

On Marriage and the Legal Recognition of Same-Sex Unions

Presentation to the Standing Committee on Justice

**Presented on behalf of Canadian Baptist Ministries (CBM) by Lois Mitchell, PhD
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Thank you for the invitation to appear as a witness in these hearings. I am appearing on behalf of Canadian Baptist Ministries, a national federation of four regional Conventions and Unions representing approximately 1200 local Baptist churches with a combined resident membership of approximately 120,000. I appreciate the complexity and sensitivity of this issue and consider it a privilege to be given this opportunity to speak with you today.

As I have followed the Committee's hearings across the country and read media accounts of the proceedings, I am acutely aware of how emotive this issue is for those who are making presentations and especially for those who see the current definition of marriage as discriminatory against gays and lesbians who are living in relationships characterized by love and commitment. I don't want to contribute to the pain gays and lesbians and their families experience and I assure the Committee and all present that I intend no disrespect to anyone participating in these hearings.

As I have prepared this presentation I have wondered if it is possible to speak in support of the current, opposite-sex definition of marriage without offending gays and lesbians and being accused of being narrow-minded, unjust and judgmental?

I believe that the challenge to the constitutionality of the opposite-sex definition of marriage is perhaps the greatest test to date of the ability of the Charter of Rights and Freedoms to define social relationships in such a way as to preserve social order and promote the common good while also respecting the rights and freedoms of individuals and special interest groups.

I am concerned that while gay rights proponents have used the courts to challenge public policy and public opinion around the view and treatment of gays and lesbians in our society, the result has been not only the progressive extension of rights to gays and lesbians and a growing sense of social acceptability of the homosexual identity, but also the creation of a socio-political environment in which a clear message is conveyed to any who oppose the practice of homosexuality on moral or religious grounds, that such views may be construed and litigated as discriminatory. As I reflect on this trend, it seems the principle challenge for this Committee will be to look past arguments about sexual morality to the larger question of the structure of marriage and the management of pluralism within Canadian society.

Marriage is an institution which has an important role in society. Across cultures it is the means by which the sexual bonding of males and females is managed and exclusivity is encouraged. Marriage must be understood to be much more than a simple expression of love and commitment between two individuals. Because the pressures against monogamous, exclusive sexual bonding and the perpetual care and nurture of children are tremendous, the institution of marriage is fragile and requires support through social, political, religious and legal means. The removal of

any of these support structures has, I believe, both immediate and long-term negative effects for both individuals and society.

Tampering with the definition of marriage is social experimentation of unprecedented magnitude. I do not consider it an exaggeration to say that a decision to redefine marriage may ultimately lead to the implosion of our society, not because it lets gays and lesbians in, but because it further stretches and broadens, and thus weakens, an already vulnerable institution.

The basic tenets of this presentation are:

1. Since marriage is a universal social institution which pre-dates human governments, courts and religious traditions, neither Canadian courts, Parliaments nor religious institutions have the authority to redefine it.
2. Marriage, as historically and currently defined, is an institution which is exclusive but not discriminatory. Within the context of a pluralist society, the opposite-sex definition of marriage does not violate the rights of gay or lesbian couples. Persons who do not choose to comply with the qualifications for marriage, or who are unable to comply, are not prohibited from forming relationships which are subject to very similar legal and financial rights and obligations as those who are married. A variety of domestic relationships may have some of the attributes of marriage but should not be lumped together with marriage because they are unique.
3. In a pluralist society, the courts and Parliaments play an important role in ensuring that diversity is respected and not homogenized – that is, that all citizens are not forced to adhere to a single view of morality.
4. Marriage is a beleaguered institution in our society. The effects of changes in public policy around marriage, and the tendency to treat all conjugal relationships as civil contracts without maintaining distinctions, significantly undermines the potential of marriage to provide personal and societal stability.

Canadian society is a “pluralist” society – that is, our civil and social life is not prescribed or determined by any one ethnic, cultural or racial heritage or religious tradition. Citizens in Canada are free to hold differing beliefs and values and to live, within the limitations of the law, free of discrimination or moral coercion. We are, in fact, a mosaic of cultures and faith traditions.

In the two decades since the Charter of Rights and Freedoms was passed into law the fabric of Canadian life has been tested and tried for consistency with the ideal of pluralism. The ongoing challenge in a pluralist society is to protect equality and fairness without legislating societal affirmation or endorsement of any particular worldview. Diversity implies difference and distinction. Individuals and groups must be treated fairly, because of, or in spite of, their differences.

To redefine marriage in order to accommodate same-sex relationships (or other domestic partnerships) is not about fairness and equality so much as it is about the distinctiveness of marriage and the management of pluralism. That the Parliamentary Committee could even seriously ask whether marriage has a continuing role to play in Canadian society is clear evidence of the advanced state of our social and political confusion. Perhaps this discussion will

ultimately allow us to regain some of the ground which has been lost in our understanding of marriage and its unique and very special role in our society.

Clergy of various faith traditions, licensed by their provinces to conduct wedding ceremonies which are legally recognized, now find themselves conducting ceremonies that have the form of Christian (or other faith) weddings, but not the substance. Clergy across the country are watching this discussion closely, wondering if they will soon be expected to also perform same-sex weddings or face legal action for refusing to do so. The Freedom of Religion protections offered in the Charter of Rights and Freedoms and in the Criminal Code seem to be quite variable and subject to judicial interpretations.

In conclusion, I propose 4 recommendations for this Committee as it prepares its Report for Parliament. I urge you to:

- maintain the current and historical definition of marriage: “the lawful union of one man and one woman to the exclusion of all others”;
- consider, and if necessary, clarify, the legal interpretation of “freedom of religion” as it relates to issues where faith traditions are apt to differ from worldviews based on secular authority;
- urge Parliament to review the effects of public policy on marriage and family life, and to consider ways to amend public policy in order to strengthen Canadian marriages and families; and
- clarify the role of parliament and the courts on this issue in particular, so that a decision made by Parliament on the definition of marriage is not continually challenged by the courts.