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3 Fighting It Out in Canadian Courts

In the previous chapter, Gerald Hunt summarized the kinds of discrimination that lesbians and gay men face in Canada and highlighted the role that organized labor has played in addressing these problems. As he pointed out, employment discrimination based on sexual orientation has become less common over the past two decades, but it persists in many sectors and continues to affect the lives of countless workers. Certainly, unions bear some responsibility for human rights violations against lesbian and gay employees. Some unions, for example, have negotiated collective agreement clauses that benefit heterosexual employees exclusively. Some have failed in other ways to provide representation to lesbian and gay members. A number of unions, however, have been increasingly supportive of lesbian and gay equality rights in the workplace. Many unions have bargained for contract language to protect their members from discrimination based on sexual orientation, fought discriminatory employment practices through their grievance procedures, supported human rights complaints filed by individual workers, and devoted considerable resources to challenging discriminatory laws in the courts.

This chapter focuses primarily on the participation of unions in same-sex spousal benefits litigation. Litigation is, of course, only one small avenue in the queer liberation movement, and access to spousal benefits constitutes only one of the issues involved in the struggle for full equality. Court battles arise in a broader context of increased political activism and changed social climate. The willingness of union members to challenge discriminatory workplace practices is a byproduct of the growing visibility of lesbian/gay/bisexual/transgendered movements, and the readiness of tribunals to side with them is attributable to the advances made by overall movement activism.

The focus on spousal benefits litigation is not intended to suggest that it is the only area in which unions have been instrumental in advancing lesbian and gay equality claims. Even in the area of same-sex relationship recognition, many claims and grievances supported by unions never make it to arbitration boards and courts, simply because they are not firmly resisted by management. Much of the day-to-day support by unions is therefore invisible to the legal system. Unions have, however, been particularly active in litigation efforts to assert and enforce spousal claims on behalf of

employees in same-sex relationships. Although many unions have remained outside the struggle for equality, those that have participated have had a significant impact. Several of the landmark rulings by courts and tribunals on the recognition of same-sex relationships have been supported by labor.

The Early Human Rights Cases, Mid-1970s to Mid-1980s

In 1977, Quebec became the first province to amend its human rights legislation to prohibit discrimination based on sexual orientation. At that time, human rights statutes existed in all ten provinces and the two territories, as well as in the federal jurisdiction, but outside Quebec they did not include sexual orientation as a prohibited ground of discrimination. Consequently, with the exception of provincially regulated employees in Quebec, individuals who suffered anti-gay discrimination in the workplace had no recourse to human rights commissions for redress. Some employees made creative attempts to file human rights complaints about anti-gay discrimination on grounds other than sexual orientation, but those attempts consistently failed.

For example, in the first reported human rights case involving employment discrimination against a gay man, the complainant alleged that his employer had discriminated against him on the basis of sex. Douglas Wilson was a graduate student employed as a sessional lecturer in the College of Education at the University of Saskatchewan. In 1975, he was suspended from supervising the practice teaching of his students in public schools because the university discovered that he was gay. When the Saskatchewan Human Rights Commission notified the university of its intention to investigate Wilson's complaint, the university applied to the Court of Queen's Bench for an order prohibiting the commission from conducting a formal inquiry. The university's application was granted by Judge Johnson, who ruled that the Saskatchewan human rights legislation outlawed discrimination based on sex, which meant gender, not sexual orientation, sexual proclivity, or sexual activity.[1]

A similar case arose in Ontario in 1975, when John Damien attempted to file a human rights complaint alleging that the Ontario Racing Commission (ORC) had fired him because he was gay. The Ontario Human Rights Commission refused to investigate Damien's complaint of sex discrimination, so he applied to the High Court of Justice for an order requiring the commission to receive and deal with his complaint. He also initiated a wrongful dismissal lawsuit against the ORC. The merits of his legal arguments were never determined by a court because Damien died before his cases proceeded to a hearing.[2]

A somewhat different sex discrimination argument was made by another gay man in a 1982 case. Chris Vogel, an employee of the Manitoba government, filed a human rights complaint against his employer because he was denied dental benefits for his same-sex partner, Richard North. Vogel complained that the opposite-sex restriction on eligibility for spousal benefits constituted discrimination based on marital status and sex, both of which were forbidden by the Manitoba Human Rights Act. A Board of Adjudication rejected his sex discrimination argument, ruling that the denial of benefits arose

"not because Mr. Vogel is a male but because he chooses to live with another male."[3] His complaint of marital status discrimination was also rejected by the board, which concluded that same-sex partners have no marital status and consequently cannot claim discrimination on that ground.[4]

The Lobby for Human Rights Protection

As a result of these decisions, lesbian and gay activists became involved in a concerted lobby for legislative amendments to add sexual orientation as a prohibited ground of discrimination in provincial and federal human rights codes. Ontario, Manitoba, and the Yukon finally outlawed discrimination based on sexual orientation in 1986 and 1987. The federal government and most other provinces have since followed suit, but only after years of sustained lobbying and repeated resort to courts. Labor organizations have supported lesbian and gay communities in these efforts.

The *Canadian Charter of Rights and Freedoms* played a significant role in shifting the balance in favor of lesbian and gay activists. The *Charter* was proclaimed as part of the Canadian Constitution in 1982, and its equality rights provision came into effect in 1985. The *Charter* applies to all acts of government, federal and provincial. Its primary purpose is to restrain the state from enacting laws or engaging in conduct that infringes upon the fundamental rights and freedoms of individuals. Human rights codes also restrain discriminatory state action, but they do not enjoy the same legal status as the *Charter.* As a constitutional document, the *Charter* takes precedence over all Canadian statutes, including human rights codes.

Lesbian and gay activists have used the *Charter* to obtain human rights protection in several jurisdictions. After years of trying in vain to persuade the federal government to add sexual orientation to the *Canadian Human Rights Act,* a *Charter* challenge was initiated by Joshua Birch and Graham Haig, two gay men living in Ottawa. The case resulted in a 1992 declaration by the Ontario Court of Appeal that the federal government is required to protect individuals from discrimination based on sexual orientation.[5] Three years later, the Newfoundland Supreme Court ruled that the *Human Rights Code* in that province violated the *Charter* because it did not include sexual orientation as a prohibited ground of discrimination.[6] More recently, in April 1998, the Supreme Court of Canada held that the Alberta government's refusal to prohibit discrimination based on sexual orientation in its human rights code was unconstitutional.

The Alberta case involved Delwin Vriend, a laboratory coordinator at King's College in Edmonton, who had been fired from his job because he is gay. He tried to file a complaint against his employer, but the Alberta Human Rights Commission explained that he could not do so because discrimination based on sexual orientation was not prohibited by the provincial human rights statute. He reacted by initiating a court case against the Alberta government. When the case reached the Supreme Court of Canada, the Canadian Labour Congress was among the many organizations that intervened in support of Vriend, continuing its long-standing commitment to the advancement of lesbian and gay rights and to the elimination of employment discrimination generally.

The decision of the Supreme Court in the *Vriend* case was an important victory, not only because it gave human rights protection to lesbians and gay men in Alberta, but also because it set an important precedent for the governments of Prince Edward Island, the Northwest Territories, and Nunavut, which have not yet amended their human rights legislation to include sexual orientation.

Collective Bargaining and Grievance Arbitration Cases, 1975–1992

In addition to supporting litigation and lobbying efforts for greater human rights protection, the organized labor movement in Canada has been instrumental in advancing lesbian and gay equality rights through the collective bargaining process. Since the 1970s, and throughout the last two decades, unions have been negotiating comprehensive "no discrimination" clauses that cover sexual orientation. In many instances, this has provided unionized employees with contractual protection from discrimination even before applicable human rights statutes were amended. In Alberta, for example, the University of Lethbridge Faculty Association negotiated a collective agreement in 1992 that prohibited discrimination against any member of the academic staff by reason of their sexual orientation. Subsequently, when the university refused to allow a gay professor to enroll for family coverage under the employee health care and dental care plans, the Faculty Association filed a grievance pursuant to the collective agreement. A labor arbitrator ruled that the university had violated the no discrimination provision in the agreement by restricting eligibility for spousal benefits to heterosexual partners.[7] As a result of this decision, all lesbian and gay members of the academic staff at the University of Lethbridge became eligible to receive spousal benefits for their same-sex partners, notwithstanding that their equality rights were not protected by the province's human rights legislation at that time.

Collective agreement protection continues to be vitally important to lesbian and gay employees, even in jurisdictions where human rights statutes have been amended to add sexual orientation. In the event that lesbians and gay men suffer discrimination at work, they have access to a grievance procedure, which is often preferable to the human rights complaints process. Moreover, contractual protection frequently exceeds the limited scope of protection afforded by human rights statutes. The significance of collective agreement protection is evident from the fact that grievance arbitration has become the most fruitful avenue for advancing lesbian and gay equality claims in the employment context, though for a time it was not as effective as it is now in securing same-sex spousal benefits for lesbian and gay workers.

The initial phase of same-sex spousal benefits arbitrations occurred in the late 1980s and early 1990s. In virtually all of the early grievances, the union relied on a collective agreement clause that protected workers from discrimination based on sexual orientation. Although the facts in each case clearly demonstrated that employees in lesbian and gay relationships were denied benefits available to employees in heterosexual relationships, the grievances consistently failed.

The first such arbitration case appears to have arisen from a grievance filed by a Quebec local of the Canadian Union of Postal Workers (CUPW).[8] The grievor was a lesbian

who was denied leave to care for her ailing same-sex partner of sixteen years. The collective agreement between CUPW and the Canada Post Corporation allowed employees to take leave in the event of illness of an "immediate family member," including a "common-law spouse," the latter term not being defined in the agreement. The union argued that the expression should be interpreted broadly to include the grievor and her same-sex partner, particularly since the agreement contained a clause prohibiting discrimination based on sexual orientation. The arbitrator rejected CUPW's argument and ruled that the "universally recognized meaning" of a common-law relationship excludes "homosexual partners." He also stated that "it is not because the Grievor is a homosexual that the Employer refused to grant her a benefit under the collective agreement, but instead because her friend [*sic*] did not fit into the specific context of members of the immediate family."

Two similar cases were decided in Ontario during this initial phase of arbitrations. The first involved a grievance filed by Local 2424 of the Canadian Union of Public Employees (CUPE) in 1985. Jim Carleton was an employee of Carleton University who sought a tuition waiver and health insurance coverage for his partner, Bob Krawczyk. The university denied him the benefits, arguing that its collective agreement with CUPE defined "spouse" as a "husband or wife in law or in common law."

Carleton grieved the university's decision, alleging that it amounted to discrimination based on sexual orientation, which was specifically prohibited by the collective agreement. At the arbitration hearing, CUPE argued that the definition of spouse in the collective agreement should be interpreted in light of the no discrimination provision in the agreement, as well as the Ontario *Human Rights Code,* which had just recently been amended to forbid discrimination based on sexual orientation. Ironically, it was the *Human Rights Code* that ultimately defeated the union's argument. The arbitration board dismissed the grievance because the definition of spouse in the collective agreement was consistent with the heterosexual definition of spouse contained in the *Code.*[9] Consequently, the board held that the definition of spouse in the agreement did not discriminate based on sexual orientation. CUPE applied for judicial review of the board's decision, but its application was dismissed by Judge Reid, who issued an endorsement stating that "the law [as reflected in the *Human Rights Code*] does not recognize homosexual partners as spouses."[10] CUPE attempted to appeal Judge Reid's decision to the Ontario Court of Appeal, but its motion for leave to appeal was denied.[11]

The second Ontario grievance involved Steven Chalkley, a gay man employed by Parkwood Hospital in London. When he requested health benefits coverage for his same-sex partner, his employer advised that the coverage would not be provided because of the cost and because "homosexuals are at risk from AIDS." The London and District Service Workers' Union filed a grievance, arguing that the employer's refusal to grant spousal coverage to Chalkley's partner was arbitrary and discriminatory. Although the collective agreement did not include a clause to prohibit discrimination based on sexual orientation, the union argued that the employer was required to manage its enterprise in accordance with the Ontario *Human Rights Code,* which had been amended to prohibit discrimination based on sexual orientation. An arbitrator denied the grievance, ruling that the case could not be meaningfully distinguished from the earlier *Carleton* decision.[12]

Two other unsuccessful grievances during this initial phase of arbitrations involved federal public servants. The first was initiated by James Watson, an employee in the Department of Indian and Northern Affairs in Vancouver, who grieved the denial of bereavement leave following the death of his same-sex partner's sister. According to the Master Agreement between the Public Service Alliance of Canada (PSAC) and Treasury Board, employees were eligible for bereavement leave upon the death of certain family members, including a sister-in-law. ("Sister-in-law" was not defined in the agreement, but "common-law spouse" was defined in exclusively heterosexual terms.) At the arbitration hearing, PSAC argued that the government's refusal to grant Watson's request for bereavement leave violated the Master Agreement, which specifically prohibited discrimination based on sexual orientation. The Public Service Staff Relations Board rejected the union's argument and ruled that it did not have the power to amend the collective agreement by disregarding the words "of the opposite sex" in the definition of "common law spouse."[13]

The second federal public service case involved the grievance of David Hewens, a gay man employed in the Department of Public Works in Ottawa. In July 1992, Hewens participated in a marriage ceremony with his same-sex partner, Marc Laflamme. The ceremony had the traditional rituals of a Christian wedding, including the exchange of vows and rings before friends and family, and was performed by an ordained minister of the Independent Anglican Church. According to the Master Agreement between the Treasury Board and PSAC, employees were entitled to "five days' marriage leave with pay for the purpose of getting married," but Hewens's application for leave was denied by the government on the basis that "the arrangement . . . with his male partner did not constitute a marriage."

The word "married" was not defined in the Master Agreement. PSAC argued that an expansive interpretation of the word should be applied in light of the agreement's specific prohibition against discrimination based on sexual orientation. The Public Service Staff Relations Board rejected the union's argument, ruling that the term must be given "its ordinary meaning as understood both in law and in common parlance," namely that marriage is a "union between a man and a woman."[14] The board also held that it was "doubtful whether . . . the grievor was discriminated against on the ground of sexual orientation" because he was treated no differently than a heterosexual employee would be if she or he sought marriage leave for the purpose of participating in a ceremony that was not legally recognized as a valid marriage.

Union Involvement in Court Cases, 1988–1993

The early grievance arbitration decisions were not anomalous. They mirrored the early decisions rendered by courts in a variety of lesbian and gay equality rights cases. For example, the first *Charter of Rights and Freedoms* case involving a claim of spousal status by a same-sex couple was initiated in 1987 by CUPE Local 1996 and one of its members, Karen Andrews, who was an employee of the Toronto Public Library Board. Andrews had lived with her same-sex partner, Karen Trenholm, and her partner's two children for approximately nine years. Under CUPE's collective agreement, the Library

Board was required to pay Ontario Health Insurance Plan (OHIP) coverage for employees and their dependants. The Library Board was willing to pay dependant coverage for Trenholm and her children, but the Ontario Hospital Insurance Commission refused to recognize Trenholm as Andrews's spouse for the purposes of insurance coverage under the provincial *Health Insurance Act.*

In the court application, CUPE asserted that Andrews and Trenholm were spouses, but Judge McRae of the Ontario High Court of Justice disagreed. Although there was no definition of the word spouse in the *Health Insurance Act,* he relied on dictionary definitions and other Ontario statutes that define a spouse as a person of the opposite sex. CUPE then argued that, if cohabiting lesbian partners were precluded from obtaining dependant coverage under the *Health Insurance Act,* then the *Act* violated equality rights guaranteed by the *Charter.* Judge McRae rejected that argument as well, ruling that the *Act* was not discriminatory because "heterosexual couples of the same sex" were treated the same as lesbian couples.[15] In other words, heterosexual "brothers and brothers, sisters and sisters, . . . cousins, parents and adult children and any combination of them may be living together under similar circumstances to [Andrews and Trenholm] but would in each case pay OHIP premiums as 'single persons.'"

This type of reasoning was frequently adopted by courts in other early *Charter* cases involving claims for same-sex spousal recognition.[16] It also prevailed in human rights cases at that time, engendering disappointment and frustration for lesbian and gay litigants. Perhaps the best example is the decision of the Manitoba Court of Queen's Bench in the case involving Chris Vogel and Richard North's 1988 human rights complaint. Vogel had made his earlier unsuccessful complaint in 1982, arguing that his employer was discriminating against him based on sex and marital status by refusing to provide him with dental benefits for his same-sex partner. After the Manitoba *Human Rights Act* was amended to add sexual orientation as a prohibited ground of discrimination, Vogel and North filed a new complaint against both the Manitoba government and the Manitoba Government Employees' Association (MGEA). Although the MGEA was named as a respondent because of its role in negotiating a collective agreement that denied spousal benefits to same-sex partners, it supported the arguments presented by the complainants.

When Vogel's first complaint of sex discrimination was dismissed in 1983, the Board of Adjudication ruled that the "denial of benefits to Mr. North arises because of Mr. Vogel's sexual preference and not his gender."[17] The 1988 complaint therefore should have been successful because it was framed as discrimination based on sexual orientation. The complaint was, however, dismissed by the Board of Adjudication, and the dismissal was subsequently upheld by the Manitoba Court of Queen's Bench. Judge Hirschfield found that the denial of same-sex spousal benefits did not constitute discrimination based on sexual orientation, since "homosexual" employees were eligible to receive spousal benefits, provided that they had an opposite-sex spouse.[18]

At this stage, then, arbitrators, adjudicators, and judges all adhered to the circular reasoning that the refusal to grant spousal benefits to same-sex partners was not discriminatory because same-sex partners simply were not spouses. The absurdity of this reasoning was most apparent when tribunals concluded that "homosexuals" were treated equally because they were entitled to precisely the same benefits as heterosexuals, namely spousal benefits for a conjugal partner of the opposite sex.

Lesbian and gay rights litigation might have been abandoned in despair had it not been for a few lower court and tribunal decisions that signaled the jurisprudential tide could be changing in favor of same-sex spousal recognition. First, in 1991, the British Columbia Supreme Court ruled that the exclusion of cohabiting same-sex partners from the definition of spouse in the provincial health insurance regulations violated the *Charter* equality rights of lesbians and gay men.[19] This landmark ruling was made in a case that involved precisely the same issue as the 1988 *Andrews* case in Ontario.

The applicant was Timothy Knodel, a nurse employed by Vancouver's Shaughnessy University Hospital. His employment was governed by a collective agreement that required the hospital to pay Medical Services Plan premiums for employees and their dependants. When his same-sex partner became ill, however, the Medical Services Commission (which administers the provincial Medical Services Plan) refused to register his partner as his spouse. The commission based its refusal on regulations under the *Medical Services Act,* which contained a heterosexual definition of the word spouse. With the support of both the Hospital Employees' Union and his employer, Knodel successfully challenged the regulations' definition of spouse as an unconstitutional infringement of his *Charter* equality rights.

The next important victory came in 1992, when a Board of Inquiry ruled that the Ontario government had violated the provincial *Human Rights Code* by denying public servants coverage for their same-sex partners under various employment benefits plans.[20] The case began in 1988 when Michael Leshner, a lawyer employed by the Ministry of the Attorney General, complained that his employment benefits were discriminatory. The Ontario government argued that the benefit programs were lawful because the *Code* included heterosexual definitions of the terms spouse and marital status. The *Code* also included a section that specifically allowed discrimination based on marital status within insured benefits plans and pension plans. A Board of Inquiry ruled that, by providing the government with a defense against Leshner's complaint, the *Code* was itself discriminatory based on sexual orientation and was therefore unconstitutional. As a result of this ruling, employees represented by the Ontario Public Service Employees' Union became entitled to same-sex spousal benefits, including survivor pension benefits.

The third important victory occurred in 1992, when the British Columbia Workers' Compensation Board (WCB) awarded Shirley Petten a monthly pension as the surviving spouse of Beverly Holmwood, a nurse who died as a result of a work-related injury. Petten's application for the pension was initially rejected by a WCB adjudicator, who held that a same-sex partner could not qualify as a spouse. The British Columbia Nurses' Union assisted Petten in challenging the adjudicator's decision. She successfully argued that the workers' compensation legislation should be interpreted in accordance with the provincial human rights statute, which had just been amended to prohibit discrimination based on sexual orientation.[21]

These three decisions in 1991–1992 offered hope to lesbians and gay men that the earlier trend of negative rulings in same-sex spousal benefits cases might be reversed. However, they also created significant confusion for employees and employers alike, who were unclear as to their respective rights and obligations. Thus, employers,

unions, and lesbian and gay workers eagerly awaited a pronouncement from the Supreme Court of Canada to resolve the inconsistencies that had emerged in the jurisprudence.

The *Mossop* Case (1993)

The first same-sex spousal benefits case to reach the Supreme Court was decided in February 1993. It was initiated by Brian Mossop, a translator employed by the Department of the Secretary of State, after he was denied bereavement leave to attend the funeral of his male partner's father. His employment was governed by a collective agreement between the Treasury Board and the Canadian Union of Professional and Technical Employees (CUPTE). The agreement provided employees with up to four days' leave upon the death of an "immediate family member," which was defined to include a father-in-law. "Father-in-law" was not defined in the agreement, but "common-law spouse" was defined in a manner that restricted its application to the opposite-sex partners of employees.

Mossop's request for bereavement leave was rejected. A subsequent grievance, launched with the support of CUPTE, was denied. Rather than proceeding to arbitration, Mossop chose to submit a complaint to the Canadian Human Rights Commission, alleging that both his employer and his union had violated his rights by negotiating a collective agreement that discriminated against him on the basis of family status. When he filed the complaint in 1985, sexual orientation was not a prohibited ground of discrimination under the *Canadian Human Rights Act* (CHRA).

Mossop's complaint eventually reached the Supreme Court of Canada, which ruled that the denial of bereavement leave did not constitute discrimination based on family status. The legislative history of the CHRA revealed that Parliament had deliberately decided not to add sexual orientation to the statute when it added family status to the list of prohibited grounds of discrimination in 1983. The Supreme Court ruled that the reason for the denial of bereavement leave was so closely related to Mossop's sexual orientation that to allow his complaint on the basis of family status would effectively introduce into the CHRA a prohibition that Parliament had specifically decided to exclude.[22]

It is important to note that, approximately six months prior to the release of the *Mossop* decision, the Ontario Court of Appeal had declared (in the *Haig* case) that the CHRA was unconstitutional because it did not prohibit discrimination based on sexual orientation. The Court of Appeal also ordered that the CHRA be interpreted and applied as though it included sexual orientation. After the release of the *Haig* decision, the Supreme Court of Canada invited the parties in *Mossop* to submit new arguments with respect to the constitutionality of the CHRA, but the parties declined, insisting that the court dispose of the *Mossop* appeal based on an interpretation of the meaning of family status. Significantly, Chief Justice Lamer suggested in *Mossop* that the Supreme Court might have decided the case differently if the parties had accepted the invitation to submit *Charter* arguments. Without a *Charter* challenge to the

constitutional validity of the CHRA, the Supreme Court was powerless to interfere with Parliament's intent to exclude lesbians and gay men from the protection afforded by that statute.

Union Supported Grievances in the Wake of the *Mossop* Decision

Although Mossop lost his legal battle for bereavement leave, his case established a positive precedent for same-sex spousal rights litigation. Prior to the *Mossop* decision, arbitrators and most tribunals and courts had ruled that the failure to treat same-sex and opposite-sex partners equally did not constitute discrimination based on sexual orientation. It was therefore significant that the Supreme Court of Canada effectively told Mossop that the real reason he was denied bereavement leave was not because of his family status, but rather because he was gay. The reasoning that had characterized previous negative decisions in same-sex spousal benefits cases was clearly inconsistent with the Supreme Court's decision in *Mossop*.

The impact of the *Mossop* case was apparent almost immediately in the labor arbitration field. In workplaces where a collective agreement or the governing human rights statute prohibited discrimination based on sexual orientation, unions began to win same-sex spousal benefits grievances. The first successful grievance was decided in September 1993. The Public Service Staff Relations Board ruled that the Treasury Board had violated its Master Agreement with PSAC by refusing to recognize a gay employee's same-sex partner as his common-law spouse for the purpose of certain leave provisions in the collective agreement. The grievance was filed by David Lorenzen after he was denied family-related leave to care for his injured partner, Steven Pauls, and denied bereavement leave to attend the funeral of Pauls's father. The Public Service Staff Relations Board, citing the *Mossop* decision, found that the government had discriminated against the grievor on the basis of his sexual orientation.

The *Mossop* decision was also cited by arbitrators in three successful grievances in 1994. The University of Lethbridge Faculty Association won a grievance (cited earlier) that resulted in same-sex spousal coverage for academic staff enrolled in the university's life insurance, dental care, extended health care, and vision care plans. The Canadian Telephone Employees' Association won a similar grievance on behalf of Michael Lee and Ritchie Waller, two gay employees who wanted to register their respective same-sex partners for spousal coverage under Bell Canada's comprehensive benefits program (which included pension, extended health care, dental care, and vision care benefits).[23] Finally, PSAC won a grievance against Canada Post Corporation on behalf of Luc Guevremont, a payroll clerk who was denied reimbursement of vision care expenses incurred by his same-sex partner, Raymond Milne.[24] The latter case involved the second grievance filed by Guevremont in an effort to obtain same-sex spousal benefits. His first grievance had been dismissed by an arbitrator only six months earlier.[25]

The arbitrator who heard Guevremont's first grievance appears to have misinterpreted the *Mossop* decision. He treated *Mossop* as a precedent for the broad principle

that a denial of same-sex spousal benefits is not discriminatory, rather than for the narrower principle that it does not constitute *discrimination based on family status.* A similar error was made by a different arbitrator in another 1994 grievance against the Canada Post Corporation, which was filed by a Winnipeg local of CUPW. The latter case involved a lesbian employee's request for same-sex spousal coverage under the corporation's dental plan.[26] The union argued that the corporation's refusal to provide the benefits violated the collective agreement, which specifically prohibited discrimination based on sexual orientation. The arbitrator dismissed the grievance, ruling that the grievor had not suffered discrimination based on her sexual orientation, because her request for spousal benefits would have been granted—despite her sexual orientation—if only her partner had been of the opposite-sex.

Fortunately, these two cases did not represent a renewed trend in same-sex spousal benefits litigation. They did contribute, however, to ongoing confusion about the respective rights and obligations of lesbian and gay workers and employers, and the uncertainty in the law generated further litigation. For example, in 1995, the Canadian Media Guild filed a grievance on behalf of Denis-Martin Chabot, a legislative reporter employed by the Canadian Broadcasting Corporation (CBC) in Edmonton. Chabot had been denied spousal benefits for his same-sex partner, Dwayne Zoeteman, under the CBC's health care, dental care, and employee pension plans. The union argued that the denial of benefits violated the collective agreement, which specifically prohibited discrimination based on sexual orientation. The arbitrator agreed, quoting extensively from the *Mossop* case, which he regarded "as providing authoritative guidance." He found that the corporation's refusal to grant same-sex spousal benefits "must be construed as discrimination on the basis of sexual orientation."[27] The CBC was ordered to rid its employee benefit plans of discrimination.

The Supreme Court's Decision in *Egan* and Its Impact on Grievance Arbitrations

In May 1995, the Supreme Court of Canada released its decision in the *Egan*[28] case and thereby eliminated whatever doubt remained after *Mossop* about whether the denial of same-sex spousal benefits constitutes discrimination based on sexual orientation. James Egan and John Nesbit challenged the opposite-sex definition of spouse in the *Old Age Security Act* (OASA), arguing that it constituted a violation of their *Charter* equality rights. Under the OASA, a spouse of a pensioner is entitled to receive an allowance from the ages of 60 to 65, provided that the couple's joint income falls below a particular amount. Egan was a pensioner whose partner of forty years was denied a spousal allowance even though their joint income was lower than the requisite threshold. The denial of Nesbit's request for a spousal allowance was upheld by both the trial division and the appellate division of the Federal Court. The case was appealed to the Supreme Court of Canada, where the Canadian Labour Congress intervened with other organizations in support of the appellants.

The outcome of the *Egan* case was complex. First, the Supreme Court ruled that the *Charter* prohibits discrimination based on sexual orientation, although it does not do

so explicitly. The court also concluded that the opposite-sex definition of spouse in the OASA discriminates based on sexual orientation, thereby eliminating any uncertainty that existed about the import of the earlier *Mossop* decision. Egan and Nesbit's appeal, however, was dismissed by a majority of the court on the basis that the discrimination in the OASA was justifiable pursuant to section 1 of the *Charter,* which permits governments to impose reasonable limits on constitutional rights. The precise reasons for the court's ruling under section 1 were somewhat difficult to decipher, since four out of the five judges who held that the discrimination was justifiable expressed their reasons for doing so in a single sentence. The fifth judge, Justice Sopinka, wrote separate reasons for his decision. He outlined several factors, including the cost of extending the spousal allowance to same-sex partners, the ostensible "novelty" of the claim for spousal recognition, and the fact that Parliament requires time to move "incrementally" in developing social policy initiatives.

In the *Egan* case, the Supreme Court unequivocally affirmed that a denial of spousal benefits to same-sex partners constitutes discrimination based on sexual orientation. The ultimate rejection of Egan and Nesbit's claim, based on section 1 of the *Charter,* did not detract from the significance of the court's ruling in the labor arbitration field, since collective agreements do not contain clauses similar to section 1 of the *Charter.* The *Egan* case consequently did not assist employers who were seeking to deny lesbian and gay workers access to same-sex spousal benefits.

For example, shortly after the decision in *Egan* was released, the Canadian Broadcasting Corporation returned before the arbitrator who had ruled in February 1995 that it must rid its employee benefits plans of discrimination based on sexual orientation. The CBC argued that, with respect to pension benefits, the earlier arbitration award had been superceded by the Supreme Court's ruling in *Egan.* The arbitrator rejected the CBC's argument, stating that *Egan* did not create "any sort of legal impediment" to the establishment of a pension plan that provides spousal survivor benefits to employees in same-sex relationships.[29] The issue of pension benefit was especially significant because the *Income Tax Act* provided preferential tax treatment to registered pension plans that restricted spousal survivor benefits to opposite-sex partners. The *Income Tax Act*'s definition of spouse would later become the subject of separate litigation in the *Rosenberg* case, which is discussed below.

In the past three years, numerous other successful arbitration cases have involved claims for same-sex spousal benefits. Many of the grievances have raised issues identical to those that were litigated and lost prior to the *Mossop* and *Egan* decisions. For example, in December 1995, CUPW won a grievance on behalf of Archie Aebly, a long-standing employee of the Canada Post Corporation, who was denied bereavement leave to attend the funeral of his same-sex partner's father. The corporation argued that Aebly's request was denied not because of his sexual orientation, but rather because no member of his immediate family had died. According to the corporation, the deceased was not Aebly's father-in-law because Aebly and his same-sex partner were not (and could not be) legally married. The arbitrator ruled in favor of the union, declaring that Aebly's same-sex partner qualified as his common-law spouse, and that the deceased consequently qualified as his father-in-law within the meaning of the bereavement leave provisions in the collective agreement.[30]

CUPE Local 1582 also won an arbitration case late in 1995. The grievance was filed against the Metro Toronto Reference Library, which had denied a gay employee bereavement leave upon the death of his same-sex partner.[31] In 1996, two successful grievances were decided by the Public Service Staff Relations Board against the Treasury Board of Canada. One was filed by PSAC on behalf of Lahl Barbara Sarson, an employee of the Canadian Grain Commission in Winnipeg, who was denied relocation leave to accompany her partner, Rebecca Van Sciver, when she moved to British Columbia.[32] The other was filed by the Professional Institute of the Public Service of Canada (PIPSC) on behalf of Stephen Yarrow, an employee of Agriculture and Agri-Food Canada, who was denied bereavement leave when his partner, Joseph Adam Murray, died.[33] In the latter case, PSAC intervened in support of Yarrow's grievance.

In June 1997, the Public Service Staff Relations Board revisited the issue of marriage leave for public service employees who have a commitment ceremony with their same-sex partner. As discussed above, PSAC had lost a grievance on this very issue in 1992. This time, PIPSC was filing a grievance on behalf of Ross Boutilier, an employee in the Department of Natural Resources in Halifax, Nova Scotia, who had requested leave to participate in a church wedding ceremony with his partner, Brian Mombourquette. His request was denied on the basis that his holy union with Mombourquette was not legally recognized as a valid marriage. At the arbitration hearing, the government argued that the board would be required to "do violence to the ordinary meaning" of the word marriage in order to allow Boutilier's grievance. The union argued that the board should interpret the word marriage to include a same-sex commitment ceremony because the collective agreement must be interpreted in a manner consistent with the *Canadian Human Rights Act,* which had been amended to prohibit discrimination based on sexual orientation. The board accepted the union's argument and upheld Boutilier's grievance.[34] The government, however, applied for judicial review of this decision. (The Federal Court has not yet ruled on the government's application.)

Another important arbitration case decided in 1997 involved a grievance filed by the British Columbia Government and Service Employees' Union (BCGSEU). The grievor was Liav Gold, an employee in the provincial Ministry of Women's Equality, who was in a long-term same-sex relationship with Rhys Liat del Valle. The case began shortly after del Valle gave birth to their son, Elias, in 1995. Gold applied for parental leave benefits under the *Unemployment Insurance Act* (now the *Employment Insurance Act*). She also applied for parental leave and for an additional allowance to "top up" her unemployment benefits, as provided by the Master Agreement negotiated by the BCGSEU. (The "top up" provision in the agreement ensured that employees on parental leave received 75 percent of their regular wages.)

Gold's requests were denied. The employer asserted that Gold was neither the biological nor the adoptive mother of Elias and consequently was not a parent of the child with respect to whom she had made her application for parental leave. The employer also asserted that Gold's sexual orientation was irrelevant because all applicants, regardless of their sexual orientation, must meet the criteria for being a parent before they qualify for parental leave and the leave allowance under the collective agreement. The union filed a grievance on Gold's behalf, alleging that the employer's decision violated the collective agreement, which prohibited discrimination based on sexual orientation.

The grievance was referred to arbitration, where the union's position prevailed.[35] The arbitrator ruled that the "form of parenthood selected by the grievor and Ms. del Valle was one dictated by their sexual orientation" and that to require Gold to bring herself within the definition of a parent urged by the employer would amount to discrimination based on sexual orientation. (It should be noted that this grievance arose before it became legal in British Columbia for a woman to adopt her same-sex partner's biological child. It was therefore not possible for Gold to adopt her son Elias unless del Valle relinquished her rights as his mother.)

Following the arbitration decision, an issue arose with respect to the appropriate remedy in the case. The federal government had also denied Gold's request for unemployment benefits, and the arbitrator did not have the jurisdiction to order Employment Canada to reverse its decision. The collective agreement required the employer to "top up" unemployment benefits received from Employment Canada, but in Gold's case, there were no benefits to top up. The union argued that the employer should fund the entire leave allowance (i.e., 75 percent of the grievor's regular wages); the employer argued that such a remedy would be unfair. The arbitrator ruled that the "Employer cannot avoid the obligation to pay leave allowance on the basis that Employment Canada does not recognize the grievor's status as a parent and thus refuses to fund its portion of the benefit." Since the loss to the grievor of denying the benefit outweighed the cost to the employer of funding the benefit, the arbitrator ordered that the full allowance be paid by the employer.

Cases Brought Before Human Rights Tribunals After *Egan*

Same-sex spousal benefits cases continue to be litigated before human rights tribunals, although not as often as labor arbitration boards. Unions have often been directly involved in these cases, in some instances supporting complainants even when the unions have been named as respondents. The case of Chris Vogel provides a useful illustration. His 1982 and 1988 attempts to secure same-sex benefits from the Manitoba government have already been discussed. His second human rights complaint eventually reached the Manitoba Court of Appeal, which ruled in June 1995 that, as a result of the *Egan* decision, it was "bound to conclude that the denial of spousal benefits [to Vogel's] same-sex partner is the result of their sexual orientation, and is, therefore, discriminatory treatment" under the Manitoba Human Rights Code.[36] The court referred the complaint back to the Board of Adjudication for a hearing as to whether there was a *bona fide* and reasonable cause for the discrimination.

When the case was subsequently heard by the Board of Adjudication, the Manitoba government attempted to defend its position by relying on Justice Sopinka's reasoning in *Egan*. In particular, the government argued that the board should adopt an "incremental approach to expanding the protection against discrimination" and should "take into account the additional costs and administrative burden" of extending spousal benefits to the same-sex partners of employees.[37] Although the Manitoba Government Employees' Union (MGEU) was named as a respondent in the complaint, it supported

the position of Vogel and North, arguing that the reasons of Justice Sopinka in the *Egan* case do not apply to situations in which a government acts as an employer. Evidence was adduced with respect to the MGEU's unsuccessful attempts to obtain same-sex spousal benefits through collective bargaining. The Board of Adjudication ruled against the Manitoba government with respect to the dental, health care, and group life insurance plans. On the other hand, it ruled that the government's refusal to provide survivor pension benefits to same-sex spouses was reasonable, in light of the applicable income tax regulations (which are discussed below).

Another significant human rights case involved the complaints of Dale Akerstrom and Stanley Moore, two federal public servants who were denied spousal benefits for their respective same-sex partners. Akerstrom, an employee of Citizenship and Immigration Canada, was seeking health care and dental care coverage for his partner, Alexander Dias. Moore, a Foreign Service Officer employed by the Department of External Affairs, was seeking a variety of insured and uninsured spousal benefits. He had been denied a spousal relocation allowance when his partner, Pierre Soucy, had accompanied him on a posting to Indonesia. They had been assigned housing in Jakarta as though Moore was single, and while in Jakarta, Soucy had been denied access to the recreational hardship support program offered to opposite-sex spouses. Soucy had also been denied spousal coverage under Moore's extended health care and dental care plans.

Akerstrom was a member of a bargaining unit represented by PSAC. Moore's bargaining agent was the Professional Association of Foreign Service Officers (PAFSO). Both men named their unions and the federal government as respondents in their respective complaints, alleging that the unions were partially responsible for the discrimination because they had negotiated the benefits contained in the collective agreements. However, at the hearing before the Canadian Human Rights Tribunal, both PSAC and PAFSO supported the complainants' positions. In addition, PIPSC intervened in the case in support of the complainants. There was evidence during the hearing that all three unions had made repeated efforts to acquire same-sex spousal benefits for employees through collective bargaining.

After reviewing the decisions in *Egan* and *Vogel,* the tribunal held that the law "is now crystal clear" that "denial of the extension of employment benefits to a same-sex partner which would otherwise be extended to opposite-sex common-law partners is discriminatory on the prohibited ground of sexual orientation."[38] The government relied on the reasoning of Justice Sopinka in *Egan,* arguing that the denial of spousal benefits constitutes a reasonable limit on human rights, in light of the government's limited resources and the need for flexibility in making decisions about eligibility for benefits. The tribunal rejected that argument, noting that it is important to make a distinction between the role of government as the developer and implementer of social policy initiatives and the role of government as employer. In this case, the government was an employer who could "no more rely upon s.1 of the *Charter* to justify discrimination on a ground prohibited under [the *Canadian Human Rights Act*] than can a private employer who is federally regulated." The tribunal also described the benefits at issue in the complaints as "earned benefits" that were "part of the remunerative package of employees," distinguishing them from the "discretionary social benefits" at issue in the *Egan* case.

As a result of this case, the federal government was ordered to extend spousal benefits to the same-sex partners of all public service employees. The government attempted to implement the tribunal's order by granting lesbian and gay employees the same benefits as heterosexual employees without actually recognizing that cohabiting same-sex partners are spouses within the meaning of the PSAC, PIPSC, and PAFSO Master Agreements. The unions rejected that proposal, and the matter was referred back to the tribunal, which ordered the government to treat cohabiting same-sex partners as spouses. The government was advised that it cannot segregate employees with same-sex partners as a separate category of benefits recipients.[39]

The Special Case of Pension Benefits

Until very recently, lesbian and gay workers' claims for spousal pension benefits faced unique hurdles due to complications created by the *Income Tax Act*. The outcome of Chris Vogel and Richard North's human rights complaint illustrates this point. As mentioned above, in 1997 the Manitoba Board of Adjudication ruled in their favor with respect to all employment benefits except the spousal survivor pension. A similar result was reached in March 1998 in an arbitration case involving several grievances filed by two locals of the Canadian Auto Workers (CAW) against Chrysler Canada Ltd. The CAW was successful in winning an array of same-sex spousal benefits for its lesbian and gay members (including health and dental care, legal services, and various forms of leave) but lost its claim for survivor pension benefits for same-sex spouses.[40] In both of these cases, the pension benefits were denied due to the impact of income tax regulations.

Prior to the April 1998 court ruling in the *Rosenberg* case, which is discussed below, the *Income Tax Act* created a strong disincentive, if not an outright barrier, to the provision of same-sex spousal pension benefits. The *Act* required that certain conditions be satisfied in order for a pension plan to be registered. One of the criteria for registration was that a plan had to provide survivor benefits for the spouses of deceased plan members, but only for opposite-sex spouses. Consequently, Revenue Canada would revoke the registered status of any pension plan that purported to pay survivor benefits to same-sex widows or widowers. Since deregistration of a pension plan had severe negative tax consequences, virtually all employers refused to provide same-sex spousal pension benefits in order to preserve the registered status of their plans.

Despite these tax rules, in the early 1990s, lesbian and gay employees began to challenge their employers' refusal to provide survivor pension benefits for same-sex partners. Unions played an active role in supporting many of these challenges. Arbitrators and adjudicators were, however, understandably reluctant to order employers to take any action that could result in the deregistration of a pension plan, because that would have adverse financial implications that could jeopardize the very existence of the plan. Most pension benefits cases were therefore unsuccessful.

One notable exception was the *Leshner* case, which was decided by the Ontario Board of Inquiry in 1992.[41] As discussed above, Michael Leshner was a lawyer employed by the Ministry of the Attorney General who filed a human rights complaint against

the provincial government because it refused to extend spousal benefits to his same-sex partner. Leshner succeeded in obtaining not only health care and dental care benefits, but also survivor pension benefits for all same-sex spouses of public service employees. The Board of Inquiry ordered the Ontario government to create a separate unregistered pension plan for lesbian and gay employees. The creation of such an "off-side" plan enabled the government to provide same-sex spousal pension benefits to its employees without jeopardizing the registered status of its regular pension plan.

In subsequent grievances and human rights cases, unions and employees sought similar orders for the creation of off-side pension plans, but their efforts were often unsuccessful. Once again, the impact of income tax regulations presented a barrier to lesbian and gay equality claims. Since off-side pension arrangements do not receive preferential tax treatment, they are considerably more expensive to administer than registered pension plans. Many tribunals were therefore reluctant to impose off-side plans upon employers.[42] The *Leshner* case was unique because the employer in that case, a provincial government, was not subject to the same tax liability as private sector employers.

Despite the difficulties created by the *Income Tax Act,* unions obtained survivor pension benefits for lesbian and gay workers in a few grievances. For example, the 1994 arbitration case that the Canadian Telephone Employees' Association won on behalf of Michael Lee and Ritchie Waller against Bell Canada resulted in the creation of an off-side pension plan including same-sex spousal survivor benefits. Similarly, in the 1995 case initiated by the Canadian Media Guild on behalf of Denis-Martin Chabot, an arbitrator ordered the Canadian Broadcasting Corporation to implement an off-side pension plan that included same-sex spousal benefits. (Both of these cases have already been discussed.)

Even these successful cases, however, did not achieve equal benefits for lesbian and gay workers. The pension benefits provided by off-side arrangements were not as secure as the benefits provided by registered plans. Moreover, the implementation of off-side pension plans did not alter the heterosexist income tax regulations that were the real source of the problem.

The *Income Tax Act* was eventually challenged directly in a *Charter* application initiated by CUPE and two of its employees, Nancy Rosenberg and Margaret Evans. The *Rosenberg* case involved CUPE's own employee pension plan. All CUPE employees, including Rosenberg and Evans, were required to make regular contributions to the plan, but they were denied survivor pension benefits for their same-sex partners. CUPE wanted to eliminate the discriminatory exclusion of same-sex partners, but Revenue Canada threatened to deregister CUPE's pension plan if same-sex spousal survivor benefits were offered. CUPE responded by challenging the heterosexual definition of spouse in the *Income Tax Act.*

After an initial defeat in August 1995, CUPE won its case in April 1998.[43] The Ontario Court of Appeal ruled that the income tax regulations violated the *Charter* equality rights of lesbians and gay men. The court declared that same-sex partners must be treated the same as opposite-sex partners for the purposes of survivor benefits and pension plan registration under the *Income Tax Act.*

The *Rosenberg* case was an important victory for lesbian and gay workers across the country because it eliminated the excuse most commonly cited by employers for refusing

to provide same-sex spousal pension benefits. The federal government chose not to appeal the court decision. Almost immediately, the government of Nova Scotia settled an employee's human rights complaint by agreeing to extend same-sex spousal pension benefits to teachers and public servants in that province. The government of British Columbia then introduced legislation to provide same-sex spousal pension benefits to its public service employees, and the government of New Brunswick followed suit. The government of Quebec has announced that it will examine its own provincial laws with a view to taking similar action.

In Ontario, the government initially refused to extend survivor pension benefits to the same-sex partners of public service employees. Although the *Rosenberg* case made it clear that Revenue Canada could no longer refuse to register a pension plan simply because the plan offered survivor benefits to same-sex partners, the case did not address the issue of whether the Financial Services Commission of Ontario (FSCO) could or should refuse to register such a plan provincially. The Ontario government took the position that the provincial *Pension Benefits Act,* which contains an opposite-sex definition of "spouse," precludes the registration by FSCO of pension plans that offer same-sex survivor benefits. The Ontario Public Service Employees' Union (OPSEU) disagreed and argued that the heterosexual definition of "spouse" in the OPSEU Pension Plan should be amended to provide survivor benefits to the same-sex partners of public service employees.

In December 1998, the Trustees of the OPSEU Pension Fund applied to an Ontario court for directions as to whether the OPSEU Pension Plan had to be amended in light of the *Rosenberg* decision and whether the Plan could be registered by FSCO if it were amended. OPSEU, the government, and FSCO were all named as Respondents in the case. OPSEU argued in favor of the proposed amendment. The Court interpreted the *Pension Benefits Act* as requiring that survivor pension benefits be provided to opposite-sex spouses, but not forbidding the provision of similar benefits to same-sex spouses.[44] The Trustees were directed to amend their plan and, as a result, same-sex survivor benefits are now provided by the registered OPSEU plan, instead of through an off-side arrangement.

There were three intervenors in the *OPSEU Pension Plan* case: CUPE, the Trustees of the CUPE Pension Fund (which was at issue in the *Rosenberg* case), and the Ontario Teachers' Federation (which is jointly responsible with the Ontario government for the administration of the largest pension plan in the province). The intervenors argued that the *Pension Benefits Act* is discriminatory and unconstitutional, even tough it *permits* the registration of pension plans offering same-sex survivor benefits, because the *Act* does not *require* that survivor benefits be provided to same-sex spouses in every pension plan. OPSEU supported these arguments.

The Court was persuaded that the provincial legislation violates the *Charter* equality rights of lesbian and gay workers. It declared the heterosexual definition of "spouse" in the *Pension Benefits Act* to be unconstitutional and ordered that it be interpreted to include same-sex partners. The Ontario government has appealed this aspect of the ruling. If the lower court decision is upheld on appeal, every pension plan in the province (including private sector plans) will be required to offer survivor benefits to same-sex partners.

The Supreme Court's Decision in M. v. H.

The movement of Canadian courts and tribunals toward greater recognition of same-sex relationships was solidified in May 1999, when the Supreme Court of Canada issued its decision in the M. v. H. case. The case involved a lesbian couple who had separated after more than ten years of cohabitation. One of the women wanted to sue the other for spousal support, but she did not have the right to do so because the applicable definition of "spouse" in Ontario's *Family Law Act* is restricted to opposite-sex partners. She challenged the constitutional validity of that definition, relying on the equality rights section of the *Charter*. The Supreme Court ruled that the heterosexual definition of "spouse" in the statute is invalid because it discriminates on the basis of sexual orientation. The Court also ruled that there is no acceptable justification for the discrimination. The Ontario government was given six months from the date of the Court's judgment to amend its family law regime by granting cohabiting same-sex partners the same support rights and obligations as opposite-sex partners. Although the decision in M. v. H. only directly affects the right of lesbians and gay men in Ontario to sue their ex-partners for spousal support, it has broad implications. It sends a clear message to federal and provincial governments that the discriminatory exclusion of same-sex partners from eligibility for all kinds of spousal benefits will no longer be tolerated by the courts.

Conclusion

Unions and labor organizations have been at the forefront of lesbian and gay rights litigation for many years. Their prominent role in the struggle for same-sex spousal benefits is probably due, at least in part, to the centrality of employment benefits as an issue in collective bargaining. Employment benefits are an integral part of every employee's compensation package. Many trade unionists, who might not otherwise be vocal supporters of the queer liberation movement, are quick to object to an employer's attempt to provide lesser compensation (e.g., fewer benefits) to an employee simply because that employee is in a same-sex relationship. The fundamental principle of "equal pay for work of equal value" is one of the keystones of the organized labor movement. The denial of same-sex spousal benefits constitutes a flagrant breach of that principle because it effectively denies some employees equal compensation based solely on their sexual orientation.

Evidently, unions have played a particularly active and critical role in cases that involved same-sex spousal benefits claims. The record of unions in addressing sexual orientation issues more generally has been uneven, although in the 1990s, the number of unions and labor organizations speaking out in favor of respect for sexual diversity has significantly increased. Many unions have deepened their commitment over the course of the decade and demonstrated a willingness to apply considerable resources to assisting lesbian and gay workers in achieving equality through grievance procedures, human rights tribunals, and court actions. Labor involvement in all of these cases has been important, not only in helping to establish useful legal precedents, but also in forging space for lesbian and gay workers to become visible in the workplace.

Notes

Acknowledgments: I would like to thank Gerald Hunt and David Rayside for their comments and suggestions on earlier drafts of this chapter. I also want to acknowledge that the work of Janice Cheney has influenced my thinking on the issues addressed.

1. *Re Board of Governors of the University of Saskatchewan and the Saskatchewan Human Rights Commission* (1976), 66 D.L.R. (3d) 561 (Sask. Q.B.).

2. *Re Damien and Ontario Human Rights Commission* (1976), 12 O.R. (2d) 262 (H.C.J.), and *Damien v. Ontario Racing Commission* (1975), 11 O.R. (2d) 489 (H.C.J.).

3. *Vogel v. Government of Manitoba (no. 1)* (1983), C.H.R.R. D/1654 (Man. Bd. Adj.).

4. Vogel and North had participated in a wedding ceremony in 1974 and had failed in an attempt to compel the province to register their union as a marriage. See *North v. Matheson* (1974), 20 R.F.L. 112 (Man. Co. Ct.).

5. *Haig v. Canada* (1992), 9 O.R. (3d) 495 (C.A.).

6. *Newfoundland and Labrador (Human Rights Commission) v. Newfoundland and Labrador (Minister of Employment and Labour Relations),* [1995] N.J. No.283 (Nfld. S.C.) (QL).

7. *Re University of Lethbridge and University of Lethbridge Faculty Association* (1994), 48 L.A.C. (4th) 172.

8. *Re Canada Post Corporation and CUPW,* unreported decision of arbitrator Pierre Jasmin dated 27 March 1986. If any readers are aware of an earlier arbitration award involving same-sex spousal benefits, I would greatly appreciate receiving information about the case.

9. *Re Carleton University and CUPE, Local 2424* (1988), 35 L.A.C. (3d) 96.

10. Endorsement of Judge Reid, Ontario Divisional Court, dated 8 June 1990. It should be noted that, in more recent cases, arbitrators and Boards of Inquiry have ruled that the opposite-sex definition of spouse in the Ontario *Human Rights Code* is itself discriminatory and is unconstitutional because it violates equality rights guaranteed by the *Canadian Charter of Rights and Freedoms.* See, for example, *Leshner v. Ontario* (1992), 16 C.H.R.R. D/184 (Ont. Bd. Inq.); *Re Metro Toronto Reference Library and CUPE, Local 1582* (1995), 51 L.A.C. (4th) 69 (Ontario); *Dwyer and Sims v. Metro Toronto (no. 3)* (1996), 27 C.H.R.R. D/108 (Ont. Bd. Inq.); *McCallum v. Toronto Transit Commission,* [1997] O.H.R.B.I.D. No. 19 (QL) and [1996] O.H.R.B.I.D. No. 8 (QL); and *Re Chrysler Canada Ltd. and C.A.W., Locals 1498 and 444,* unreported decision of Ross Kennedy dated 6 March 1998.

11. *CUPE, Local 2424 v. Carleton University,* [1990] O.J. No.1890 (C.A.) (QL).

12. *Re Parkwood Hospital and McCormick Home* (1992), 24 L.A.C. (4th) 149.

13. *Re Canada (Indian and Northern Affairs) and Watson (PSAC)* (1990), 11 L.A.C. (4th) 129 (PSSRB).

14. *Re Canada and Hewens (PSAC),* decision of the Public Service Staff Relations Board dated 25 November 1992 (file no. 166-2-22732).

15. *Andrews v. Ontario (Minister of Health)* (1988), 49 D.L.R. (4th) 584 (Ont. H.C.).

16. See, for example, *Egan* v. *Canada,* [1993] 3 F.C. 401 (C.A.) and *Layland v. Ontario (Minister of Consumer and Commercial Relations)* (1993), 14 O.R. (3d) 658 (Gen. Div.).

17. *Vogel v. Government of Manitoba (no. 1)* (1983), C.H.R.R. D/1657 (Man. Bd. Adj.).

18. *Vogel v. Manitoba (no. 2)* (1992), 90 D.L.R. (4th) 84 (Man. Q.B.). The decision was eventually reversed on appeal (see notes 36 and 37 below).

19. *Knodel v. British Columbia (Medical Services Commission)* (1991), 58 B.C.L.R. (2d) 356 (S.C.). In a 1989 case, a gay prison inmate won the right to have visits with his same-sex partner; however, the case did not involve a declaration that the two men were spouses. See *Vesey v. Correctional Services Canada* (1990), 109 N.R. 300 (F.C.A.).

20. *Leshner v. Ontario (no. 2)* (1992), 16 C.H.R.R. D/184 (Ont. Bd. Inq.).

21. This case is summarized in CUPE, *Winning Out at Work* (Ottawa: 1993 edition) at C-11, and in Donald Casswell, *Lesbians, Gay Men and Canadian Law* (Toronto, Emond Montgomery Publications, 1996), p. 425.

22. *Mossop v. Canada,* [1993] 1 S.C.R. 554.

23. *Re Bell Canada and Canadian Telephone Employees' Association* (1994), 43 L.A.C. (4th) 172.

24. *Re Canada Post Corporation and PSAC (Guevremont no. 3),* unreported decision of Stephen Kelleher dated 8 March 1994.

25. *Re Canada Post Corporation and PSAC (Guevremont no. 1),* unreported decision of Robert Blasina dated 5 October 1993. See also *Re Canada Post Corporation and PSAC (Guevremont no. 2)* (1993), 38 L.A.C. (4th) 332.

26. *Re Canada Post Corporation and CUPW (Evinger),* [1994] D.A.T.C. No. 1164 (QL) (judgment written in French).

27. *Re Canadian Broadcasting Corporation and Canadian Media Guild* (1995), 45 L.A.C. (4th) 353.

28. *Egan v. Canada,* [1995] 2 S.C.R. 513.

29. *Re Canadian Broadcasting Corporation and Canadian Media Guild* (1996), 52 L.A.C. (4th) 350.

30. *Re Canada Post Corporation and CUPW (Aebly),* [1995] C.L.A.D. No. 1134 (QL).

31. *Re Metro Toronto Reference Library and CUPE, Local 1582* (1995), 51 L.A.C. (4th) 69.

32. *Re Treasury Board and PSAC (Sarson),* decision of the Public Service Staff Relations Board dated 1 March 1996 (file no. 166-2-25312).

33. *Re Treasury Board and PIPSC (Yarrow),* decision of the Public Service Staff Relations Board dated 5 February 1996 (file no. 166-2-25034).

34. *Re Treasury Board and Boutilier* (1997), 65 L.A.C. (4th) 102 (PSSRB).

35. *Re British Columbia and B.C.G.S.E.U.,* [1997] B.C.C.A.A.A. No.514 (QL).

36. *Vogel v. Manitoba* (1995), 23 C.H.R.R. D/173 (Man. C.A.) at D/175.

37. *Vogel v. Manitoba (no. 3),* decision of the Manitoba Board of Adjudication dated 21 November 1997.

38. *Moore v. Canada* (1996), 25 C.H.R.R. D/352 (C.H.R.T.).

39. *Canada Attorney General v. Moore,* [1998] F.C.J. No. 1128 (T.D.) (QL).

40. *Re Chrysler Canada Ltd. and CAW, Locals 1498 and 444,* unreported decision of Ross Kennedy dated 6 March 1998.

41. *Leshner v. Ontario (no. 2)* (1992), 16 C.H.R.R. D/184 (Ont. Bd. Inq.).

42. See, for example, *Laessoe v. Air Canada* (1996), 27 C.H.R.R. D/1 (C.H.R.T.) and *Dwyer v. Toronto (Metro) (no. 3)* (1996), 27 C.H.R.R. D/108 (Ont. Bd. Inq.).

43. *Rosenberg v. Canada,* decision of the Ontario Court of Appeal dated 23 April 1998.

44. *Trustees of the OPSEU Pension Plan Trust Fund v. Ontario, FSCO, and OPSEU,* unreported decision of Judge Rivard, dated 4 December 1998.