

**Brief by the Canadian Conference of Catholic Bishops
to the Special Legislative Committee on Bill C-38,
*The Civil Marriage Act***

The continuing interventions of the Canadian Conference of Catholic Bishops in the debate on the possible redefinition of marriage in our country are obviously, but not solely, because of our faith convictions. We are motivated as well by our responsibilities as citizens to promote and defend the fundamental rights and freedoms of all persons while respecting the natural order.

Prior to its being a religious institution, marriage is a natural institution. The cultural, social, legal and religious recognition it has enjoyed throughout the centuries of human history is proof that it constitutes a fundamental good for society. Its historical definition clearly reflects the unique service rendered to society by the men and women committed to marriage.

It is therefore not surprising from this perspective that on 8 June 1999 the Parliament of Canada stated its firm intention to preserve the conjugal union as a societal norm. The motion as adopted, with 216 in favour and 55 opposed, stipulated:

That, in the opinion of this House, it is necessary, in light of public debate around recent court decisions, to state that marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament will take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition of marriage in Canada.

Similarly, the Canadian Conference of Catholic Bishops, which represents the spiritual leadership of some 13 million Canadian Catholics, has repeatedly reaffirmed its conviction which it considers to be an obvious fact: “Marriage is a loving, life-giving partnership between a man and a woman which is essential to the survival of society. Its purpose is the good of the couple and the procreation and education of children. Marriage as the union between a man and a woman is a unique and irreplaceable institution that merits government protection and social recognition” (letter from Most Reverend Brendan M. O’Brien, President of the Canadian Conference of Catholic Bishops, to Prime Minister Paul Martin, 15 February 2005).

The Catholic Church teaches that marriage is both a vocation and a sacrament, a celebration of that sacred commitment and bond between a man and a woman which is at the heart of family life, as it gives basic form and shape to the over-all responsibility for raising and educating each new generation of citizens for the common good of society.

Natural Law and Positive Law

Six years have passed since the Parliament of Canada officially declared its intention to uphold the heterosexual definition of marriage. Today, we are told that attitudes have evolved and, so as to respect the rights of the Canadian homosexual minority, it is necessary to give to persons of the same sex the right to marry. To defend this point of view, mention is made of the *Canadian Charter of Rights and Freedoms*, the court judgments rendered in seven provinces and one territory, and the recent opinion of the Supreme Court of Canada on the marriage reference (9 December 2004).

We would question this interpretation of the Charter, and instead recall a fundamental principle basic to the development of legislation, if it is to be just and thereby merit the support and respect of all citizens.

Laws are established to respect the social order. However, a particular social order is valid only if it respects the order inscribed in nature. Once laws contradict this natural order, they become unjust. They then risk creating division and dissension, and so breed social disorder.

The preamble to the *Canadian Charter of Rights and Freedoms* affirms that “Canada is founded on principles that recognize the supremacy of God and the rule of law.”

This is a recognition of a higher law, with the Charter then proceeding to specify what rights are due to human beings and how these are protected. It thus does not stem from the will of individuals, judges or governments. Its source is found in the nature of human beings. This is why we refer to natural law, a law whose components are more universal and immutable than particular social and cultural realities that change with time. The right to marriage – which the *Universal Declaration of Human Rights* (Art. 16) recognizes as pertaining to a man and a woman – is based on natural law and does not change with changing mentalities.

States have a responsibility to legislate in order to promote the exercise of the natural rights of their citizens; the laws and regulations established in this way form positive law. But the evolution of positive law represents progress for civilization insofar as it conforms to the natural law. Similarly, a sound interpretation of the Charter requires this reference to natural law – which the Supreme Court of Canada omitted in its opinion on the marriage reference.

It is clear that “the primacy of the law to which the Charter refers in its preamble and its mention of the supremacy of God is the primacy of natural law over positive law. As stated by Cicero, the great philosopher and jurist who explored the principles of our Western notion of law: ‘True law is right reason in agreement with nature.’ But when the primacy of natural law is rejected, we are generally faced with an arbitrary and often totalitarian regime” (Gérard Lévesque, “*Une erreur flagrante*”, private manuscript [CCCB translation]).

Love and Procreation

The change proposed by Bill C-38 affects the most fundamental institution and some of the most basic values of society: marriage and the family. These are realities present in the history of humanity before any form of state or law. If Bill C-38 is adopted, it will alter the nature of marriage and the family, and further contribute to their erosion.

The promoters of “same-sex marriage” have succeeded in excluding the whole question of procreation from the current debate. According to them, the sole requirement for marriage is to be the love between two persons. Yet according to its historical definition – which also reflects objective reality – marriage is a matter of the survival of humanity as well.

It is for this reason that in addition to the well-being of the spouses and the fulfillment of their love, the goal of marriage includes the procreation and education of children. Removing one of these essential elements from the definition of marriage results in another reality that is clearly no longer a marriage. The anatomical complementarity which makes the engendering of new lives possible is fundamental to the reality of marriage, not to mention the psychological and affective complementarity, as well as the natural mutuality, of a man and a woman.

French psychoanalyst Tony Anatrella, an authority on the couple and the family, addressed the issue of the ecology of this procreative relationship in an interview in French with *Zenit News Agency* on 13 May 2004 [CCCB translation]: “Realities as objective as the biological, corporal and anthropological aspects that characterize the basis of marriage are absent from homosexual ‘unions’ in order to provide a reasonable foundation for marriage. These relationships are not in the nature of conjugality and by definition are infertile. They do not represent the future of society, as does the couple founded between a man and a woman.

“Marriage is based on the association of two sexual identities and not on a partial tendency. It bears witness to the sense of commitment of the couple formed by a man and a woman in society, and society’s willingness to accord special rights to those who commit themselves in this way to a legal relationship. Marriage also ensures the renewal of generations as well as providing evidence of one’s relationship with one’s parents and kin, and brings security to the adults as well as to the children born of their sexual communion.”

It is not discriminatory to attribute different names or different treatment to two realities that are so fundamentally different: (1) the heterosexual union, which has the potential to transmit life and (2) other forms of unions which do not have this potential.

Discrimination against Heterosexual Couples

To want to identify these two fundamentally different realities with the same term is contrary to justice and to common sense. It would be unjust and discriminatory toward men and women who enter marriage in order to form a stable and procreative union, as it fails to uphold their particular status and to support them in a special way.

A specialist in this area raises the following questions about the need to preserve marriage as a heterosexual institution: “What will same-sex marriage do to marriage as a social institution? Is the great, historic, cross-cultural understanding of marriage as the union of husband and wife rooted only in animus and discrimination? Or is there a real deeply rooted human need for a social institution that specifically addresses those people whose sexual attractions and relationships produce new life? Children need mothers and fathers, and marriage is the way societies everywhere get that important good for children. Same-sex marriage amounts to a declaration that marriage in Canada is now about something else: some other adult agendas and needs” (Maggie Gallagher, President of the Institute for Marriage and Public Policy, “Responses to the Supreme Court Opinion on the Reference Questions”, Institute for the Study of Marriage, Law and Culture).

Seen from this light, there is a major difference to the idea of according to persons of the same sex the right to marriage, ostensibly in order to protect the rights of a minority. To state this clearly, a minority does not have specific rights simply by being a minority. It is the persons who are part of a minority who have rights, and these rights are either absolute or conditional.

An example of an absolute right is the right to life; an example of a conditional right is the right to practise medicine which is conditional to having a medical diploma. The right to marriage is also conditional: it is reserved for those persons who fulfil the natural conditions that are essential to this right. Sexual complementarity is an inherent condition for marriage.

Same-sex partners, therefore, are not entitled to this right. But this does not deny the need to protect their true human rights, which Canada already effectively does by protecting same-sex partners through a variety of charters and laws that assure them of numerous social and family benefits. If there is further need to change certain attitudes toward homosexual persons in order to eliminate all unjust discrimination against them, this cannot be achieved by redefining a social institution that is essentially heterosexual.

By including same-sex unions in the definition of marriage, the government would no longer recognize any particular public or social usefulness in heterosexual civil marriage. Since the marriage contract would not differentiate between heterosexual and homosexual unions, the message would be loud and clear: these “marriages” are equivalent and have the same value. Why would young heterosexual adults continue to marry and take on collective responsibilities if the state devalues their commitment and offers no special benefit which recognizes their essential contribution to the survival of society?

Rights and Needs of Children

The experience of Scandinavian countries over the past ten years that have accorded same-sex partners rights equivalent to those of marriage should give Canadians cause for serious reflection. These countries have seen a significant decrease in the number of marriages and a corresponding increase in the number of children born to unmarried parents.

The 1999 *National Longitudinal Survey of Children and Youth* conducted by Statistics Canada and Human Resources and Development Canada clearly demonstrates that marriage is the most stable type of union and thus the most beneficial for children. Only 13 per cent of children born to married parents who had not lived together before marriage experience the separation of their parents, whereas 63 per cent of children in common-law relationships experience family break-up. As for the children of parents who married after living together, 25 per cent of them experience family break-up.

The enormous social costs of divorce are now well-known; its effects (emotional instability, depression, poverty, school dropout, delinquency, suicide, etc.) were not foreseen when divorce was legalized. The new “gay marriage” venture is also liable to lead to disagreeable surprises. It is astounding that the government is prepared to create new situations which do not favour the well-being of children. Equally astonishing, however, is that so much time has been spent questioning how marriage may be discriminatory, but with so little consideration given to the rights of children.

As citizens, Canadian children have rights and needs. Entering into this world generally as a result of the special communion of love between a man and a woman, children have a fundamental right to know their biological parents and to be raised by them. The difficulties experienced by adopted children or those from broken families are known only too well.

“Across millennia and societies, marriage has institutionalized and symbolized the inherently procreative relationship between a man and a woman,” recalls Margaret Somerville, a lawyer and professor at McGill University. “It has established the societal norm that in entering marriage a man and a woman take on shared obligations to protect and nurture the children born to them. The corollary of those adult obligations is a child’s right to know and to be brought up by his or her biological parents, unless an exception can be justified as in a child’s best interests. Same-sex marriage would radically change that norm” (“What about the Children?”, *Divorcing Marriage: Unveiling the Dangers in Canada’s New Social Experiment*, edited by Daniel Cere and Douglas Farrow, Montreal and Kingston: McGill-Queen’s University Press, ©2004, p. 63-64).

Research in psychology and social sciences only confirms what is perceived through common sense: children function more effectively when they grow up in the company of their father and mother, who have different and complementary roles in their lives. This educational complementarity and interaction are crucial to the child’s growth process and to the development of his or her personality. The child’s affective development, self-esteem and self-confidence are dependent on this complementarity and interaction.

“A child needs a man and a woman to structure itself emotionally,” confirms psychoanalyst Tony Anatrella. “It is wrong to pretend that a child only needs to feel loved to be fulfilled: it is still necessary to know which relational structure a child should be placed in to develop.... A child needs the double figure of man and woman, father and mother, in order to develop coherently” (*Zenit*, 13 May 2004).

The adoption of Bill C-38 would create two categories of children: those who are assured of the right to be brought up by their two biological parents, and those who wilfully deprived of this right. Such discrimination is neither fair nor desirable. Paul Nathanson, a researcher at the Faculty of Religious Studies, McGill University, observes that this Bill “would give the state’s official endorsement to a worldview in which the rights of adults trump the needs of children, and those of individuals the needs of society” (“Responses to the Supreme Court Opinion on the Reference Questions”, Institute for the Study of Marriage, Law and Culture).

Individual Rights or Common Good?

By redefining marriage, the government would be going against the public interest as it has been known for centuries, namely, the integration of the sexes in an ideal social unit in which children are born and raised not only for their benefit but also for that of society as a whole. Bill C-38 disregards this long-held concern and would replace it with an interest founded solely on an intimate personal relationship. Once this is the interest recognized by the state, marriage as a social institution will become meaningless, since all forms of unions between consenting adults will need to be treated equally.

The conjugal relationship between a man and a woman clearly constitutes an irreplaceable good for the couple and society, both for their mutual love and for the procreation of children. Marriage provides a stable and positive environment for children and consequently for future generations. The right to marriage extends well beyond the rights of two individuals; it is also concerned with the common good.

The state must retain the possibility of fostering, protecting and encouraging the type of relationships that are most beneficial to it: conjugal relationships between a man and a woman – unions whose procreative potential generates new citizens and thus ensures our collective future. This crucial social recognition serves the common good and does not undermine the dignity of same-sex partners. In fact, the dignity and equality of persons are not dependent on race, religion, sex, sexual orientation or marital status, but are based on the reality of the human person.

Freedom of Religion, Conscience and Expression

Bill C-38 (Article 3) purports moreover to protect religious freedom. It affirms that “it is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.”

By insisting on the difference between civil and religious marriage, the reality of marriage is distorted. These are not two parallel institutions, each of which is called “marriage”. These are two different doors giving access to one and the same institution which is anchored in human nature: the civil door for couples who choose to marry at city hall, and the religious door for couples who prefer to marry in a church, synagogue, mosque or temple. In both cases, it is a voluntary, lawful, faithful, exclusive and loving union of a man and a woman – a relationship that has the natural potential for creating new life.

On the other hand, what authority does the federal government effectively have for protecting the religious freedom of those persons called upon to perform marriages, since the solemnization of marriages comes under provincial jurisdiction? What does the federal government intend to do to protect freedom of religion, freedom of conscience and freedom of expression for all Canadians? How does it plan to ensure that:

1. Canadians will not be compelled to act contrary to their conscience and their religious beliefs?
2. Leaders and members of faith groups throughout Canada will be entirely free to teach and preach on marriage and homosexuality in accordance with their conscience and religious beliefs?
3. In addition to sacred places, all facilities belonging to or rented by an organization associated with a faith group will be protected against any obligatory use for marriage ceremonies incompatible with the religious convictions of that faith?
4. All officials, both civil and religious, who preside at marriages in Canadian provinces or territories, will be protected against the obligation to officiate when the conditions are irreconcilable with their conscience and religious beliefs?
5. Faith groups that do not accept the proposed redefinition of marriage will not be penalized with respect to their charitable status?

Religious freedom is not limited to the freedom to perform or to refuse to perform marriages involving same-sex partners. Religious freedom is intrinsically linked to freedom of conscience and freedom of expression. It is not a concern only for religious authorities, but for all citizens who must be able to express their freedoms publicly in daily life.

A number of serious issues are emerging, including the following:

1. What will happen to civil officials refusing to preside at a “gay marriage”?
2. What will happen to preachers expressing the teachings of their religion on marriage and homosexuality if these differ from the new social norm?
3. What will happen to politicians proposing legislation that recognizes the unique contribution heterosexual couples offer to society and supports them in their procreative role?
4. What will happen to teachers who cannot in good conscience present “same-sex marriage” to their students as the equivalent of natural marriage?
5. What will happen to parents who do not accept a school presenting their children with a vision of marriage different than their own?
6. What will happen to authors and publishers who write and publish texts that present a vision of marriage inspired by moral convictions but not in agreement with the new social norm?

Will those who believe in the historical definition of marriage henceforth be victims of discrimination? Should we anticipate lengthy, costly lawsuits in the courts to defend the freedom to teach, preach and educate in accordance with one’s faith and conscience?

The authors of the *Canadian Charter of Rights and Freedoms* certainly did not foresee such a confrontation between the different basic freedoms of Canadian citizens. They did not intend the Charter to allow such a radical re-engineering of our most fundamental social institutions. It is thus reasonable to believe that it is the current interpretation of the Charter which is distorted.

Risk of an Irrevocable Rupture

This is not a question of the Catholic Church imposing its dogma and precepts on the whole of society. The reasons for opposing the redefinition of marriage as proposed by Bill C-38 and upholding the historical definition of marriage are first and foremost natural. What millions of Canadians are refusing to accept is that the reality of marriage – profoundly inscribed in human nature – should be redefined to comprise a totally different reality.

Because the relationship of a man and a woman in marriage is the most stable basis of the family, and because the family is a vital unit for society, there are great risks in playing with the definition of marriage and the family.

Bill C-38 constitutes, purely and simply, a rejection of the conjugal meaning of marriage, a phenomenon more pronounced over the past two generations which is progressively eroding the institution of matrimony. “The pattern of this erosion is reflected in the movement of the main social indicators relevant to marriage: higher divorce rates, rising cohabitation rates, higher rates of unwed child-bearing, lower marriage rates, declining birth rates, declines in marital satisfaction, and declining well-being among children. Law and public policy have been channelling marriage away from its distinctively conjugal goals of sex-bridging, generativity, care-giving, and connecting children to their mothers and fathers....

“The current project to strip marriage of its conjugal meaning is right in synch with these trends. Driven by a moral and ideological enthusiasm, it overlooks their real human costs. And it leaves unanswered far too many questions. How will Canadian society fare when it is no longer able to offer any special recognition in law or public policy to a form of life so central to human experience and, indeed, to human reproduction? Will the transformation of marriage into a close-relationships regime continue to erode its social significance for future generations? Will marriage continue to decline as a centre of gravity for women and men seeking to form a stable life together? Will these men and women have the social and cultural supports they need to help bring children into this world and to rear a family? Will the reconstitution of marriage ratify a reproductive revolution that will kill any public commitment to maintaining relationships between children and their natural parents? Will it set in motion new developments that will open the way for further deregulations of marriage and parenthood?” (Daniel Cere, Conclusion, *Divorcing Marriage*, p. 176).

That there are so many questions should be sufficient to curb the government’s eagerness to move forward with the radical social experiment of “marriage” involving persons of the same sex. The fundamental institutions of society do not have infinite flexibility. There

comes a time when, confronted by radical upheaval, a rupture occurs. This is a critical threshold in our social and cultural evolution with regards to marriage; there must be serious reflections about crossing this threshold.

The proposed redefinition does not foster the evolution of marriage, but breaks irrevocably with human history as well as with the very nature of marriage. The adoption of Bill C-38 will cause irreparable damage to the basic fabric of human coexistence – the family founded on marriage – and result in a deeply wounded society.

The family cannot be reduced to a private affective experience, nor can individual rights be confused with those that are at the heart of the family, founded on a marriage between a man and a woman. Two grave wrongs for Canadian society would result from this Bill: the elimination of the public interest in protecting and promoting the institution of marriage for the benefit of the state, and the imposition of an “orthodoxy” that runs counter to freedom of conscience and religion.

Promoting a Culture of Marriage

If it is to defend the common good, how can our country’s legitimate authority seriously contemplate redefining a human institution that is so fundamental and vital for the stability of families and the future of society? How can it wish to impose on Canadian society a norm contrary to natural law?

We ask the government to abandon its plan to redefine marriage and to commit itself to promoting a culture that encourages and fosters marriage as a fundamental institution which provides the norm for society.

“There is something wrong ... with the idea that any society can endure without public support for heterosexual bonding. Every society has maintained the culture mechanisms that provide it.... The culture of marriage must encourage at least five things: (a) the bonding between men and women that ensures their cooperation for the common good; (b) the birth and rearing of children, at least to the extent necessary for perpetuating society; (c) bonding between men and children so that men are likely to become active participants in family life; (d) some healthy form of masculine identity ... and (e) the transformation of adolescents into sexually responsible adults – that is, young men and women who are ready for marriage and the beginning of a new cycle” (Katherine Young and Paul Nathanson, “The Future of an Experiment”, *Divorcing Marriage*, p. 47-48).

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