

HOUSE OF COMMONS OF CANADA

**BILL C-38**

An Act respecting certain aspects of legal capacity for marriage for civil purposes

WHEREAS the Parliament of Canada is committed to upholding the Constitution of Canada, and section 15 of the Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination;

WHEREAS the courts in a majority of the provinces and in one territory have recognized that the right to equality without discrimination requires that couples of the same sex and couples of the opposite sex have equal access to marriage for civil purposes;

WHEREAS the Supreme Court of Canada has recognized that many Canadian couples of the same sex have married in reliance on those court decisions;

WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the Canadian Charter of Rights and Freedoms;

WHEREAS the Supreme Court of Canada has determined that the Parliament of Canada has legislative jurisdiction over marriage but does not have the jurisdiction to establish an institution other than marriage for couples of the same sex;

WHEREAS everyone has the freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms;

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS, in light of those considerations, the Parliament of Canada's commitment to uphold the right to equality without discrimination precludes the use of section 33 of the Canadian Charter of Rights and Freedoms to deny the right of couples of the same sex to equal access to marriage for civil purposes;

WHEREAS marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians;

AND WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the Canadian Charter of Rights and Freedoms, access to marriage for civil purposes should be extended by legislation to couples of the same sex;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as the Civil Marriage Act.
2. Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.
3. It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.
4. For greater certainty, a marriage is not void or voidable by reason only that the spouses are of the same sex.

## CONSEQUENTIAL AMENDMENTS

### Canada Business Corporations Act

5. (1) Subsection 237.5(2) of the Canada Business Corporations Act is replaced by the following:

(2) For the purposes of this section,

(a) a personal body corporate is a body corporate that is not actively engaged in any financial, commercial or industrial business and that is controlled by an individual, or by a group of individuals who are connected by marriage, common-law partnership or any legal parent-child relationship or are connected indirectly by a combination of those relationships, whether or not the individuals through whom they are connected are members of the group; and

(b) a common-law partnership is a relationship between two persons who are cohabiting with each other in a conjugal relationship and have done so for a period of at least one year.

(2) Subsection 237.5(3) of the Act is renumbered as subsection (1.1) and repositioned accordingly.

### Canada Cooperatives Act

6. (1) Subsection 337.5(2) of the Canada Cooperatives Act is replaced by the following:

(2) For the purposes of this section,

(a) a personal body corporate is a body corporate that is not actively engaged in any financial, commercial or industrial business and that is controlled by an individual, or by a group of individuals who are connected by marriage, common-law partnership or any legal parent-child relationship or are connected indirectly by a combination of those relationships, whether or not the individuals through whom they are connected are members of the group; and

(b) a common-law partnership is a relationship between two persons who are cohabiting with each other in a conjugal relationship and have done so for a period of at least one year.

(2) Subsection 337.5(3) of the Act is renumbered as subsection (1.1) and repositioned accordingly.

#### Civilian War-related Benefits Act

7. Section 36 of the Civilian War-related Benefits Act is repealed.

#### Divorce Act

8. (1) The definition “spouse” in subsection 2(1) of the Divorce Act is replaced by the following:

“spouse” means either of two persons who are married to each other;

(2) Paragraph 2(2)(a) of the French version of the Act is replaced by the following:

a) pour lequel ils tiennent lieu de parents;

#### Federal Law and Civil Law of the Province of Quebec Act

9. Section 5 of the Federal Law and Civil Law of the Province of Quebec Act is replaced by the following:

5. Marriage requires the free and enlightened consent of two persons to be the spouse of each other.

#### Income Tax Act

10. (1) Paragraph (b) in the description of A in subsection 56.1(2) of the Income Tax Act is replaced by the following:

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is the parent of a child of whom the person is a legal parent,

(2) The definition “child support amount” in subsection 56.1(4) of the Act is replaced by the following:

“child support amount” means any support amount that is not identified in the agreement or order under which it is receivable as being solely for the support of a recipient who is a spouse or common-law partner or former spouse or common-law partner of the payer or who is a parent of a child of whom the payer is a legal parent.

(3) Paragraph (b) of the definition “support amount” in subsection 56.1(4) of the Act is replaced by the following:

(b) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

11. Paragraph (b) in the description of A in subsection 60.1(2) of the Act is replaced by the following:

(b) where the amount became payable under an order made by a competent tribunal in accordance with the laws of a province, an individual who is a parent of a child of whom the taxpayer is a legal parent,

12. (1) Paragraph 252(1)(a) of the Act is replaced by the following:

(a) a person of whom the taxpayer is the legal parent;

(2) Subsection 252(1) of the Act is amended by adding the word “and” at the end of paragraph (c) and by repealing paragraph (d).

(3) Subsection 252(3) of the Act is replaced by the following:

(3) For the purposes of paragraph 56(1)(b), section 56.1, paragraphs 60(b) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition “pre-1972 spousal trust” in subsection 108(1), subsection 146(16), subparagraph 146.3(2)(f)(iv), subsections 146.3(14), 147(19), 147.3(5) and (7) and 148(8.1) and (8.2), the definition “small business property” in subsection 206(1), subparagraph 210(c)(ii) and subsections 248(22) and (23), “spouse” and “former spouse” of a particular individual include another individual who is a party to a void or voidable marriage with the particular individual.

#### Marriage (Prohibited Degrees) Act

13. Subsection 2(2) of the Marriage (Prohibited Degrees) Act is replaced by the following:

(2) No person shall marry another person if they are related lineally, or as brother or sister or half-brother or half-sister, including by adoption.

14. Subsection 3(2) of the Act is replaced by the following:

(2) A marriage between persons who are related in the manner described in subsection 2(2) is void.

#### Modernization of Benefits and Obligations Act

15. Section 1.1 of the Modernization of Benefits and Obligations Act and the heading before it are repealed.