kin' is one of the most common ways in which people in same sex and de facto relationships are excluded from benefits. In other instances the rights conferred upon married couples are unconditional and those conferred upon non marital relationships are conditioned upon financial or other dependence.

The differential treatment of same sex couples covers a wide range of areas. The report details differential treatment of same sex relationships in relation to;

- Property rights, including division of property upon relationship breakdown and stamp duty obligations upon transfer of property.
- Rights upon a death of a partner, including funeral decisions, decisions in relation to organ donation, post mortems and autopsies, distribution of property in the event of intestacy, maintenance of a surviving partner, and accident compensation for surviving partners.
- Health related rights, including ability to make decisions for incapacitated partners and hospital visitation rights.
- Entitlement of partner to receive superannuation fund benefits upon the death of a partner.
- Access to employment related benefits such as compassionate, carer or bereavement leave, travel packages and participation in health insurance schemes.

#### **4 options for reform**

The Report outlines various options for reform of legislatively enshrined discrimination against people in same sex relationships. The options canvassed are;

- Passing legislation that broadens the definition of 'de facto relationship' in all relevant pieces of Victorian legislation.
- Establishing a relationship register that is accessible to same sex and heterosexual couples and extending appropriate rights to registered relationships.
- Amending individual pieces of discriminatory legislation.
- Extending the definition of 'de facto spouse' in the *Equal Opportunity Act (Vic) 1995* to include same sex relationships and removing the exception, relating to acts done pursuant to other legislation, in section 69 of the Act.
- A combination of the above.

The Report outlines the choices made in other jurisdictions, nationally and internationally, which have adopted one or more of the above approaches to elimination of discrimination against people in same sex relationships.

The majority of submissions received by the Commission in support of recognition of same sex relationships were in favour of a combination of a registration system and expansion of the definition of de facto relationship. It was submitted that such a combination of options would avoid the disadvantages of both systems by providing formal recognition mechanisms, for those who register, as well as a safety net for those who do not.

#### **5 conclusions**

Submissions confirmed broad based support for elimination of discrimination against people in same sex relationships in most areas highlighted by the Discussion Paper. On the basis of submitted views on the options for reform in relation to same sex relationships the Commission believes that, should Government wish to address these issues, the most appropriate form of recognition appears to be two tiered - first, extension of legislative definitions of de facto relationship to include same sex couples and second, the establishment of a relationship register.

The Commission believes that further consideration of, and community consultation on, the issues of access to reproductive technology and adoption for people in same sex relationships would be appropriate before changes are proposed in these two areas.

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