

SAVING MARRIAGE AS A FUNDAMENTAL INSTITUTION RECOGNIZED BY THE STATE

**Brief by the Canadian Conference of Catholic Bishops
to the Senate Standing Committee on Constitution and Legal Affairs
13 July 2005**

On behalf of the Canadian Conference of Catholic Bishops (CCCB), I would first like to thank the Honourable Members of the Senate for this opportunity to present our vision of marriage and the family as part of the debates on Bill C-38. Inspired by human and spiritual convictions common to the Canadian people, this vision is defensible without recourse to religion.

Since November 2002, we have intervened time and time again to convince Members of Parliament not to redefine the institution of marriage for the benefit of persons of homosexual orientation who, nonetheless, as human beings deserve the respect of all their fellow citizens.

Contrary to those who would seek to relegate us to the religious sphere each time we speak, we are convinced that the current debate is predominantly social on the nature and value of marriage. For this reason we have set forth arguments based on natural law and common sense. We will provide a short overview of these arguments in this brief.

As we reach the end of a political process that carries a grave risk of changing the nature of marriage and involving largely unforeseeable but assuredly negative consequences for Canadian society, we are turning to you in the hope that you will prevent the adoption of this unjust law.

A BILL THAT WILL PROFOUNDLY DIVIDE THE COUNTRY

Throughout the country, numerous voices have been raised to denounce this government proposal that does not respond to the legitimate needs or expectations of Canadians. Many consider it to be based on a false understanding of the fundamental equality between persons, on an erroneous understanding of human dignity, on a spurious understanding of minority rights, on a faulty interpretation of the ***Canadian Charter of Rights and Freedoms***, and on a truncated understanding of freedom of religion. We are among these voices.

This colossal misunderstanding risks leading Canada down a slippery slope that is prejudicial to the common good of its citizens, for it threatens the natural institution that is the most solid basis of the family, which is itself the basic unit of

society. We are not discussing a trivial reality, but the cornerstone of our social structure.

Neither the State nor religions invented marriage nor determined its natural components. They merely institutionalized a reality that existed well before them, thereby recognizing that the inherent characteristics of this reality — the stability of the couple, as well as the procreation and education of children — would assure the common good of society.

Today, the issues of Bill C-38 concern not only the definition and foundations of marriage as celebrated since time immemorial and recognized by all cultures. The future of marriage as a fundamental social institution is also being challenged, as well as the importance for society of the irreplaceable role of a husband and wife in conceiving and raising children. Their union guarantees a stable environment for family life, continuity between generations and parental models involving a father and a mother.

A TRUNCATED DEFINITION THAT DENATURES MARRIAGE

Logically, all definitions are made up of a type and a specific difference. Aristotle defines man as a reasonable (specific difference) animal (genus). Therefore, the definition of marriage as a “union between two persons to the exclusion of all others” excludes the specific difference of marriage which is its essential component, namely sexual difference, the union of a man and a woman. This is a truncated definition, applicable perhaps to angels of pure hearts, but not very adequate in defining human beings who are by nature sexual and complementary.

The redefinition proposed in Bill C-38 does not promote the evolution of marriage, but instead breaks irrevocably both with human history as well as with the meaning and very nature of marriage. We have no illusions: it implies a distortion of the natural institution of marriage. If this Bill is adopted, we will ascribe the term *marriage* to something that is merely pseudo-marriage, a fiction, a derivative and, in the words of the Honourable Senator Hervieux-Payette, an imposture.

Despite efforts to sow confusion by changing the definition of words, it will not change the objective reality of marriage — a heterosexual institution in its essence.

For us, and for a majority of Canadians, marriage will remain the exclusive life-long covenant of the love of a man and a woman to the exclusion of all others. A union possessing the natural capacity to generate new lives, which has as its purposes the couple’s well-being as well as the procreation and education of children. A relationship that satisfies individual needs, but is also for the common good, and consequently deserving the preference and protection of the State.

The government has a responsibility to favour and encourage this type of union, since marriage between a man and a woman ensures the future of society and constitutes the ideal environment for the development of children.

A FALSE INTERPRETATION OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

Relying on the *Canadian Charter of Rights and Freedoms* and decisions by the Supreme Court and lower courts, promoters of Bill C-38 maintain that the universal definition of marriage violates the equality rights of a Canadian minority composed of same-sex partners, flouts their dignity and generates discrimination based on sexual orientation. But does it really?

To answer this question, we refer to a reflection by Gérard Lévesque, a Quebec philosopher and independent researcher in ethics and jurisprudence: “The courts’ false notion of equality leads to a false notion of discrimination: by identifying equality as being a perfection results in perceiving any difference as abnormal and discriminatory. This false perception of discrimination prevents an appropriate reading of the Charter.

“It should not be regarded as discriminatory or unjust to treat someone according to his or her true situation, or to accord special status or the granting of different treatment to people because of genuine differences. On the contrary, to act in this way is to be just and equitable. A sensible application of the *Canadian Charter of Rights and Freedoms* allows legislation that conforms to these principles. For example, Section 15 of the Charter forbids ... discrimination based on race, religion, sex, age or mental disability. And the same Charter stipulates that every Canadian citizen has the right to vote. Nevertheless, Section 3 of the *Canada Elections Act* does not grant this right to those who are not considered as having reached the age for making important political choices.... It follows that if the interpretation of the Charter were to ignore obvious differences, it would be applied without discernment and, what is more, in a way that is contrary to the common good” (manuscript, February, 2005; CCCB translation from the French).

Heterosexual and homosexual unions must therefore be compared to determine whether they are perfectly identical or whether they present characteristics which justify different treatment and different names. No one disputes that same-sex partners can truly love each other and wish to share their life together. If marriage is reduced to a relationship of intimacy between consenting adults, then there is no reason to refuse it. And it is not enough that one group sees marriage in this way in order that it receive legal, therefore public recognition.

As we have seen, however, marriage is a great deal more than a relationship of interdependence between consenting adults. It aims at much more than the well-being and fulfillment of the partners. It possesses another constituent element, namely, the procreative potential of the man and woman who are making the

commitment. The sexual relationship between two men or two women is not equivalent to the sexual relationship between a man and a woman because they do not have the biological capacity to generate new lives. It must also be added that with regard to education of children, the same values cannot reasonably be attributed to both types of union. The principal right of children is to be born of an act of love and to live in complete communion with a father and mother.

Therefore, it is neither unjust nor discriminatory to name and treat differently two realities that are so intrinsically different both anatomical and psychoaffective perspective. On the contrary, it would be unjust and discriminatory toward married heterosexual couples to treat them this way. The State must accord special treatment to a man and woman who marry, not because of the exclusivity, dependence, duration or sexual nature of their union, but because of its vital function of procreation and its function of socialization that encourages complementarity between man and woman for the greater good of their children.

“When the State uniquely privileges marriage it takes the position that it is in the best interest of society for children to be born and raised in a community where they experience the cause of their biological and historical identity as a loving union preserved by each parent placing the needs of others over their own. By promoting marriage to be the exclusive union between one man and one woman, the State not only protects the rights of children but encourages the values of commitment, restraint and diversity that are needed to preserve community at large” (R.M.T. Schmid, Oxford University, in *Zenit*, 12 July 2004).

If same-sex partners are excluded from marriage, it is not because of their sexual orientation, but because of the absence between them of a sexual complementarity that defines the specific difference of marriage. Thus, they are naturally incapable of procreation and less capable of educating the next generation of citizens — a determining criterion of public interest.

To affirm that there is a difference between heterosexual and homosexual unions is not unjust discrimination against same-sex partners. This was recognized by the UN Commission on Human Rights in 2002 when refusing to hear a complaint against the New Zealand Court of Appeal which had just refuted the idea (*Quilter vs. New Zealand [A.G., 1997] ICHRL 129*) that banning discrimination on the basis of sexual orientation implied a right to marriage between same-sex partners. The Court of Appeal had determined that “not all differences in treatment are discriminatory.”

Furthermore, the argument of those promoting homosexual “marriage” in favour of equal rights is also based on a false notion of respect for human dignity. The equality and dignity of persons do not depend on race, religion, sex, sexual orientation or marital status. Their dignity and equality are based on the simple fact that they are members of the human race. To respect their dignity, neither

the State nor society is obliged to legally accept their “lifestyle” that has no reason to be publicly recognized as a social value.

Pierre Manent, a foremost authority in the field of political philosophy and director of studies at the *École des hautes études en sciences sociales*, Paris, explains: “In our system it is possible to meet most of the demands of homosexuals, or of those who speak on their behalf. But not all. Or rather, only one is impossible to meet. It is impossible for the body politic to ‘recognize’ their ‘lifestyle’: our system does not ‘recognize’ any ‘lifestyle’. That is why it is liberal. But it ‘recognizes’ ‘heterosexual marriage’? Of course, and for a good reason: this marriage produces children, that is to say, citizens, and this comes under *public interest*” (*Cours familier de philosophie politique*, Gallimard, 2001, 324-5).

With regard to the protection of minority rights, it should be remembered that a minority does not have rights solely because it is a minority. It is the members of this 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, which is recognized by the ***Universal Declaration of Human Rights***, is also a conditional right. It is reserved for persons who meet the conditions naturally required and associated with this right, including sexual complementarity.

As the government prepares to redefine marriage by invoking the evolutionary nature of the Canadian Constitution, we must also recall a fundamental principle that is to govern the development of laws to ensure that they will be just and thus deserve the support and respect of citizens.

Laws are established to ensure respect for the social order. But a social order is valid only if it respects the order inscribed in human nature itself. When laws contradict this natural order, they become unjust and are liable to provoke division and dissension. The result is social disorder.

The ***Canadian Charter of Rights and Freedoms*** aptly refers to the “supremacy of God and the rule of law”. This reference is in no way denominational. It is written within the framework of the conventional tradition of a right that establishes what is due to each human person because he or she is human. It finds its roots in human nature and does not originate from the will of judges and governments. It is natural law — and its components are more universal and unchanging than the social and cultural realities that change with time.

The right to marriage as stated in the ***Universal Declaration of Human Rights*** (Article 16) is based on natural law and does not evolve with attitudes. The evolution of positive law can be considered as progress for civilization only when it conforms to natural law. A sound interpretation of the Charter demands this reference to natural law that comes from its prelude.

HARMFUL EFFECTS ON CHILDREN

We are also most concerned by the foreseeable impact of a redefinition of marriage on Canada's most vulnerable citizens — its children. We cannot dismiss their needs and rights by imagining that tomorrow's society will not suffer from the repercussions of this legislation. Before proceeding with such social re-engineering, we should consider the impact that divorce has had on some generations of children.

Issuing from the union of a man and a woman, children need a father and a mother; they have the right to know their biological parents and to be educated by them. We are only too aware of the suffering of those who are deprived of this possibility. Why then deliberately create other situations that are contrary to the well-being of children who need the double figure of a man and a woman, who represent for them the different, complementary roles that are crucial for their growth process and the structuring of their personalities?

The adoption of Bill C-38 would create two categories of children: those who would have the right to be educated by their two biological parents and those who would be voluntarily deprived of this right. Such discrimination is neither just nor desirable. In a position statement dated 22 January 2004, entitled "Human Parenting: Is It Time for Change?", the American College of Paediatricians (ACP) concluded that: "The research literature on childrearing by homosexual parents is limited. The environment in which children are reared is absolutely critical to their development. Given the current body of research, the American College of Paediatricians believes it is inappropriate, potentially hazardous to children and dangerously irresponsible to change the age-old prohibition on homosexual parenting, neither by adoption, foster care, or by reproductive manipulation. This position is rooted in the best available science." Basing its comments on a report summarizing hundreds of studies throughout the world, the Spanish Association of Paediatrics has recently affirmed "a family nucleus with two fathers or two mothers is clearly dangerous for the child" (www.preservemarriage.ca).

Imposing uniformity in the name of equality means pursuing the erosion of marriage and the family by belittling the importance of the union of a woman and a man, a wife and a husband, a mother and a father. Society must do everything in its power to ensure that children have a father and a mother who live together in a relationship marked by stability and love.

Furthermore, the educational impact of laws on attitudes is undeniable. If Canadian law must henceforth teach that marriage is the union of two persons, a majority of Canadians face the risk of a serious threat to their freedom of conscience, religion and expression through the imposition of an "orthodoxy" that is contrary to their values.

It is true that the amended version of Bill C-38, Article 3.1, affirms “For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the ***Canadian Charter of Rights and Freedoms*** or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom”.

This section of Bill C-38 affects only federal legislation. Nothing has been provided to ensure that this section is applied in all provinces given that legislation dealing with social issues and education is under provincial jurisdiction. The Charter currently protects freedom of conscience and religion; however, in provinces that recognize the validity of same-sex marriage we are already witnessing lawsuits against persons and groups who do not share this vision. Must we now resign ourselves to being victims of discrimination for believing in the historical definition of marriage and wishing to teach, educate and preach according to our faith and conscience? Must a majority of parents accept it as inevitable, that schools and the media will transmit a vision of marriage contrary to their own?

THREAT TO FREEDOM OF CONSCIENCE AND RELIGION

Bill C-38 affirms that freedom of religion is protected and therefore those licensed to perform marriages would not be obliged to do so if their convictions are compromised. Not only will it be necessary to count on the willingness of the provinces to assure this right, but it is clear from the debates on the redefinition of marriage that the concept of religious freedom is misunderstood by the majority of intervenors.

Religious freedom is not limited to the freedom to perform or not perform marriages between same-sex partners. Freedom of religion, which is intrinsically linked to freedom of conscience and expression, not only concerns religious authorities but all citizens, who must be able to express these freedoms publicly in their daily lives.

An extremely distressing phenomenon has been noted in recent years. It has been particularly well described by Professor R.M.T. Schmid that whoever indicates disagreement with the idea of same-sex marriage is accused of homophobia. “Is the introduction of homosexual unions ultimately to symbolize that there is no right to freedom of conscience on the matter of homosexual acts and that conscientious objectors are to be marginalized in public life?”

“Already, the appeal to conscience in any matter pertaining to homosexuality risks being dismissed as ‘homophobia’. Understood as a pathological fear, this disqualifies the position of opponents as an entirely irrational stance. Because

the condemnation of homosexual behaviour objects to acts, not to persons, the conclusion that any opposition to homosexual unions indicates lack of respect and care for people is a blatant non sequitur.

“If the line of reasoning is that homosexuality is so central to the human person that it is impossible to morally disapprove of homosexual acts and not thereby discriminate against the person, then by the same token conscientious beliefs central to the human person could not be contradicted without discriminating against the person.

“The exhortation that ‘religious belief must not lead to the discrimination of homosexual persons by refusing them the right to marry’ sets up a false problem. Not all arguments made by religious believers can be reduced to their religious beliefs. The contribution of religious believers to the public debate on homosexual unions cannot be dismissed as inherently irrational and biased without denying them equality as citizens.

“It cannot be allowed that in political discussion pathological irrationality, bad motives or even hatred are freely ascribed to opponents of homosexual unions. If in the name of truth, rational arguments can be rejected because they accord with conscientious beliefs, and in the name of justice, conscientious belief can be silenced, then freedom is not for all” (Ib.).

These attempts to intimidate persons who do not share the State’s vision of marriage may well multiply after the adoption of Bill C-38. Once the State imposes a new standard affirming that homosexual sexual behaviour is a social good, those who oppose it for religious motives or motives of conscience will be considered as bigots, anti-gay and homophobes, and then risk prosecution.

Again, to quote Pierre Manent: “Precisely because our system is a system of freedom, and in order for it to remain so, we have no right to demand that our citizens approve our ‘styles’ or ‘contents of life’: it would be tyranny” (Ib. 326).

By claiming marriage, persons of the same sex are seeking social recognition. But, we repeat, in this case social recognition depends on the service a citizen renders to the State. Unlike same-sex couples, heterosexual couples naturally and most often transmit life. In giving new citizens to society, they render an essential social service to the State, which justifies a special status to their union.

By obtaining the right to marriage, same-sex partners would be asked to present themselves socially in a way that is different from what they really are. This would also affirm that they need this status to be deemed worthy of consideration, which would run entirely counter to the objective of Bill C-38.

The State is not interested in recognizing or institutionalising consensual adult relationships founded on sexual orientation, sexual preferences, cultural

practices, religious convictions or personal preferences of its citizens. In public interest, it must protect the institution of marriage and the family that are the cornerstone of society and the best guarantee for its future.

CONCLUSION

In conclusion, we maintain that it would be unjust and contrary to the common good to redefine marriage as dictated in Bill C-38. Such a law would change the essential nature of marriage and destroy the public recognition that the State must grant, in the spirit of the **Charter** and in respecting natural law, to the union of a man and a woman to the exclusion of all others.

In claiming marriage, persons of the same sex are seeking a social recognition that if granted to them in this way, would be unjust since their union does not fulfill the essential condition of sexual complementarity and openness to natural procreation which is characteristic of the institution of marriage.

To find legal and social recognition above all else and to the detriment of the common values of marriage and family in Canadian society, has already had disastrous consequences and has endangered not only freedom of conscience and religion, but also the quality of public and private education in the future.

The State must protect the primary right to freedom of religion not only for members of the clergy but also for the population as a whole. It must ensure that the rights and justice toward homosexuals and same-sex unions be respected, but without relinquishing to cultural movements that threaten the fundamental values of marriage and the family.

We are counting on you, Honourable Senators, who may vote in complete freedom of conscience, and we appeal to you on behalf of the majority of Canadians: Save the fundamental institution of marriage! Your parliamentary institution will emerge more credible and faithful to the **Canadian Charter of Rights of Freedoms**, which will provide a more accurate interpretation than the one presented by this bill.

Cardinal Marc Ouellet
Archbishop of Quebec and Primate of Canada
On behalf of the Canadian Conference of Catholic Bishops

To the Senate Standing Committee on Constitution and Legal Affairs
An Act respecting certain aspects of legal capacity for marriage for civil purposes

13 July 2005