

A look back at the CPP case

And the British Columbians who started it all

SPOUSAL BENEFITS

Nathaniel Christopher

IT'S A BREEZY FRIDAY afternoon. Gail Meredith and Eric Brogaard meet each other for a brief visit in East Vancouver.

They are two old friends having a pleasant afternoon chat about last month's Supreme Court of Canada decision granting same-sex couples nearly the same access to Canada Pension Plan (CPP) survivor benefits as opposite-sex couples. Brogaard and Meredith aren't just casual observers of the news; they helped make it happen.

Brogaard and Meredith are two of the five public faces behind the national class action lawsuit that challenged the CPP's rules denying survivor benefits to widows and widowers whose same-sex partners died before 1998.

The suit was launched in 2001, one year after the federal government introduced legislation amending 68 laws to recognize same-sex couples. Though Bill C-23 redefined spouse to include gay and lesbian common-law partners in the CPP, it limited survivor pensions to people whose partners died after 1998.

Meredith's partner, Judy, died in 1992. Brogaard's partner, Orville, died in 1993. Their applications were rejected; neither of them could collect any benefits.

"I'm a widower, for God's sake," says Brogaard. "Orville and I were together for 22 years. I feel the same loss as someone who lost a wife or husband. There's no difference when you lose someone."

Brogaard raised the issue with his lawyer Ken Smith, who also felt the CPP rules needed to be challenged. Smith put him in touch with Meredith, and that's where it all began.

In 2001, the BC Supreme Court certified their case as a class action lawsuit.

At the same time, veteran activist George Hislop launched a

similar challenge in Ontario's Superior Court. In 2002, the two cases were rolled into one and proceeded as a single, national class action suit.

"Gail and I started it out here and then Ontario came on board and then a few years later other provinces decided to fight together as one group," recalls Brogaard.

The plaintiffs argued the 1998 cut-off date for survivor benefits eligibility was arbitrary and discriminated against gays and lesbians on the basis of their sexual orientation. Opposite-sex widows faced no such cut-off, they pointed out. Gays and lesbians should be eligible for survivor benefits if their partner died after 1985—the year the Charter of Rights and Freedoms prohibiting discrimination on the basis of sexual orientation came into effect.

In 2003, Ontario Justice Ellen Macdonald ruled in the plaintiffs' favour. Excluding gay and lesbian widows and widowers from CPP survivor benefits because their partners died prior to 1998 is an infringement of their Charter equality rights, she said.

The federal government promptly appealed.

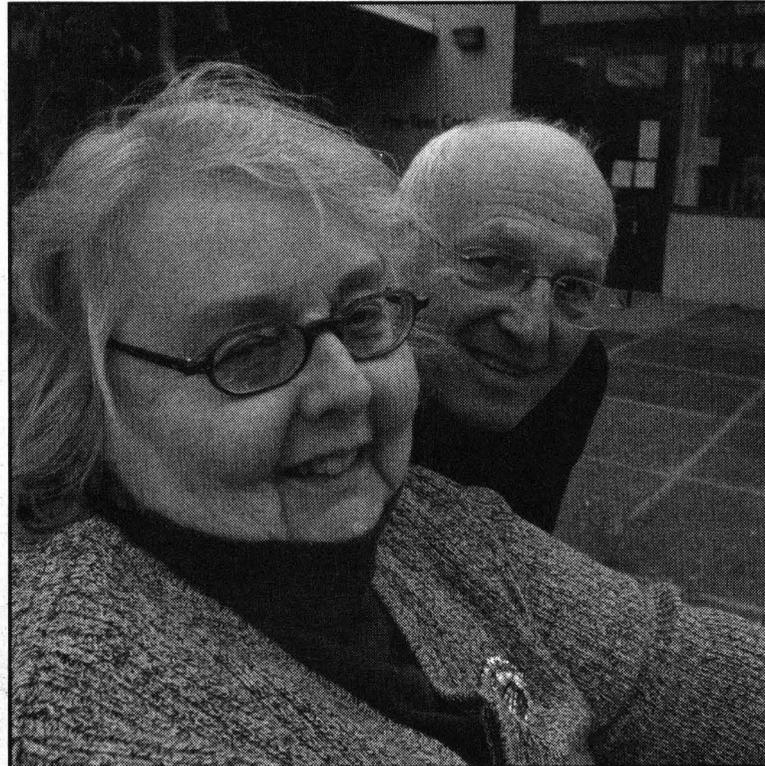
"That's the way the government works," says Brogaard. "They don't say, 'Yes, we just pay.' You're going to go through all those channels where we'll get up there to where we should never have been. We wanted to go back to 1985 to the Constitution but that never happened."

In 2004, the Ontario Court of Appeal agreed that excluding gays and lesbians whose partners died prior to 1998 was discriminatory. However, the court limited arrears and ruled out payment to estates whose claimants had already died. Both parties appealed to the Supreme Court of Canada.

On Mar 1, the Supreme Court of Canada officially reset the eligibility date to 1985 so queers whose partners died after that date are now definitively eligible for CPP survivor benefits.

The court also ruled that estates can collect payment if the

plaintiff lived to see the end of arguments before Justice Macdonald in October 2003. The question of back payments, however, still needs to be sorted out in administrative hearings.



CANADA PENSION PLAN TRAILBLAZERS: Gail Meredith and Eric Brogaard launched the class action lawsuit in BC that eventually led to the Supreme Court of Canada's Mar 1 decision officially making gays and lesbians eligible for survivor benefits if their partners died after 1985.

The intense media exposure surrounding the case was a public coming out for Brogaard.

"Everyone at work knew or assumed I was gay but nothing had ever been said about it," he says. "But when the Sun had my picture on the paper, and when I went in to work the next day after being interviewed on the CBC, they all knew it. The girls and the bosses came and gave me a great big hug and said, 'Good for you for standing up for your rights!' I worked in that shop that was nothing but 50 welders and I would say 99 percent of them came up and shook my hand telling me 'we are all with you. Thank you for going that far.' There was only one guy who didn't want to speak to me for a year."

Meredith, in contrast, is a seasoned political veteran. Originally from New York, she left college to join Cesar Chavez and the United Farm Workers in their struggle for better working conditions. She's used to being in the public eye.

"Cesar always said the only education is on the picket line,"

but hits younger people in a different part of the brain."

Meredith had to fight for her rights as Judy's partner for the duration of her illness. She petitioned the BC Supreme Court to maintain control of their finances and her medical condition.

"All the nursing staff in whatever hospital we were in were absolutely great about the gay issue, even then," Meredith recalls. "They totally considered me a partner and didn't shut me out from any decision making or any access to Judy. But the medical establishment had a harder time wrapping its head around that one. There was one doctor at Riverview who said Judy's condition was a judgment by God for her lifestyle."

Though the CPP hearings are now over, Meredith has no plans to hang up her activist hat.

"I'm starting to kick butt a bit on disability issues," she says. "I just went to New York and it's horrible. Vancouver is so far ahead of New York on disability issues it's unbelievable." Meredith's arthritis prevents her from walking everywhere but she has no problem getting around. She can often be seen cruising along Commercial Dr in her scooter.

"I love living by the Drive," she says. "Living over here is great. I go to the library. I go have food with friends, I go to the car-free Drive days, I go to the Parade of Lost Souls. That is so fabulous."

Brogaard keeps active by playing in a gay bowling league.

"I've done it for years," he says. "Ten pin bowling is a lot of fun. There are two groups, English Bay Bowling League and Wet and Wild Wednesday."

At one of his bowling events Brogaard delivered a speech about his recent victory in court. To his surprise most people in the room were unfamiliar with what had happened.

"Most of them didn't know and that's the sad part," he says. "I'm probably one of the oldest ones there. They are in their 20s and 30s."

Both Meredith and Brogaard urge people whose same-sex partners died after 1985 to contact Ken Smith to see if they are eligible for survivor benefits.

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