

COURT FILE NO.:

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**GEORGE HISLOP, BRENT E. DAUM, ALBERT MCNUTT,
ERIC BROGAARD AND GAIL MEREDITH**

**Plaintiffs
(Respondents)**

-and-

THE ATTORNEY GENERAL OF CANADA

**Defendant
(Appellant)**

A Proceeding under the Class Proceedings Act, 1992

NOTICE OF APPEAL

THE ATTORNEY GENERAL OF CANADA APPEALS to the Court of Appeal from the judgment of the Honourable Justice Ellen Macdonald, dated Friday, December 19, 2003, made at Toronto, Ontario.

THE APPELLANT ASKS that the judgment be set aside and judgment be granted as follows:

- Dismissing this action in its entirety

THE GROUNDS OF APPEAL are that the Honourable Trial Judge erred in fact and law in making, or failing to make, the following determinations:

1. in failing to find, on the evidence and in law, that Canadian courts' and society's recognition of gay rights issues evolved from the mid-1980's to the late 1990's, and that the initial focus was on anti discrimination issues with relationship recognition issues emerging as a focus in the mid- to late 1990's;
2. in finding that s. 44(1.1) and s. 72(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the "CPP") infringe s. 15(1) of the *Canadian Charter of Rights and Freedoms, 1982* ("Charter");
3. in finding that if s. 44(1.1) and s. 72(2) of the CPP infringed s. 15(1) of the *Charter*, the provisions were not demonstrably justifiable pursuant to section 1 of the *Charter*;
4. in finding that s. 44(1.1) and s. 72(2) of the CPP should be struck out and declared of no force or effect pursuant to s.52 of the *Constitution Act, 1982*;
5. in finding that pursuant to s. 52 of the *Constitution Act, 1982*, the class members are constitutionally exempt from the application of s. 60(2) of the CPP insofar as it applies to a survivor's pension and from the application of s. 72(1) of the CPP insofar as it prohibits payment of a survivor's pension no earlier than the twelfth month preceding the month following the month in which the application was received;
6. in finding that the class members shall be eligible to receive prospective survivor's pensions plus survivor's pensions in arrears calculated from one month following the death of their partner/contributor in the same manner as other qualified applicants for survivors' pensions;

7. in finding that the class members shall be entitled to interest on the amounts awarded in the Judgment for arrears of pension, in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, from the later of February 1, 1992 or one month after the date of death of their partners, to the date of judgment;

8. in finding that the common issues numbered 8, 9, 10, 14, 15 and 17 are to be answered as set out in Schedule "A" to the Judgment;

9 in finding that the Judgment herein be implemented immediately.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: The appeal is as of right, being from a judgment on the common issues in this class proceeding. The jurisdiction of this Court is based on s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and s. 30(3) of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

Dated: January 19, 2004

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APPELLANT'S CERTIFICATE

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. Exhibits numbers: All
2. The oral evidence of: George Hislop, Albert McNutt, Brent Daum, Eric Brogaard, Gail Meredith, Sharon Baxter, Dr. Barry Adam, Dr. Rosemary Barnes, Catherine Drummond, Heather Bordeleau, Jean-Claude Ménard, and Edward Tamagno.

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