

# Denying Same-Sex Pension Benefits Declared Unconstitutional

On March 1, 2007, the Supreme Court of Canada ruled in *Canada (Attorney General) v. Hislop* that the federal government's current legislation governing same sex pension benefits was unconstitutional under section 15 of the Charter of Rights and Freedoms. The case centered upon a challenge brought against sections 44(1.1) and 72(2) of the Canada Pension Plan Act ("CPP Act"). The legislation currently only allows Canada Pension Plan ("CPP") survivor benefits to same-sex partners who are widowed after January 1, 1998. This specific date was chosen by the Liberal government in 2000 when it enacted new laws to extend pension benefits to same-sex couples. The Supreme Court declared that allowing benefits only to same-sex survivors whose partners had died after 1998 was unconstitutional. However, the Court limited benefits to those whose same-sex partners passed away after 1985 (the date that section 15 of the Charter was enacted) and limited back payments to a period of 12 months.

In 1999, the Supreme Court ruled in *M. v. H.* that the opposite-sex definition of "spouse" in the *Ontario Family Law Act* was in violation of s. 15(1) of the Charter. Following the decision in *M. v. H.* the federal government enacted the section of the CPP Act that developed into the focus of the arguments in *Hislop*. The argument in *Hislop* was that the newly introduced provisions were under-inclusive and discriminatory because they granted survivor benefits only to those whose spouses died after January 1, 1998. By deeming those individuals whose same-sex partners had died before 1998 as ineligible to receive pension benefits, the discrimination that existed prior to the changes made by Parliament following *M. v. H.* continued. The Court agreed, yet financial practicalities persuaded a limited remedy that was achievable by the government.

*Hislop* was launched as a class action in 2003 in Toronto. Leading the class action was noted gay rights [George Hislop](#), who passed away in 2005. Overall, the case included some 1,500 claimants and estates seeking compensation.

## Sources

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- M. v. H. [1999] 2 S.C.R. 3.
- [Wikipedia, "George Hislop" Wikipedia, the free encyclopedia \(25 February 2007\).](#)

#### Further Reading

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