

Government application for stay rejected in same-sex benefits case

Date : October 1, 1996

A judge of the Federal Court of Canada has dismissed an application by the federal government for a stay of part of an order issued by the Canadian Human Rights Tribunal pending the hearing of a judicial review application in *Moore and Akerstrom v. Canada (Treasury Board)*, which we reported in the September 1996 issue of *FOCUS* (see "[Denial of same-sex spousal benefits contrary to Canadian Human Rights Act](#)" on our Publications page). In that case, two public service employees complained that they had been denied health, dental and other benefits for their same-sex partners.

The government was contesting that part of the order requiring it to prepare an inventory of all legislation, regulations, directives, plans, policies and collective agreements containing language discriminating against same-sex couples in the provision of benefits, as well as a proposal for the elimination of such language. It argued that the order was beyond the Tribunal's jurisdiction, and was a breach of natural justice as these issues had not been raised during the course of the hearing.

The Court rejected the government's application, noting that at this stage of the proceedings one could not assume that the inventory would be used to the government's detriment or that the government would not have the opportunity to respond before the Tribunal. There was no indication the Tribunal intended to declare any legislation inoperative, and it did have the jurisdiction to consider the impact of legislation on the complainants. The effort of compiling the inventory would not cause the government irreparable harm that could not be remedied at a later stage, the Court stated, and the government could pursue its argument either before the Tribunal when it reconvened, or in the context of its application for judicial review.

(See also "[Ontario Court of Appeal hands big victory to same sex couples in pension benefits case](#)" on our Publications page.)