



A M E R I C A N
A S S O C I A T I O N F O R
S I N G L E P E O P L E

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A Global View:
Domestic Partnership Laws
in Other Nations

Special Report to the Vermont Legislature

Presented to the
House Judiciary Committee
January 27, 2000

Special Report No. V-2

Domestic Partnership Laws in Other Nations

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

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

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

Statutes Enacted into Law

Denmark:

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

Norway:

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

Sweden:

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

Iceland:

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

Hungary:

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

Netherlands:

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

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

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

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

Belgium:

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

France:

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

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

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

Canada:

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

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

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

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

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

Legislative Proposals

Spain:

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

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

Portugal:

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

Finland:

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

Germany:

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

Australia:

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

Recognition of gay & lesbian partnerships in Europe

See also the ILGA World Legal Survey

Existing partnership laws

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

These countries have passed partnership laws:

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

Denmark

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

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

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

The differences from marriage are

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

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

Norway

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

The exceptions are

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

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

Sweden

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

Iceland

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

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

The Netherlands

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

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

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

France

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

The law contains the following main provisions:

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

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

Regional partnership benefits

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

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

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

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

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

Partnership laws to come?

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

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

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

Domestic partnerships

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

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

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

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

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

A Worldwide Summary by IGLHRC

Back to my homepage: [Steffen Jensen](#)

You can also send an e-mail to me: steff@inet.uni2.dk



Denmark : Registered partnership act, 1989

Texts/
Denmark

[Amendments]

THE REGISTERED PARTNERSHIP ACT

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

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

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

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

Registration

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

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

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

Legal Effects

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

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

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

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

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

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

Dissolution

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

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

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

Commencement etc.

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

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

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

Under Our Royal Hand and Seal
MARGRETHE R.



France QRD
La France Gaie et Lesbienne

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Texts/
Norway

Norway : Registered partnership law, 1995 3

[*norwegian version*]

Bill on Registered Partnerships

Section 1

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

Section 2

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

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

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

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

Section 3

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

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

Section 4

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

Section 5

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

Section 6

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

Section 7

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

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

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

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

Section 338 shall read:

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

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

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

Section 7, first paragraph, litra e shall read:

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

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

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

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

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

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

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

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

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

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

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



Texts/
Sweden

Sweden : Registered partnership act, 1994

THE REGISTERED PARTNERSHIP ACT

Issued on 23 June 1994

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

Chapter 1 Registration of partnership

Section 1

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

Section 2

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

Section 3

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

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

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

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

Section 4

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

Section 5

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

Section 6

Registration shall take place in the presence of witnesses.

Section 7

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

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

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

Section 8

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

Section 9

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

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

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

Chapter 2 Dissolution of registered partnership

Section 1

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

Section 2

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

dissolution of a registered partnership.

Section 3

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

Section 4

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

Chapter 3

Legal effects of registered partnership

Section 1

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

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

Section 2

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

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

Section 3

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

Section 4

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

This Act enters into force on 1 January 1995.

On behalf of the Government
CARL BILDT

ILGA Euroletter 42, June 1996

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

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Previous issue: 41

In this issue:

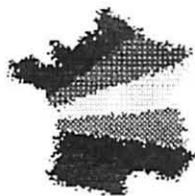
- Partnership law in Iceland
- Anti-discrimination law for the private labour market in Denmark
- Action appeal for Austria
- Anti-discrimination proposal in Belgium
- Gay British teenager challenges age of consent
- Top-level EU official meets with ILGA
- A bill on the partnership of same sex couples in Finland
- Dutch parliament demands legislation to open up marriage and adoption for same-sex couples
- EU Court rules transsexual unfairly dismissed
- Answer from the CoE Committee of Ministers on Romania
- Responses to protest letters about Romania
- Slovenia protects gays and lesbians
- News on the partnership law in Spain
- Hungary recognises common-law gay marriage
- Gay marriage proposed in Luxembourg
- Comparative survey on the legal situation for homosexuals in Europe
- Index of Euroletters

Next issue: 43

PARTNERSHIP LAW IN ICELAND

By Steffen Jensen

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



Texts/
Iceland

Iceland : Recognized partnership law, 1996

[Changes]
[Remarks]

1995-96

1065 years since founding the Parliament
120th legislative assembly

564th Bill On the recognized partnership

1

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

2

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

3

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

4

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

5

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

6

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

7

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

8

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

9

These Acts are enacted on 1 July 1996.

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

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



France QRD
La France Gaie et Lesbienne

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Reply-To: mszymczy@urm.gov.pl

Hungary high court gives blessing to gay couples

By Blaise Szolgyemy

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

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

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

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

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

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

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

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

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

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

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

Hungarian homosexual leaders welcomed the decision.

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

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

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

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

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

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

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

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

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

From: Bob Stock <bstock@ucla.edu>

To: queerlaw@abacus.oxy.edu

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

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

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

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

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

-and-

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

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

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

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

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

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

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

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

Bob Stock <bstock@ucla.edu>
2L - UCLA School of Law
<http://www.geocities.com/Paris/1206/>

\$50 a week, pay her medical insurance coverage, maintain her as a beneficiary on his life insurance, and contribute \$30 a week to her auto insurance, as required by the couple's 1994 divorce decree until such time as she remarried. The article does not describe the judge's rationale for the decision. A.S.L.

Law & Society Notes

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

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

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

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

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

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

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

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

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

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

International Notes

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

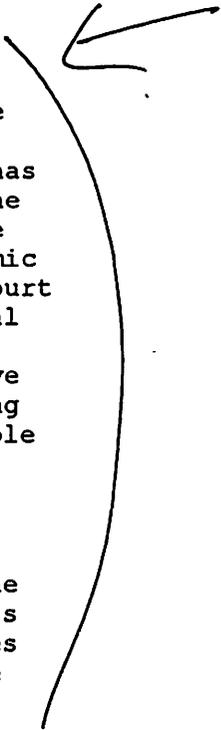
Canada's House of Commons voted 153-76 on May 9 to amend the federal Human Rights Act to add "sexual orientation" to the list of forbidden grounds for employment discrimination. The Act applies to the federal civil service as well as employees of regulated businesses, such as banks, railways, airlines,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

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

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

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

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



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

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

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

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



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

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

the tax or social security system.

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

Contents

- [Registered partnership, marriage, cohabitation contract](#)
- [This brochure](#)
- [What is registered partnership and for whom is it intended?](#)
- [Conditions](#)
- [How is a registered partnership effected?](#)
- [Rights and obligations?](#)
- [When does the registered partnership end?](#)
- [Rights and obligations of ex-partners](#)
- [Further information](#)

Registered partnership, marriage, cohabitation contract

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

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

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

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

example by a pension fund.



This brochure

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

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



What is registered partnership and for whom is it intended?

A few important features have already been mentioned above.

Registered partnership:

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



Conditions

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

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

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

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

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

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

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

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



How is a registered partnership effected?

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

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

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

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

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

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

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

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

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



Rights and obligations

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

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

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

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

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

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

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

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

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

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



When does the registered partnership end?

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

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

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

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



Rights and obligations of ex-partners

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

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

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



Further information

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

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



[Previous page](#)

ILGA Euroletter 46, December 1996

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

DUTCH SECOND CHAMBER OF PARLIAMENT AGREES ON PARTNERSHIP REGISTRATION

By *Michiel Odijk*

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

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

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

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

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

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

EURO-LETTER

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

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IN THIS ISSUE

- w SWEDEN: NEW LEGISLATION AGAINST DISCRIMINATION AT THE LABOUR MARKET
- w UK: BAN VIOLATES EUROPEAN CONVENTION ON FOUR COUNTS
- w REGISTERED PARTNERSHIP FAIRLY POPULAR IN THE NETHERLANDS
- w SWEDISH PARLIAMENTARY COMMITTEE ON CHILDREN OF LESBIANS AND GAYS
- w GAY-FRIENDLINESS OF ALL SWEDISH MUNICIPALITIES EXAMINED
- w GUERNSEY LOWERED AGE OF CONSENT TO 18 - NOT YET
- w UN-COMMITTEE ON THE RIGHTS OF THE CHILD SUGGESTS TO EXTEND DISCRIMINATION OF GAY ADOLESCENTS TO LESBIAN ADOLESCENTS
- w ANDALUSIA: BLEAK PROSPECTS IN THE SPANISH PARLIAMENT
- w NORDIC GAY/LESBIAN STUDENT CONGRESS
- w LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS, A CONFERENCE ON NATIONAL, EUROPEAN, AND INTERNATIONAL LAW

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

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

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

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

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

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

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

SWEDEN: NEW LEGISLATION AGAINST DISCRIMINATION AT THE LABOUR MARKET

By RFSL

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

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

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

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

UK: BAN VIOLATES EUROPEAN CONVENTION ON FOUR COUNTS

By STONEWALL

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

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

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

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

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

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

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

REGISTERED PARTNERSHIP FAIRLY POPULAR IN THE NETHERLANDS

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

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

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

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

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

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

The Dutch figures:

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

SWEDISH PARLIAMENTARY COMMITTEE ON CHILDREN OF LESBIANS AND GAYS

By Martin Andreasson

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

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

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

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

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

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

GAY-FRIENDLINESS OF ALL SWEDISH MUNICIPALITIES EXAMINED

By Martin Andreasson

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

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

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

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

EURO-LETTER

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IN THIS ISSUE

SEXUAL OFFENCES BILL WILL RETURN TO UK PARLIAMENT

SWITZERLAND CONSIDERS COUPLES' RIGHTS

PORTUGUESE CASE ON GAY PARENTING ACCEPTED BY THE EUROPEAN COURT OF HUMAN RIGHTS

DANISH GOVERNMENT SUPPORTS GAY EU EMPLOYEE IN COURT CASE

DUTCH BILL TO OPEN MARRIAGE FOR SAME-SEX PARTNERS

DUTCH BILL ALLOWING ADOPTION FOR SAME-SEX COUPLES

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

FAMILY LIFE

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

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

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

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

ARTICLE 14

DISCRIMINATION

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

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

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

DANISH GOVERNMENT SUPPORTS GAY EU EMPLOYEE IN COURT CASE

By Steffen Jensen

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

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

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

DUTCH BILL TO OPEN MARRIAGE FOR SAME-SEX PARTNERS

By Kees Waaldijk

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

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

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

Summary-translation by Kees Waaldijk LL.M.
Universiteit Leiden, The Netherlands,
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Draft-version 23 July 1999

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

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

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

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Parliamentary paper 26672

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

NR. 2: LEGISLATIVE PROPOSAL

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

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

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

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

D
Article 30 shall read as follows:

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

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

E
Article 33 shall read as follows:

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

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

F

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

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

G
A new article 77a shall be inserted:

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

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

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

I
A new article 88f shall be inserted:

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

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

J

Article 395 shall read as follows:

Article 395

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

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

K

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

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

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

Article II

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

Article III

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

Article IV

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

Parliamentary paper 26672

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

NR. 3: EXPLANATORY MEMORANDUM

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

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

[...]

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

1. History

[...]

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

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

[...]

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

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

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

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

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

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

4. International aspects

[...]

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

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

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

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

[...]

6. Adaptation of computerised systems

[...]

7. Explanation per article

[...]

Article I - D

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

[...]

Article III

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

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

DUTCH BILL ALLOWING ADOPTION FOR SAME-SEX COUPLES

By Kees Waaldijk

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

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

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

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

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

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

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

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

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

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

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

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

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

by Kees Waaldijk
(law lecturer University of Leiden)

EURO-LETTER

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IN THIS ISSUE

- **ANTI-DISCRIMINATION PROPOSAL PACKAGE ADOPTED BY THE COMMISSION**
- **ILGA-EUROPE PRESS RELEASE**
- **FRANCE/PaCS: LAW EFFECTIVE NOV. 17**
- **Ireland: NEW EMPLOYMENT EQUALITY ACT COMES INTO FORCE**
- **STATUTORY COHABITATION CONTRACT IN BELGIUM**
- **LANDMARK UK RULING ON INTERPREATION OF 'FAMILY'**
- **Scotland: SCHOOL'S GAY BAN TO BE LIFTED**
- **The Russian Federation has dropped "homosexual orientation" from its new classification of mental and behaviour disorders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY COHABITATION CONTRACT IN BELGIUM

By Alan Reekie

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

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

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

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

Notwithstanding any contract, each partner:

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



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

Furthermore, the contract has no impact on:

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

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

LANDMARK UK RULING ON INTERPRETATION OF 'FAMILY'

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

Ruling recognises status of "long term" same sex relationships

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

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

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

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

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

'Intimate mutual love'

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

Ruling is an advance in gay rights

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

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

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

'A wonderful victory'

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

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

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

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

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



October 14, 1999

The French registered partnership law: the civil solidarity pact

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

A ten year long process

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

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

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

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

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

Contents of the law

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

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

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

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

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

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

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

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

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

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

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

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

Comments on the law

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

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

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

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

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

Comments on the process

Seven readings in the Parliament, 120 discussion hours,

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

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

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

R. Lalement

[France QRD] [Documents] [Partnership]

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

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

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

From: RDElliott@aol.com

To: queerlaw@abacus.oxy.edu

Greetings US friends:

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

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

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

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

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

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

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

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

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

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

Best of luck to you in your quest for equality.

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