

Vogel v. The Government of Manitoba et al.

[COMPLETE DECISION PDF](#)

SUMMARY:

The adjudication continued as directed by the Court of Appeal, to consider specifically the provisions in *The Human Rights Code* that allow bona fide and reasonable cause for the discrimination.

The Adjudicator found that the respondents were able to demonstrate bona fide and reasonable cause for denying benefits to homosexual civil servants, only with respect to the pension plan and not with respect to any of the other employee benefits. The Adjudicator considered that the complainant's same-sex partner was not entitled to claim benefits under the following components of his partner's employee benefits package: dental; extended health care; ambulance, hospital and semi-private plan (AHSP); and pension plan. It appeared that he could claim benefits under the group life insurance policy.

The Government did not bring any evidence to demonstrate that there was bona fide and reasonable cause for excluding the complainant's same sex partner from the extended health plan and group life insurance. The extended health plan premiums were paid directly by employees, so the Government incurs no additional cost by extending this benefit to same-sex couples. The group life insurance policy did not appear to exclude same-sex couples, so the Adjudicator assumed that the insurer would honour their claims and that it would have structured its premiums accordingly.

With respect to the dental plan and the AHSP, the complainants acknowledged that costs would increase but that would still not excuse discrimination unless the increased costs would render the plan non-viable. The Government argued that the provisions in the collective agreement had been fairly negotiated between the Government and the Union and were therefore bona fide and reasonable. The Government also argued that the adjudicator should consider the additional costs and administrative burden of expanding protection from discrimination, as well as the social, legal and political context of benefit programs.

With respect to the pension plan, the complainants acknowledged that expanding coverage to same-sex spouses would contravene the federal Income Tax Act, therefore jeopardizing the plan and accordingly, requested the Government create a separate program that would give affected persons a comparable benefit, or alternatively, declare an entitlement to equivalent benefits to take effect whenever the Income Tax Act be amended to permit it. The Government emphasized that deregistration of the plan would have substantial consequences on all employees as would creating an offside arrangement outside of the plan.

The Adjudicator ultimately found that there was no bona fide and reasonable cause for the discriminatory denial of the extended health care, group life insurance, dental and AHSP plans to homosexual civil servants involved in same-sex relationships. It also found that the Government had shown bona fide and reasonable cause to justify continued discriminatory denial of benefits with respect to the pension plan.

The appeal was therefore allowed in part.

Remedy: Benefits, other than those related to the pension plan, were ordered to be extended accordingly and it was noted that the group life plan benefits may already have been expended. If the Income Tax Act were to be amended, the Government should implement appropriate changes to the pension plan however that was not made a conditional order. No damages were sought by the complainants or awarded.