



Pension Commission of Ontario
Commission des régimes de retraite de l'Ontario

SECTION: Spousal Rights
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In the Matters of: *Sims v. Attorney General of Ontario and Dwyer v. Municipality of Metropolitan Toronto*

On September 27, 1996, a Board of Inquiry of the Human Rights Commission heard the above complaints which arose out of the denial of employment benefits to same-sex spouses of employees of the Municipality of Metropolitan Toronto. Although originally relating exclusively to extended health care benefits, other issues were raised including an allegation that the definition of "spouse" under the *Pension Benefits Act* (the "*PBA*") is contrary to the equality rights guaranteed under section 15 of the *Charter of Rights and Freedoms*.

One complainant sought an order from the court that OMERS provide an interim offside arrangement which would provide that a survivor benefit be provided within the pension plan as soon as it is possible under the *Income Tax Act* (Canada) ("*ITA* (Canada)").

The Board of Inquiry found that the opposite-sex definition of "spouse" in a number of statutes including the *ITA* (Canada), the *Human Rights Code* and the *PBA* violates the *Charter of Rights and Freedoms*. The Board made a contingent order that, when the definition of "spouse" in the *ITA* (Canada) changes by amendment or judicial decision to permit pension benefits to be extended to same-sex spouses without deregistration of pension plans, the definition of "spouse" in the *PBA* would be read to include same-sex spouses. The Board made a number of other orders but declined to order that the OMERS provide survivor benefits immediately through an offside plan.

The Attorney General of Ontario has filed a Notice of Appeal.