

Christian Legal Fellowship Submission to Canadian Parliamentary Committee on Bill C-38

May 18, 2005

Honourable Members:

My name is Ruth Ross. I appear with Valerie Hazlett Parker and while I will make the oral submissions, we are both available for questions. Please note that the Christian Legal Fellowship was only contacted by this committee on Friday and has since submitted a written 15 page brief which is not yet translated but which elaborates on our submissions and raises additional issues.

Religious Freedom

In the seminal case of *Big M Drug Mart*, the essence of the concept of freedom of religion was said to be the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination.

This broad and liberal interpretation of religious freedom was restated in the recent 2004 decision of *Amselem*, out of Quebec, and in the Same-Sex Marriage Reference. However, given the developing case law, there is little doubt that, if passed, *Bill C-38* will be used by provincial governments and others to override the rights of conscience and religion of ordinary Canadians.

a) Religious clergy

Bill C-38 speaks of religious freedom in its Preamble but this is not legally binding.

The wording of section 3 on religious freedom is found wanting. Because the solemnization of marriage falls within the scope of provincial powers, the federal government cannot by itself create a legislative protection for religious officials who oppose same-sex marriage.

Given the diversity of the provinces, and the fact that each province is responsible for enacting its own legislation concerning solemnization, one only has to consider the current confusing state of affairs.

b) Marriage Commissioners

The fact that there is discrepancy in the treatment of marriage commissioners across Canada is an example of this. This is fully dealt with in our written submissions and I am prepared to answer questions on this topic.

c) Protection for religious individuals and groups is eroded when there is a “collision of rights” and a “collision of dignities” with the rights of homosexuals. The Marriage Reference said this collision would have to be decided on a case by case basis. This will result in a real threat to religious freedom, if the case law to date is any indication.

Consider the following cases:

In Trinity Western University the Supreme Court stated that one is entitled to hold religious beliefs, but that “the freedom to hold beliefs is broader than the freedom to act on them”. *Trinity*

reinforces the notion that religious belief is a private matter only, permitted within a church or the home, but not in one's public actions or expressions.

The difficulty with this view is that it imposes a form of "sexual relativism" as the official public morality for Canadian society. In this view, all sexual lifestyles must be publicly affirmed as equal even if the imposition of this ideology violates the intellectual, moral, or religious convictions of others. According to this point of view, people who do not conform to this sexual relativism must now go "into the closet", while those favouring this ideology should receive the support of the courts and society as a whole.

Mr. Justice Gonthier stated in *Chamberlain v. Surrey School District* "there is no Canadian law or constitutional provision that prevents Canadian citizens from morally disapproving of homosexual behaviour or relationships." He stated, "It is a feeble notion of pluralism that transforms "tolerance" into "mandated approval or acceptance." The great risk is that the emphasis on tolerance will be used as a mask for obliterating dissent on controversial questions such as the morality of certain sexual activity.

Please refer to comments in my written brief on the Brockie Case in Ontario – the Christian printer who refused to perform printing services for the Gay and Lesbian Archives, on the basis of his Christian beliefs. In essence, the court suggested a requirement that matters may be objected to if adequately "core" to a religious conviction, which supposedly can be determined objectively. The unacceptable implication then is that the court should be the final arbiter of what is a reasonable religious belief.

Chris Kemplingⁱ, a 13-year teacher and counselor in the public school system in British Columbia was declared guilty of conduct unbecoming a member by the British Columbia College of Teachers. The College declared that everything Kempling wrote was discriminatory, even though some information was merely quoting previously published research data. There was neither evidence of harm nor any complaint by a teacher or student.

The decision of the College was upheld by the BC Supreme Court and was recently appealed to the BCCA. By characterizing Mr. Kempling's statements as "discriminatory", the court permitted a government agency to censor his speech and effectively end his participation in a public debate on a matter of deep concern and public interest. The Kempling case has a huge impact on all professionals and other public officials.

Bishop Henry of Calgary has faced at least two official complaints to the Human Rights Commission for his public statements on the subject of same sex marriage and the morality of homosexual behaviour. He also received a threat from the Canada Revenue Agency suggesting that **the charitable status** of the Roman Catholic Church would be at risk if he continued to speak out on the matter.

e) Education

Religious schools have been forced to accept Same Sex Couples. **I refer you to the Ontario Gay Prom case in our materials.** An Ontario Superior Court ordered a local Roman Catholic school board to allow a student to bring his same sex partner to the high school prom just hours before the prom, with no time for appeal. The Roman Catholic school board opposed the order on the basis of religious freedom but lost.

f) There are at the moment Human Rights Complaints against Christian groups for use of facilities in Manitoba and BC and I refer you to the cases discussed in our written submissions:

- **Camp Arnes and The Rainbow Harmony Project:** In February 2004, the human rights complaint was lodged by the Winnipeg-based homosexual choir, the Rainbow Harmony Project,

for the Christian camp's refusal to rent its facilities to the group. The complaint against Camp Arnes has been referred to adjudication and a date for a hearing is expected soon.

- **B.C. Lesbians Take Knights of Columbus to Human Rights Tribunal over Hall Rental**

g) Loss of Charitable Status and Loss of Property Tax Exempt Status

Same sex marriage activists have argued that religious organizations that refuse to perform same sex marriage ceremonies should lose their charitable status under the Income Tax Act. See www.samesexmarriage.ca. There is reason to believe that municipal governments in Canada will be pushed to follow the lead of cities like San Francisco in establishing rules that deny municipal property tax exemption to religious organizations that do not perform same sex marriages.

h) Bill C-250

Canadian prosecutors may take the lead of the Government of Sweden and prosecute religious leaders who speak against same sex marriage. See the Reverend Ake Green in our full submission.

i) Marginalization of people of faith

If, as a so-called act of inclusion, same-sex marriage is established as a norm, the vast majority of cultures and religions in this country will find themselves excluded from the social mainstream. This marginalization will be felt in social, political, educational and legal terms.

Evangelical Christians feel subject to societal marginalization and perceive that their religious beliefs have come under attack in recent years. There is societal indifference to their religious beliefs, and increasing intolerance. The Courts, through judicial activism, are attempting to force Christians to accept same sex marriage, and other controversial social concepts, which contravene their fundamental religious teachings. ⁱⁱ

The Fourth Charter Question Not Answered

It must be noted that the answers provided in the Marriage Reference were an advisory opinion only. In addition, the Supreme Court did not address the question of whether an opposite-sex definition of marriage would fail to meet *Charter* requirements. Therefore, it is not mandatory that Parliament redefine marriage.

In fact, Parliament would be entirely consistent with the *Reference* opinion if it were to enact a statutory definition of marriage as the union of one man and one woman for life to the exclusion of all others. Parliament, in restricting the statutory definition could adopt as its test pursuant section 1 of the *Charter*, the foundational principle that marriage is used exclusively to serve the best interests of children and to create a public institution that makes it more likely that a child will be raised by the child's own mother and father. The Supreme Court has previously recognized the importance of protecting the best interests of children in a variety of contexts.

In *Young v. Young* the Supreme Court stated clearly (at p.64) the dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, or by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as physical well-being.

The Court also reminded us that, " the courts must be directed to create or support the conditions which are more conducive to the flourishing of the child." (p.65). There is no fact better established in the literature than that, all variables considered, children are better served who are reared in a home with a married mother and father where there is gender complementarity.

The current availability of reproductive technologies will have disastrous effects on the family as our basic societal unit. If Parliament redefines marriage, many children will be born into homosexual families, and thus be denied the basic right to know who their biological parents are. This could result in serious issues surrounding self-identity for generations to follow.

These changes to "marriage" pose a real concern for its future. A lesbian couple from London, Ontario has recently appealed a 2003 decision by the Family Court denying parentage simultaneously to the two of them (the biological mother and her partner), as well as the biological father, of a young boy.ⁱⁱⁱ Rather than turn to an anonymous sperm donor, the women in question asked a friend to father their child.^{iv} Justice Aston was quoted as saying, "I can't imagine a stronger case for seeking the order you are seeking....The only concern is that I'm governed by legislation and that's the only hurdle you've got to get over."^v Same sex marriage will lead to group marriage and the end of marriage as we know it. This cannot be in the best interests of our children or our country.

Conclusions and Recommendations

Christian Legal Fellowship respectfully requests that this Committee recommend that Bill C-38 not be passed. We strongly object to it and find it is technically flawed. Should you proceed, as a minimum, you will see our recommendations are in front of you in the written submission.

1. A section be added under the consequential amendments to read that "officials of religious groups and marriage commissioners shall have the right to refuse to perform marriages that are not in accordance with their religious beliefs";
2. A section be added that religious groups and individuals will have the right to refuse access/use of church and ancillary facilities for purposes of same-sex marriage gatherings or events leading up to and including the actual celebration following same-sex marriage ceremonies, and similar activities which are inconsistent with religious beliefs;
3. A section be added under the consequential amendments to reflect that expressing views opposing same sex marriage will not be considered to be discriminatory speech;
4. A section be added under the consequential amendments to the Income Tax Act to ensure that charities and religious institutions including schools, will not face discrimination for maintaining religious practices regarding marriage;
5. Bill C-38 must contain a prerequisite provision which is adopted by each of the provinces and territories to the effect that treatment of religious freedom as contemplated in this paper is consistent across all provincial jurisdictions and boundaries; and
6. Bill C-38 must contain a prerequisite provision that no action, which may be brought against any one person or organization, which, in good faith, takes the position stated in recommendations 1 & 2, will be sustained.

ⁱ See <http://www.bcptl.org/rights.htm#Kempling>

ⁱⁱ Affidavit of Craig Gay, Submitted by the Interfaith Coalition for Marriage, *Egale v. A-G Canada*, British Columbia Court of Appeal, par 15.

ⁱⁱⁱ *Canada: Boy May Have 3 Legal Parents*, Gay.com, <http://www.gay.com/news/article.html?2003/02/10/3>

^{iv} *Give boy three parents, court asked*, by Jennifer O'Brien, London Free Press, Feb 7, 2003; *Canada: Boy May Have 3 Legal Parents*, Gay.com, <http://www.gay.com/news/article.html?2003/02/10/3>

^v *Give boy three parents, court asked*, by Jennifer O'Brien, London Free Press, Feb 7, 2003.