

HOME | FRONT PAGE | CITY | SPORTS | NATIONAL | WORLD | OPINION | ENTERTAINMENT | HIGH TECH | BUSINESS | STOCKS/MUTUALS | INTERNET COMMUNITY | SEARCH/ARCHIVES | CAREERCLICK | CARCLICK | HOMES | CLASSIFIED | BIRTHS/DEATHS | PERSONALS | ABOUT US

NATIONAL[National News](#)[Gargoyle](#)[World](#)[Canada Dailies](#)[Parliament Hill Cam](#)**COLUMNISTS**[Dan Gardner](#)[Charles Gordon](#)[Maj.-Gen.
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Monday October 18, 1999

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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

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."

↑top

[HOME](#) | [FRONT PAGE](#) | [CITY](#) | [SPORTS](#) | [NATIONAL](#) | [WORLD](#) | [OPINION](#) | [ENTERTAINMENT](#) | [HIGH TECH](#) | [BUSINESS](#) | [STOCKS/MUTUALS](#) | [INTERNET COMMUNITY](#) | [SEARCH/ARCHIVES](#) | [CAREERCLICK](#) | [CARCLICK](#) | [HOMES](#) | [CLASSIFIED](#) | [BIRTHS/DEATHS](#) | [PERSONALS](#) | [ABOUT US](#)

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	Travel
	Education
	Advertise
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	What's New
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	Miscellaneous
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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.

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).

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

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:

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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 losing, 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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<http://www.france.qrd.org/assocs/ilga/euroletter.html>

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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>

IN THIS ISSUE

- PARTNERSHIP LAW IN THE NETHERLANDS
- ANTI-DISCRIMINATION CLAUSE IN THE NEW PROPOSAL FOR EU TREATY
- PROPOSAL FOR A PORTUGUESE PARTNERSHIP LAW
- THE SPANISH PARLIAMENT DECIDES A PARTNERSHIP BILL WILL HAVE TO BE PASSED WITHIN THIS LEGISLATURE
- POLISH CONSTITUTION WITHOUT ANTI- DISCRIMINATION FOR G/L
- NEW PENAL CODE IN POLAND
- EUROPEAN COURT DECIDES THAT BRITISH GOVERNMENT HAVE A CASE TO ANSWER
- THE FINNISH PARTNERSHIP LEGISLATION
- 2nd EUROPEAN CONFERENCE ON FAMILY RESEARCH
- BILL TO REDUCE INHERITANCE TAX FOR REGISTERED PARTNERS
- FINISH MINISTERS RESPONSE ON THE SITUATION IN ROMANIA
- ILGA-EUROPE MEETS EUROPEAN UNION
- DANISH PARLIAMENT BANS ASSISTED INSEMINATION FOR LESBIANS
- NEW HIV PREVENTION INITIATIVE FOR GAY MEN IN IRELAND
- GRANT CASE TO EU COURT

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

1997/05/28

HEADLINES

[Spain Will Enact DP](#)

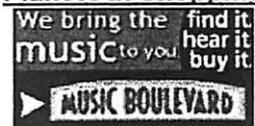
[Namibia G/L Organizing](#)

[Nat'l Guardsman Sues CA](#)

["Gang's" Website Bait
Teacher](#)

[The Little Bi in Julian Clary](#)

PlanetOut Shopping



TODAY'S HEADLINES

[Catalonia OKs Spain's 1st
DP](#)

[Gay is OK in CA Nat'l
Guard](#)

[No More Romanian
Sodomy Reform](#)

[International School Notes](#)

[Ecclesiastical Ups & Downs](#)

[Names Making News](#)

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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IN THIS ISSUE

- **CATALONIA HAS GRANTED DOMESTIC PARTNERSHIP RIGHTS**
- **PENAL CODE CHANGES IN FINLAND**
- **AMNESTY: UK SHOULD REPEAL ANTI-GAY LAWS**
- **FIRST FINNISH GAY DISCRIMINATION CASE WON**
- **DENMARK NIXES LESBIAN INSEMINATION**
- **FIRST STEP TO EQUALIZE AGE OF CONSENT IN UK**
- **NO EQUAL RIGHTS FOR GAY EU OFFICIALS AND THEIR PARTNERS**
- **ILGA-EUROPE LAUNCHES EU REPORT**
- **SWEDEN: (GAY) PROSTITUTION (RE-)CRIMINALIZED**
- **AUSTRIA: COMPLAINT AGAINST DISCRIMINATORY AGE OF CONSENT FILED WITH UN-COMMITTEE FOR THE CONVENTION ON THE RIGHTS OF THE CHILD**
- **DONATION TO ILGA-EUROPEF**

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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>

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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IN THIS ISSUE

- P SWEDEN APPOINTS GAY OMBUDSMAN
- P SWEDEN MAY ALLOW FOREIGN GAY COUPLES TO REGISTER
- P SWEDISH GOVERNMENT BACKS EU COURT CASE
- P DOMESTIC PARTNERSHIP BILL PASSED IN ARAGON
- P FRENCH SENATE DUMPS PARTNERS BILL
- P FRENCH ASSEMBLY APPROVES ANOTHER PARTNER BILL
- P UKRAINE GAY GROUP DENIED REGISTRATION
- P CZECH GOVERNMENT OKs PARTNER BILL
- P RECENT EVENTS IN BELGIUM
- P DEBATE IN SPAIN OVER POLICE FILES OF TIMES PAST
- P ILGA-EUROPE STATEMENT IN THE INTERPARLIAMENTARY CONFERENCE 'FREEDOM, SECURITY, JUSTICE: AN AGENDA FOR EUROPE' ON 24 MARCH
- P BRITISH COLONIES MUST LEGALIZE GAY SEX
- P CAYMANS WILL NOT LEGALIZE GAY SEX
- P BRITAIN TO WELCOME GAY ASYLUM SEEKERS
- P AUSTRIA: 11 MEN JAILED UNDER ANTI-GAY STATUTE
- P SEXUAL LAW REFORM IN LIECHTENSTEIN: DISCRIMINATION OF GAY MEN TO BE EXTENDED LESBIANS
- P THE ANTILLES MAY NOT ACCEPT GAY/LESBIAN PARTNERSHIPS
- P YOUNG GAY MEN DENIED EQUALITY BY BRITISH HOUSE OF LORDS
- P NEW ILGA LEGAL SURVEY

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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.

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IN THIS ISSUE

- **ASYLUM IN NORWAY FOR LESBIANS AND GAY MEN**
- **EUROPEAN COMMISSION OF HUMAN RIGHTS FINDS VIOLATION OF EUAN SUTHERLAND'S HUMAN RIGHTS IN THE UNEQUAL AGE OF CONSENT**
- **UK TO RECOGNISE SAME-SEX COUPLES IN THE IMMIGRATION RULES**
- **PARTNERSHIP IN PORTUGAL?**
- **FOREIGN SAME-SEX PARTNERS CAN OBTAIN PERMIT TO LIVE IN BELGIUM**
- **AMNESTY INTERNATIONAL WORKING AGAINST LAWS PUNISHING SEXUAL RELATIONS BETWEEN MEN IN THE COMMONWEALTH OF INDEPENDENT STATES**

The ILGA-Europe EU Action Plan and other 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>

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.

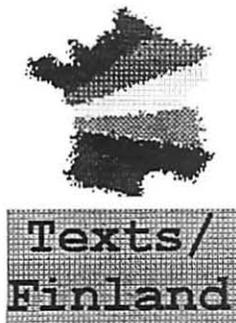
The MPs of the Socialist Party.

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 ofmonth 199_.

Translation:

Mr Mika Vepsalainen



France QRD

La France Gaie et Lesbienne

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IN THIS ISSUE

 **Germany: REGISTERED PARTNERSHIP BILL PUBLISHED**
LITHUANIAN PENAL CODE DRAFT INCLUDES SEXUAL ORIENTATION
ILGA-EUROPE CONTINUES LOBBYING THE EUROPEAN UNION
JUDGMENT IN THE CASE OF SALGUEIRO DA SILVA MOUTA v. PORTUGAL
NO TO REGISTERED PARTNERSHIP IN CZECH REPUBLIC
IRELAND BANS DISCRIMINATION
LATVIA KILLS PARTNER MEASURE

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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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E Law - Murdoch University Electronic Journal of Law, Vol 3, No 3 (September 1996)

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

- overview
- executive summary
 - 1 background and consultation process
 - 2 submissions
 - 3 areas of discrimination
 - 4 options for reform
 - 5 conclusions
- ordering the report

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.

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.
