



## Massachusetts Issues Landmark Ruling

November 2003

By Shari A. Levitan and Ellen Schiffer Berkowitz

### ***November 18 Ruling First of Its Kind***

On November 18, 2003, the Massachusetts Supreme Judicial Court issued a 4-3 decision in *Goodridge v. Department of Public Health*, concerning the constitutionality of the denial of same-sex marriages in the Commonwealth of Massachusetts. The case was brought by seven gay and lesbian couples, all of whom have been in committed relationships that range from 4 to 30 years in duration. Four of the couples have children. In March and April of 2001, the Department of Public Health refused to issue marriage licenses to each of the couples. The seven couples then filed suit claiming that denying same-sex couples marriage licenses violated Massachusetts law.

That decision held that a ban on same-sex marriage violates the Massachusetts Constitution. For members of the gay and lesbian community and advocates of the legalization of same-sex marriage, this is the good news. The decision, written by Chief Justice Marshall, acknowledges both the legal and emotional significance of marriage and states that denying this right to same-sex couples offends the Massachusetts Constitution's guarantee of equality before the law ... "Without the right to marry — or more properly, the right to choose to marry — one is excluded from the full range of human experience and denied full protection of the laws for one's avowed commitment to an intimate and lasting human relationship." Most significantly, however, the Supreme Judicial Court directs the Massachusetts legislature to "take such action as it may deem appropriate in light of this opinion" during the next 180 days. The Supreme Judicial Court is the Commonwealth's ultimate authority on constitutional issues and as such, the Legislature cannot pass a law contrary to the Court's decision. The Legislature, however, is not left powerless, and the fight for same-sex marriage in the Commonwealth is far from over.

The Supreme Judicial Court intended to "leave intact the Legislature's broad discretion to regulate marriage," which may be interpreted as the "bad news" for the gay and lesbian community. As was done in Hawaii and Alaska, the Legislature may still initiate a movement to amend the Massachusetts Constitution to prohibit same-sex marriage. That said, a constitutional amendment typically takes at least two years to pass and by that time, there may be thousands of legal same-sex marriages entered into in Massachusetts.

How to deal with marriages entered into prior to the passage of a constitutional amendment, if any, is only one of the many questions raised by today's decision. Will such marriages be recognized by other states? Will same-sex couples married in Massachusetts be able to obtain divorces in other states? Further, as addressed in Justice Marshall's decision, marriage affects "nearly every aspect of life and death." How will the lawyers, judges and lawmakers interpret and enforce other state and federal laws relating to income tax filing, property ownership, the right to inherit property at the death of a spouse, the right to wages owed a deceased employee, the pension system, alimony and perhaps most importantly, the legitimacy and parentage of children?

November 18<sup>th</sup>'s decision certainly will go down in history for what it did — declaring that the denial of same-sex marriage violates the Massachusetts Constitution. More significantly, it will be remembered for initiating a complex public discussion about the broader meaning of marriage and how (if at all) to implement this constitutional right.

**Shari A. Levitan** chairs Holland & Knight's New England Private Wealth Services Group. **Ellen Schiffer Berkowitz** concentrates her practice in the areas of estate planning and the administration of trusts and estates for individuals, families and financial institutions