

An Update on the Marriage Debate

Lois Mitchell, PhD (Director of Public Witness and Social Concerns, CABQ/CBM)
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Few issues in recent years in Canadian society have sparked as much general public interest and passionate debate as the potential redefinition of marriage. Judicial decisions in Ontario, British Columbia and Quebec have challenged the historic and traditional definition of marriage (the lawful union of one man and one woman to the exclusion of all others) on the grounds that this definition discriminates against same-sex couples who wish to have their unions recognized in law and accepted by society. Indeed in Ontario and British Columbia, the Courts of Appeal have this summer (2003), overturned this definition and declared that same-sex couples may legally marry in those jurisdictions.

Draft Legislation and the Reference to the Supreme Court

Since then, the Federal Government has sent draft legislation to the Supreme Court of Canada to secure the Court's opinion on the legislation before introducing it in the House of Commons. The proposed legislation has two parts: The first part consists of a new definition: "Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others." The second part of the proposed legislation addresses the concern that this new definition might interfere with religious freedom protections in the Charter and says: "Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious belief."

The reference to the Supreme Court asks three questions:

1. **Is the draft bill within the exclusive legislative authority of the Parliament of Canada?** This is significant because of the jurisdictional confusion surrounding marriage. Basically, the federal government defines marriage and the provincial governments are responsible for solemnization.
2. **Is the section of the draft bill that extends capacity to marry to persons of the same sex consistent with the *Canadian Charter of Rights and Freedoms*?** Significantly, the Federal Government did not ask the Supreme Court to offer its opinion as to whether or not the current and historical definition of marriage is discriminatory. This has been the consistent view of the lower courts but has not been ruled on by the Supreme Court in recent years.
3. **Does the freedom of religion guaranteed by the Charter protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?** In other words, where do clergy stand if they refuse to perform wedding ceremonies for same-sex couples?

Although it will likely be some time before the Supreme Court responds to these questions, the issue continues to generate much discussion within our political arenas, in our churches, amongst gay rights advocates, and in society at large.

The Alliance Motion

When Parliament reconvened in September, Stephen Harper, the Leader of the Alliance Party made a motion identical to one introduced by the Alliance's predecessor, the Reform Party, in 1999. It read: "That in the opinion of this House, it is necessary, in light of public debate around recent court decisions, to reaffirm that marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition." This motion was passed in 1999 by a large margin (217-55).

After some discussion, the motion was amended by the Alliance Justice Critic, Vic Toews, to end after "to the exclusion of all others." This amendment had the effect of simplifying the motion so that the focus was on the definition of marriage, and not on the implication that the government would invoke the notwithstanding clause (Sec. 33 of the Canadian Charter of Rights and Freedoms) to preserve it, should that be necessary.

The vote on the amendment resulted in a tie: 134-134. Peter Milliken, the Speaker of the House, broke the tie by voting against the amendment. Parliament then defeated the original motion by a narrow margin (137-132). While the motion was lost, the debate and vote revealed deep divisions within the Liberal party and a very even split within the House on this issue.

Some Important Background Information

In order to make sense of the public debate on this issue, we need to understand a little bit about the Canadian Charter of Rights and Freedoms and how it is being interpreted in law. The following are a few key points:

- The Canadian Charter of Rights and Freedoms came into force on April 17, 1982 (see <http://laws.justice.gc.ca/en/charter/> if you are interested in reading the Charter).
- Although sexual orientation was not originally included in the Charter in Section 15 (1), the courts "read" sexual orientation into the Charter in 1995 on the basis that it is an analogous ground of discrimination.
- Subsequently, sexual orientation was formally added to the Canadian Human Rights Act on June 20, 1996.
- The courts are now interpreting the opposite-sex definition of marriage as being a violation of the rights of same-sex couples and therefore, unconstitutional.

A Few Reflections

First of all, despite the tendency of many media venues to speak of “same-sex marriage” as though we have already redefined marriage, Canada is many months (if not years) away from passing such legislation at the federal level. There are many variables which could influence the timeline and the outcome, including the retirement of Prime Minister Chretien, the installment of a new leader of the Liberal Party and Prime Minister (almost certainly Paul Martin), a federal election, the response of the Supreme Court to the reference questions, public education around the issues, and, the ongoing battle “against the spiritual forces of evil in the heavenly realms” (Eph. 6:12).

Having said all of this, I do want to encourage us all as we continue to discern God's will for our nation at this point. I fervently believe that God is ultimately in control and that none of this is catching Him by surprise. I believe He does have an agenda for this day and this issue and that He continues to call His people to be obedient and to trust Him, even when it seems the enemy is gaining ground. We will be used of God only when we maintain a right relationship with Christ, keep our eyes fixed on Him (and not on the political, legal and social turmoil around us) and are truly motivated by a heart which has been transformed and motivated by the very love of God. May He grant us wisdom and discernment as we represent Him within our secular society.

At the annual Assembly held in Wolfville in August, delegates accepted the following public statement on this issue:

Public Statement Concerning the Legal Recognition of Same-Sex Unions

- We affirm the worth and dignity of all people;
- We support the separation of Church and State in Canadian society, however this does not negate the right of the Church to speak to the state;
- We value the principles of freedom and democracy by which our country is governed;
- We respect the cultural, ethnic and religious diversity of Canadian society;
- We cherish the freedom we have to live according to our faith and to hold beliefs which are sometimes at odds with secular society;
- On the matter of the legal recognition of same-sex unions, we believe that:

1. Marriage is a unique institution, based on the union of one man and one woman;
2. Marriage is the fundamental social unit of society;
3. The institution of marriage should be upheld in Canadian law and public policy because it encourages social stability;
4. The marriage relationship is the preferred context within which society reproduces itself;
5. Marriage is more than simply a relationship of love and commitment between two people it is also a social institution and, in our view, a religious covenant between two people in the presence of God;
6. In Christian theology, marriage is not only endorsed by God but the marriage relationship is used to depict the union of Christ and His church;
7. The opposite-sex definition of marriage, while it makes a distinction, does not discriminate against gays and lesbians;
8. In law and public policy the opposite-sex requirement for marriage should be maintained; and
9. These views are consistent with the Canadian Charter of Rights and Freedoms. They reflect principles that affirm “the supremacy of God and the rule of law” while also respecting the protections guaranteed in Section 15.

If you are interested in this issue and would like more information, there is a multi-media resource (prepared by Lois Mitchell) available through the CABC office (506-635-1922), entitled “The Marriage Issue”. This CD includes: a 40 minute audio presentation, a corresponding Powerpoint Presentation, copies of a number of briefs and papers written by Lois Mitchell (including the written and oral submissions made to the Justice Committee on behalf of CBM and the regional Conventions and Unions) and links to numerous resources on the internet. The cost of the CD is \$10.