

- *Expenditure cuts equivalent to approximately 25 percent of the GST revenues.* The \$4 billion in spending cuts should placate irate taxpayers and make the package more defensible.

This package approach should offer several advantages, political and financial, for the government. For example, it would be very difficult for people to avoid all of the tax measures and the low rates for each individual tax should lessen the incentives to avoid any particular tax.

By diversifying the tax base, tax revenues may become less sensitive to cyclical and other shocks; hence, government revenues may become more stable, and thus predictable. The government will have the ability to change the relative importance of each measure as more information on the impacts of each measure becomes available, and as economic, financial, and competitive conditions change. The federal government should be able to escape from the either/or straight-jacket it finds itself in with the GST.

Finally, by making expenditure cuts as an integral component of the reform package, the government will become more sensitive to the need to control aggregate spending, and thus, be less inclined to periodically increase the various tax rates to achieve budgetary goals. And, of course, there should be a favourable public reaction. This will be important because none of these tax proposals is without problems. No tax is perfect in design and each measure will affect different special interest constituencies.

Fred Lazar is an Associate Professor of Economics, Faculty of Administrative Studies and Faculty of Arts, York University. Economic Report is a regular feature of Canada Watch. ❖

LEGAL REPORT

REDEFINING FAMILY: ONTARIO PROPOSES SPOUSAL STATUS FOR GAY AND LESBIAN COUPLES

by Bruce Ryder

Over the past two decades, many gay and lesbian couples have engaged in a concerted effort to achieve legal recognition of their relationships. Denied the powers, rights, and benefits that accrue to "spouses," and spurred by the promise of equality provided by human rights legislation and section 15 of the Charter, they have sought redress before courts and human rights tribunals with increasing success. Our elected representatives, however, have demonstrated a strong preference for avoiding any discussion of their constitutional obligations in this area. Legislation in all Canadian jurisdictions still defines "spouse" uniformly in heterosexually exclusive terms.

ONTARIO'S BILL 167

The long-delayed introduction of Bill 167, the *Equality Rights Statute Law Amendment Act, 1994*, by the Ontario government thus amounts to a significant milestone. The Bill accords same-sex couples precisely the same legal status in Ontario legislation as is currently possessed by "common law," or unmarried, heterosexual couples. The Bill would accomplish this result by expanding the definition of spouse (or related terms, such as "next of kin") in more than 70 Ontario statutes to include

"a person of either sex with whom the person is living in a conjugal relationship outside marriage."

Among other things, the Bill would have the effect of imposing spousal support obligations on gay and lesbian partners, removing the barrier to the consideration of adoption applications by gay and lesbian couples, and requiring employers who provide family employment benefits to unmarried heterosexual couples to extend those benefits on the same terms to gay and lesbian couples.

On May 19, Bill 167 passed a rare recorded vote on first reading in the Ontario legislature by the slim margin of 57 to 52 (21 members were absent). Even though the Bill was presented as necessary to bring Ontario statutes into compliance with section 15 of the Charter, the government found it necessary to allow a free vote on the Bill, thus sending out the distressing signal that whether or not to comply with constitutional obligations is a matter of individual conscience. As a result, the Bill will face a closely divided legislature at each stage of the legislative process. It appears unlikely that the Bill will pass into law in its present form.

THE PATHS TO SPOUSAL EQUALITY

Bill 167 does not attempt to guarantee complete legal equality to gay and lesbian couples. Under existing legislation, heterosexual couples can become spouses in one of two ways: by marrying or by living together in a conjugal relationship outside of marriage for a defined period of time. Married people are "first-class" spouses in the sense that they have a fuller package of legislative rights that are effective whether or not

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*"Redefining Family," continued
from page 126.*

they are living together or have lived together for a defined period of time. "Second-class" spouses, or common law couples, are denied certain rights that married spouses have in all provincial jurisdictions — rights, for example, to an equal share of family property on the breakdown of a relationship and to intestate succession on the death of a spouse.

Bill 167 adds gay and lesbian couples to the second category of spouse without making any changes

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to the package of rights that accompany married or common law spousal status, respectively. Because the right to marry is denied to gay and lesbian couples, "first-class" spousal status remains closed to them.

The jurisdiction to redefine the capacity to marry lies with the federal Parliament. However, a province could put in place an alternative means by which gay and lesbian couples could choose to register as legal spouses. Denmark passed such a "registered partnership" law in 1989, allowing gay and lesbian couples who register their relationships to obtain the legal rights of married couples. A more limited version of a domestic partnership law has been approved by the lower house of the California legislature. Last year, the Ontario Law Reform Commission recommended the adoption of a "registered domestic partnership"

scheme in Ontario. The Ontario government declined to follow this recommendation. Bill 167 provides no mechanism, equivalent to marriage, by which gay and lesbian couples could choose to designate themselves immediately as first-class spouses for the purposes of all provincial legislation.

ROCK AND A HARD PLACE

Whether or not Bill 167 is enacted, ongoing litigation initiated by gay and lesbian couples and the power of Charter-inspired equality discourse will keep the question of family redefinition on the political agenda. In recent years, the governments of British Columbia, New Brunswick, and Ontario have extended same-sex spousal benefits to their public employees, and the federal government has indicated that it will abide by tribunal decisions ordering it to do the same.

Despite opposition in its own caucus, the federal government has embarked on a review of family definitions in federal laws and Justice Minister Rock has promised legislation before the end of the year. Rock's intriguing proposal that all interdependent domestic relationships be included in legislative definitions of family is broadly inclusive and may have a better chance of success than legislation that focuses on the rights of lesbian and gay couples.

CONCLUSION

Governments that propose recognition of same-sex spouses face fierce opposition from forces committed to the view that heterosexual family units are threatened by the legal recognition of their lesbian and gay counterparts. Nevertheless, it seems inevitable that the law will continue to catch up with the sociological reality of family diversity. In the end, the logic of constitutional equality is likely to prevail over the

view that discrimination is a family value.

The real question is whether steps toward family equality will be initiated by the courts or the legislatures. If Bill 167 fails in the Ontario legislature, one of the unfortunate consequences will be that the burden of law reform will be left with lesbian and gay litigants. Legislatures in other jurisdictions will point to the failure of the Bill as a further reason for adhering to the status quo. Change would then continue to occur in a slow and piecemeal fashion primarily through court challenges to particular laws or policies without the kinds of public debate and accountability this issue so richly deserves.

Bruce Ryder is an Associate Professor at Osgoode Hall Law School, York University. Legal Report is a regular feature of Canada Watch.

