

Feds to fight lawsuit by gay man seeking spousal-pension benefit

Ottawa argues Charter accepts that spouse must be opposite sex

By Sherri Borden
Staff Reporter

A gay Halifax man who has filed a lawsuit against the federal government is not entitled to survivor's benefits under the Canada Pension Plan, the government says in its statement of defence.

Jim Bigney, who filed his lawsuit last month, lived with his partner, John Morrow, for 12 years before Mr. Morrow died of AIDS in November 1993.

In December 1993, Mr. Bigney

applied for a surviving spouse's pension under the Canada Pension Plan.

But in February 1994, he was told he was not eligible because the plan defines a spouse as someone of the opposite sex.

In its defence, filed April 29 in Nova Scotia Supreme Court, the government agrees with Mr. Bigney that the definition of "spouse" under the Canada Pension Plan Act violates the Charter of Rights and Freedoms by discriminating on the basis of sexual orientation.

But Department of Justice lawyer Michael Donovan, who filed the statement of defence, wrote that the definition is nevertheless constitutionally valid.

"The limitation of the definition 'spouse' to persons of the opposite sex is a reasonable limit prescribed by law, which can be

demonstrably justified in a free and democratic society and is therefore authorized under ... of the Charter," he wrote.

If the court decides the definition is not a reasonable limit, the government asks the court to suspend any order for long enough to allow the federal government to consult with the provinces and Parliament to devise new criteria for eligibility and pass new legislation that meets constitutional requirements set out in the court's judgment.

In his lawsuit, Mr. Bigney asks that "spouse" be redefined to include same-sex partners. He is also seeking Mr. Morrow's Canada Pension Plan benefits and legal costs.

It could be several years before the civil suit goes to trial.