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Same-sex partner has right to CPP survivor benefits: Law unconstitutional: Ruling puts limits On Retroactive Payments

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OTTAWA - The Supreme Court of Canada ruled yesterday that same-sex couples have full access to Canada Pension Plan survivor benefits, but put a limit on claims for retroactive payments.

In a 7-0 ruling, the high court declared unconstitutional a federal law denying benefits to spouses whose same-sex mates died before Jan. 1, 1998.

Surviving spouses lost their bid, however, to claim benefits back as far as 1985, the effective date of the equality provisions for same-sex couples in the Charter of Rights and Freedoms.

Instead, the court limited the retroactive payments to one year. It argued the federal government was acting in "good faith" when it updated its law in 2000 to recognize the right of same-sex couples to CPP survivor benefits, and that ordering full retroactivity would "undermine the important balance between the protection of constitutional rights and the need for effective government."

The ruling means people whose same-sex mates died between 1985 and 1998 now can apply for CPP survivor benefits --about \$500 a month--if their partners paid into the plan. They also will be entitled to one year's worth of retroactive payments.

Gay activists were disappointed by the limit on benefits, but cheered the court's confirmation of their rights.

Douglas Elliott, the lawyer representing about 1,500 spouses and estates, said the case marked one of the last battles on the gay rights' front.

"We're just about done," Mr. Elliott said. "The message this decision sends is if gays and lesbians have been left out of any other benefit programs because of some cutoff date like this, the cutoff date is not constitutionally valid."

The ruling prompted emotional tributes to George Hislop, a gay rights pioneer from Toronto who started the case, but died last year at age 78.

Mr. Hislop had been refused survivor benefits after his mate, who had paid into the CPP plan for years, died in 1986.

"Today is a victory, certainly a victory for George. I just wish he were here to be able to enjoy it," said Christopher Hudspeth, a friend handling Mr. Hislop's estate.

Mr. Elliott estimated Mr. Hislop's estate would get between \$20,000 and \$30,000, as opposed to more than \$100,000 if the court had provided full retroactivity.

In general, however, the court ruled estates could not apply for the benefits on grounds their equality rights "die with the individual."



Julie Oliver, CanWest News Service
Christopher Hudspeth, 38, right, executor of the estate of the late George Hislop, hugs another Hislop friend, Albert McNutt, 56, in Ottawa yesterday, following the Supreme Court's ruling on Canada Pension Plan survivor benefits. Hislop started the case for benefits.

In their ruling, the justices suggested the government should be cut some slack on retroactivity because the law changed significantly in 2000 after the courts ruled same-sex couples should get equal CPP survivor benefits.

"Achieving an appropriate balance between fairness to individual litigants and respecting the legislative role of Parliament may mean that charter remedies will be directed more toward government action in the future and less toward the correction of past wrongs," the ruling said.

The government had urged the court to limit retroactive benefits rather than set a precedent that could open the door to legal challenges on a host of other social programs that pay benefits.

Illustration:

• Black & White Photo : Julie Oliver, CanWest News Service / Christopher Hudspeth, 38, right, executor of the estate of the late **George Hislop**, hugs another Hislop friend, Albert McNutt, 56, in Ottawa yesterday, following the Supreme Court's ruling on Canada Pension Plan survivor benefits. Hislop started the case for benefits.

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