

APPENDIX 4

INTERNATIONAL APPROACHES TO RECOGNISING SAME SEX RELATIONSHIPS

Extract from *Same Sex Relationships and the Law*, Equal Opportunity Commission, Victoria, March 1998:

B. INTERNATIONAL APPROACHES

A number of countries and states recognise same sex relationships through relationship registration systems or other partnership laws. Many other countries are currently addressing the issue of law reform to facilitate equality for those in same sex relationships. This section outlines the current position in countries which have recognised, or are in the process of recognising, same sex relationships.

(i) Denmark

The national legislature of Denmark passed legislation recognising same sex relationships in 1989.¹ This legislation allows lesbian and gay citizens to register their partnerships in a civil ceremony. Registration has almost identical legal consequences to those derived from legal marriage.² Only a few exceptions - notably adoption of children and international recognition - distinguish registered partnerships from legal marriage.³

A registered partnership can be dissolved under the same conditions and according to the same rules and procedures as those used for the dissolution of marriage. The same rules regarding maintenance and the distribution of assets and the home apply to registered partnerships.⁴ Registered partners also have equivalent hereditary rights of survivorship and responsibility for funeral arrangements as spouses.

Same sex partners who do not register their relationship have the same legal status as unmarried heterosexual cohabitants – pension rights, rights of survivorship and joint right to the home.⁵

(ii) Greenland

Although Greenland is an independent state it passed the Danish partnership registration legislation in 1996.

1 The Danish Registered Partnership Act 1989 (Act number 372)

2 Ibid, section 3.

3 Ibid, section 4.

4 Dupuis, Martin, The Impact of Culture, Society, and History on the Legal Process; and Analysis of the Legal Status of Same Sex Relationships in the United States and Denmark, *International Journal of Law and Family* (1995) 86-118, 105.

5 Ibid. Also for a statistical analysis of usage of registration system see page 105.

(iii) Norway

In 1993, Norway took a similar approach to Denmark by passing legislation allowing same sex partnership registration.⁶ With certain exceptions, specifically adoption⁷, registration of partnerships has the same legal consequences as entering into marriage.⁸

(iv) Sweden

In 1987 Sweden enacted legislation which provided that stable unmarried cohabitation would have certain legal consequences for the parties. Those consequences were uniformly applied to both homosexual and heterosexual couples.⁹ In particular, the legislation provided for additional property rights.

In 1994 Sweden adopted partnership registration legislation.¹⁰ The Swedish legislature has adopted a de facto model, providing similar recognition to that given to heterosexual de facto relationships in Australia. Recognition is on the basis of 'interdependency' rather than registration or declaration.

(v) Hungary

In May 1996 common law same gender relationships were recognised by the Hungarian Parliament. People in these relationships are now entitled to the same rights as heterosexual relationships, except in the adoption of children.¹¹

(vi) Belgium

The city of Antwerp in Belgium began a register of couples living together, regardless of whether they were same sex or opposite sex couples, in January 1996. Other Belgium cities have announced that they will follow.¹² This register entitles same sex couples to certain housing, health insurance and tax benefits.

6 The Norwegian Registered Partnerships Act 1993 (Act number 40).

7 Ibid, section 4.

8 Ibid, section 3.

9 Homosexual Cohabitees Act (SFS 1987:813), extending the application of The Cohabitees (Joint Homes) Act 1987 (SFS 1987:237 as amended by SFS 1987:814) and introducing a series of other enactments to homosexual cohabitants.

10 Swedish Registered Partnership Act 1994 (Act number 1994:1117).

11 L. Powers, M.Remakers, *ILGA Annual Report 1996*, Belgium.

12 Ibid.

(vii) Iceland

In Iceland, a same sex registered partnership law came into effect on 27 June 1996.¹³ The Icelandic law is similar to the Norwegian law except that it allows a recognised couple to have joint custody if one of the partners already has a child.

(viii) France

In France, a Domestic Partnership Bill was introduced into the Senate in 1997. The measure creates 'social union contracts' to 'provide a legal dimension for the union of those women and men who, though unmarried, still jointly plan on having a true, lasting life together'. The Bill encompasses same sex relationships.¹⁴

(ix) Finland

Finland has set administrative mechanisms in motion which should see recognition of domestic partnerships for lesbian and gay couples in the near future. On 29 September 1996 the Finnish Parliament passed a Committee of Laws conclusive report¹⁵ resulting in the Government being made responsible for amending inequality in legislation concerning gay and lesbian couples.

In December 1997, the Ministry of Justice nominated a committee to address this issue and the Government has set the end of 1998 as its reporting deadline.

(x) Netherlands

For most of the last decade a number of Dutch cities have allowed lesbian and gay residents to register their domestic partnerships and, in that way, to attract the same municipal privileges that are offered to heterosexual couples. In 1995 the national legislature began its consideration of extension of marriage rights to homosexuals.¹⁶

Legislation recognising same sex relationships was passed in July 1997 and became operative on 1 January 1998.¹⁷ Same sex couples can now register their relationships and enjoy almost all of the same rights as married couples.

13 The Icelandic CONFIRMED Partnership Act (Number 87/1997).

14 Bill on the Contract of Social Union (Number 274) (translated from 'Proposition de Loi Relative au Contrat d'Union Sociale').

15 The Conclusive Report of the Committee of Law, 10/1997 Parliament: The Bill for an Act Concerning Recognised Partnership for Two Persons of the Same Sex.

16 Lind, Craig. *Time for Lesbian and Gay Marriages?*, New Law Journal, (1995) October, 1553.

17 Registered Partnership Act 1997 (translated from 'Aanpassingswet Gerregistreerd Partnerschap').

(xi) Spain

Many Spanish towns and cities have adopted municipal domestic partnership registers which extend municipal marriage benefits to registered gay and lesbian couples.¹⁸ Furthermore, a domestic partnership bill is currently under consideration by the Spanish National Parliament.¹⁹

(xii) Portugal

In June 1997, the Portuguese Government introduced a Bill to register partnerships. Registration would permit official recognition of same sex couples and extend to them most of the privileges of heterosexual marriage. Consideration of the measure in Parliament is scheduled for early 1998.²⁰

(xiii) United States of America

Municipalities have taken the lead in the recognition of same sex couples in America. Domestic partnership ordinances have been adopted in at least two dozen cities across the United States.²¹ These ordinances entitle couples who have registered their partnerships to all of the employment related benefits offered to married couples by private and local government employers.

Marriage is regulated by the states in the United States. Thus, marriage statutes vary somewhat between the states. In Hawaii, a state law restricting the benefits of marriage to opposite sex couples was found, by the State Supreme Court, to be sex based discrimination that violated the State Constitution.²² The State of Hawaii, as defendant, was given the opportunity to prove that such discriminatory marriage laws were necessary to promote a compelling government interest. The State was unable to establish the compelling interest and the Supreme Court's original decision was upheld in December 1996.²³

Pursuant to the possibility that Hawaii would recognise same sex marriage the Federal Government passed, in September 1996, legislation enabling each state to determine its own policy regarding recognition of same sex marriage.²⁴

18 Supra No. 88, p1554.

19 Bill on the Contract of Civil Union 1997 (translated from 'Proyecto de Ley Reguladora del Contrato de Union Civil').

20 Law of the Factual Unions (translated from 'Lei das Unioes de Facto')

21 Supra Number 76, p. 87.

22 Baehr v Lewin, 852, P.2d44 (Hawaii 1993).

23 This decision has been appealed. The decision is expected to be handed down in early 1998.

24 Defence of Marriage Act 1996.

(xiv) Canada

In July 1997, the legislature in British Columbia amended the definition of 'spouse' in the *Family Relations Act* and the *Family Maintenance Enforcement Act*²⁵ to include same sex relationships.²⁶ These Acts primarily deal with issues surrounding child support, custody, access and maintenance. The amendment effectively gave identical common law status to same sex couples in relation to these matters.²⁷

Although this legislation does not deal with other spousal issues, the provincial Attorney-General²⁸ has publicly committed to performing a comprehensive review of all statutes to eliminate all bastions of inequality from legislation. The Attorney-General is expected to return to the legislature with additional amendments based on the review this year.²⁹

(xv) Brazil

A bill proposing registration of civil unions between persons of the same sex was presented to the Brazilian Parliament in October 1995. Throughout 1996 the Bill was analysed by a special committee. In December 1996, the committee voted in favour of the Bill. The Bill, The Civil Registered Partnership Law, assures same sex couples rights to inheritance, succession, joint income declaration, nationality for foreign partners and joint income presentations when buying a home.³⁰

The Bill was due to be voted on by the Brazilian Parliament in April 1997, but has been delayed.

(xvi) South Africa

Legislation extending marriage rights to people in same sex relationships was supported by the ANC conference in December 1997. The party also gave the Government a mandate, at its national conference, to address custody, access, maintenance, immigration and adoption rights for gay men and women. Legislation recognising same sex marriages is expected to be presented to the South African Parliament this year.³¹

25 Amendment was by the passing of Bill 31.

26 The Vote was 59 to 9, reflecting the general consensus in the legislature to make the changes.

27 Ministry of Attorney-General, News Release (97:01), B.C Recognition of Same Sex Couples, 5/6/97.

28 Ujjal Dosanjh.

29 Supra 99: Vancouver Province, *Rights for Same Sex Couples to be Ensured*, June 6 1997: Vancouver Sun, *All BC Law to get Same Sex Equality Review*, July 16 1997: Globe and Mail, *BC Passes Legislation Redefining 'Spouse'*, July 23 1997.

30 IGLHRC Action Alert, Vol VI, Number 3, 1997.

31 Independent Online News, January 29 1998.

