

Province upheld on gay rights

Fired teacher disappointed

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The province has won its appeal of a court decision ordering it to add protection for homosexuals to its human rights laws.

The Alberta Court of Appeal, in a 2-1 decision, said the Individual's Rights Protection Act already covers all people.

Delwin Vriend first took the province to court after he was fired from his job as an instructor at King's College. He argued he was the victim of discrimination on the basis of his sexual orientation.

Vriend won. The judge in the case ordered the province to include sexual orientation as something not to be discriminated against in its human rights laws.

But Alberta's Conservative government refused to add the provisions and appealed instead to the province's highest court.

Friday's split judgment said Alberta's act does not violate the charter's equality section.

It's not up to governments to legislate morality, the judgment said.

"Legislatures need not and do not enter every morally eruptive social controversy and attempt to resolve it by statutory remedy," Justice John McClung said in a written decision.

Justice W.E. O'Leary agreed with McClung's position.

However the third judge, Justice Constance Hunt, disagreed, writing that the legislation is supposed to give protection from discrimination

to disadvantaged groups, and the omission of "sexual orientation" does the exact opposite. The exclusion of gays in the act means a "total impairment" of the charter guarantee of equality.

"Homosexuals, like other disadvantaged members of society, have skills and talents to contribute ... Society will be the poorer if homosexuals are not given the even-handed opportunity to make those contributions," she said.

Vriend, 30, who now works as a computer programmer, was at the appeal court counter first thing Friday morning to read the judgment.



Vriend

"We have to get Alberta out of the dark ages," he said, adding he is considering appealing to the Supreme Court.

Vriend's lawyer Sheila Greckol said: "This is not a red letter day for the Alberta Court of Appeal ... this is very much a made-in-Alberta decision."

She noted she read the word morality four times in seven pages of McClung's reasons.

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This issue is a human rights issue not a moral issue, she said.

"Virtually 90 per cent of Canadians have the protection that Albertans do not," Greckol said, noting that only one other province, P.E.I., does not have gay rights protection.

Gary Mar, Alberta's community development minister, commented: "If nine out of ten provinces also have a provincial sales tax I don't know that we should."

Shirish Chotalia, lawyer for the Alberta Human Rights Commission, said this decision leaves gay Albertans who have been discriminated against with nowhere to turn.

Vriend was fired in 1991 from King's College after he admitted his homosexuality to the college president.

Friday's decision overturns the 1994 decision in Vriend's favor from Court of Queen's Bench Justice Anne Russell, who said the act violated the charter by failing to prohibit discrimination on "sexual orientation."

Russell called discrimination against gays a "notorious social reality" and said denying them

recognition in the act reinforces prejudice. She said the problem could be fixed by adding the words "sexual orientation." Her ruling was put on hold pending this appeal.

In Friday's ruling, McClung called what Russell did "judicial mid-wifery."

McClung and O'Leary agreed that Alberta's act doesn't mention sexual orientation at all, so it isn't giving anything to heterosexuals or homosexuals. If homosexuals suffer inequality they suffer it independently of the act, he wrote.

That means the province doesn't have to "march to the charter drum," he added.

The province "has simply chosen to step back from a controversial and morally intense issue," wrote McClung.

He said he couldn't conclude that Alberta shouldn't have stepped "back from the validation of homosexual relations, including sodomy, as a protected and fundamental right."

Sexual orientation is not in the act because Albertans don't want it to be, he said.

"In time the government will have to answer to the highest court of public policy, tomorrow's ballot box."