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Leshner Ruling

On August 31, 1992 the Ontario Human Rights Commission decided in favour of extending survivor benefits to persons in same sex conjugal relationships, in the matter of the Public Service Pension Plan.

Mr. Leshner, who is a member of the Public Service Pension Plan, argued that the denial of survivor benefits to his same sex "conjugal" partner constituted a contravention of the *Ontario Human Rights Code* (the "Code").

The Board of Inquiry under the Code ruled in Mr. Leshner's favour and held that the provisions of the Public Service Pension Plan that provide survivor benefits only in the case of opposite sex "spouses" violate the equality provision of the *Charter of Rights and Freedoms* (the "Charter"). The Board ruled that the same sex survivor benefits would have to be given to Mr. Leshner's "spouse" as would be available to a spouse of the opposite sex.

The Board of Inquiry, however, recognized that since the *Income Tax Act* (Canada) (the "ITA") does not permit the registration of pension plans that provide for same sex benefits, the Public Service Pension Plan could not be amended unless the ITA was also amended.

As a result, the Ontario government has been ordered to establish an "off-side" or "parallel" arrangement to provide for survivor benefits for persons in "conjugal relationships" who would otherwise have met the definition of "spouse" in the *Pension Benefits Act*, but are of the same sex. The province has also been ordered to establish the "off-side" arrangement on either a funded or unfunded basis (if the province chooses an unfunded arrangement, it has three years to convert it to a funded arrangement).

The province was also directed to make representations to the federal government within the next three years to attempt to convince the federal government to amend the ITA to permit benefits for same sex spouses.

It is important to note that the ruling of the Human Rights Commission applies only to the Public Service Pension Plan, and extends same sex survivor benefits to an individual living in a conjugal relationship with the member in an arrangement outside the plan.

There is no requirement for plans (including the Public Service Pension Plan) to be amended to provide same sex benefits. Plans providing same sex survivor benefits will not be accepted for registration by the Pension Commission of Ontario, nor will amendments be accepted in that regard.