



House of Commons
CANADA

Legislative Committee on Bill C-38

CC38 • NUMBER 003 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, May 12, 2005

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Chair

Mr. Marcel Proulx

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• (1410)

[Translation]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Good afternoon, Minister Cotler. Thank you for appearing before the committee again today.

Good afternoon, Ms. Hitch.

Minister Cotler, yesterday, you made a ten-minute presentation, and you agreed to come back to the committee today. Would you like a couple of minutes to make a few comments? After that, we will move on to questions and answers.

[English]

Mr. Vic Toews (Provencher, CPC): I think we've all read the transcript.

The Chair: We have?

Mr. Vic Toews: I would think so.

Hon. Irwin Cotler (Minister of Justice): Mr. Chairman, I was going to conclude, but perhaps I'll just open it up for questions right away. Maybe that would be in the best interest of the committee.

I just want to say that I was a few minutes late because I was meeting with a national student group from across the country on the humanitarian catastrophe in Darfur.

[Translation]

I think that it is extremely important to encourage our students, especially when they are actively involved in one of the greatest challenges of our time.

[English]

When we get a group of students who come and present a petition of 10,000 students across this country about the compelling need for humanitarian intervention in Darfur—it converges fortuitously with the government announcement today—I thought such students needed to have a hearing, and where they can be encouraged, they should. I even told them that I would come and share this message with you—that it was good to have students who can become the conscience of our country on such an issue.

Now I will be open for anything you ask on the matters before us.

The Chair: Thank you.

I will just remind everybody that the rules that have been decided within the committee, with the committee members, are that the first round is seven minutes per person, starting with the Conservative

Party, followed by the Bloc Québécois, followed by the NDP, and then the Liberals.

So the first seven minutes will be to the Conservatives. Mr. Toews.

Mr. Vic Toews: Thank you, and thank you to the minister for attending here today.

The issue I would like to raise, and I think some of my other colleagues want to raise this issue as well, is with respect to religious freedoms and the impact of this bill upon religious freedoms.

We have already seen that as the courts have changed the definition of marriage, there have been adverse effects on individuals throughout the country. Individuals have lost their positions, have been forced to quit commissions in Manitoba, Saskatchewan, and British Columbia. And it's the impact of this change in the legislation that is now impacting on individuals who, for reasons of conscience, do not accept this change in definition, or even public officials who, for reasons of conscience, do not accept this change of definition, and there does not seem to be any reasonable accommodation by the provinces to allow for that accommodation.

What concerns me, in particular, is clause 3, where it says: "It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs." That provision is in law virtually identical certainly in substance, it's the same as, "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 beliefs." That was the provision considered by the Supreme Court of Canada.

In that case, the Attorney General of Canada—you, sir—basically said that this was a declaratory order, or a declaratory statement, because nothing more than a declaration could be made in that respect. Certainly the bill then can be nothing more than a simple declaration. Otherwise it would be unconstitutional.

In view of the court's comments where they specifically dealt with the same provision, where the government said it was a declaratory statement, the court said it was nevertheless unconstitutional.

In paragraph 37 of the Supreme Court decision, the court states:

The Attorney General of Canada suggests that s. 2 of the Proposed Act is declaratory, merely making clear Parliament's intention that other provisions of the Proposed Act not be read in a manner that trenches on the provinces' jurisdiction over the solemnization of marriage. The provision might be seen as an attempt to reassure the provinces and to assuage the concerns of religious officials who perform marriages.

Then the court concludes on that point: However worthy of attention these concerns are, only the provinces may legislate exemptions to existing solemnization requirements, as any such exemption necessarily relates to the “solemnization of marriage” under s. 92(12). Section 2 of the Proposed Act is therefore ultra vires Parliament.

So the only clear direction we got from the Supreme Court of Canada is that this clause—clause 3 in this bill, clause 2 in the proposed bill—is unconstitutional, and the government goes ahead, puts this provision in the bill, and then seeks to reassure Canadians that religious freedoms are protected. What is being perpetrated here is a fraud on the Canadian people. Religious freedoms are not protected on account of that provision. That is simply a smokescreen to deceive people, to let them think.... Despite the direct words of the Supreme Court of Canada, that is unconstitutional.

We know that the Supreme Court made some broad general statements about the protection of religion. We understand that, and we can debate about how far that religious protection will extend, given what we have seen, this consistent pattern whereby, whenever religious freedoms and equality rights collide, there's a consistent pattern of equality rights trumping those religious freedoms. I know that whole argument.

My concern is, why would the government try to mislead Canadians—and I would suggest deliberately mislead Canadians—by putting a provision into a bill that they know is unconstitutional in respect of the protection of any type of religious freedoms?

• (1415)

The Chair: Minister Cotler.

Hon. Irwin Cotler: Mr. Toews, I will be a little bit more charitable and say that you are inadvertently, out of a lack of knowledge, misleading Canadians, rather than attribute any malice to your statement that we are seeking to deliberately mislead Canadians, or to use your words, “perpetrate a fraud”. I was hoping we could have this discussion with the kind of civility that such an important subject matter deserves, without engaging in all kinds of innuendo—

Mr. Vic Toews: Tell us what the provision is all about, Mr. Attorney General.

Hon. Irwin Cotler: I will tell you if you will allow me to do so on the merits.

You say that the court made broad general statements. When the Supreme Court speaks, it speaks as a court of law with respect to the statements of constitutional law in this country. Your views did not cite the statements of the Supreme Court of Canada to the effect that “state compulsion on religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion under s. 2(a) of the Charter”. Therefore, the charter would already protect religious officials from any provincial and territorial law to this effect.

That's point number one.

Mr. Vic Toews: I understand that point.

Hon. Irwin Cotler: I didn't interrupt you.

Mr. Vic Toews: But this is my questioning.

The Chair: Order, Mr. Toews.

On a point of order, Mr. Boudria.

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): It may be Mr. Toews' question, but I believe it's the answer for all of us. We're all members of this committee and we all have a right to hear what the minister has to say, Mr. Chairman.

The Chair: Thank you.

Hon. Don Boudria: As a member of your committee, I want to hear it.

The Chair: Thank you, Mr. Boudria.

Mr. Toews.

Mr. Vic Toews: On the same point of order, I already understand the argument that the Attorney General is making.

Hon. Irwin Cotler: You haven't heard it.

Hon. Don Boudria: The rest of us have a right to hear it.

The Chair: Mr. Boudria, please.

Mr. Vic Toews: And then you can ask your question, Mr. Boudria.

What I'm asking is, specifically, on the same point of order—

The Chair: Mr. Toews, could we please let the minister answer.

Mr. Vic Toews: Yes, on the same point of order, I just want to make the point. The point is, what is the purpose of that provision? I understand the other comments of the Supreme Court of Canada. What is the purpose of that specific provision that the Supreme Court of Canada has already declared unconstitutional?

The Chair: Minister.

Hon. Irwin Cotler: Clause 3, to which you refer, is more clearly worded as a statement of fact or a restatement of law, and exactly what the Supreme Court decision to which I just referred held, which is that the charter guarantee of religious freedom protects religious officials from being forced by the state to conduct marriage ceremonies that would be against their religious beliefs.

The previous clause, which was struck down by the Supreme Court, was an interpretation clause. In light of the decision of the Supreme Court, this is now not only declaratory of what the court said, but it is not unusual with respect to legislation to simply restate, for purposes of the public and for the purposes of understanding the law, what in fact the law is on an issue that has been so divisive and of such great concern to people in this country.

I would think, Mr. Toews, that you, who are concerned about religious officials, would like to see in the law a restatement of what the Supreme Court of Canada put forth as a proposition of law, so that the public in this country would know where they stand and so that religious officials would know where they stand as well. There's nothing wrong with that. It's declaratory, it's after the statement; it's a statement of fact and a statement of law.

Mr. Vic Toews: All right.

The Chair: Thank you.

Mr. Vic Toews: You said that it is declaratory.

The Chair: No, Mr. Toews. Mr. Toews, you had seven minutes.

[Translation]

We will now go to Mr. Marceau, of the Bloc Québécois. Mr. Marceau, you have seven minutes.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chair.

Mr. Cotler, thank you for agreeing to appear before the committee again.

Firstly, I am sure that you have carried out extensive research on freedom of religion. Since the Charter was first introduced in 1982, have the courts ever forced anybody, of any religion, to officiate a ceremony which violates the teachings of their religion? For example, has any court ever forced a Catholic priest to marry a Catholic divorcee, has any court forced a rabbi to marry a Jew with a gentile?

Hon. Irwin Cotler: No, I should point out that all that we have said on the subject of same-sex partners reflects what has been said in the past. Specifically, as is stated in the bill, members of religious groups are free to express the religious convictions of their choice, and religious authorities are free to refuse to officiate marriages which are inconsistent with their religious convictions. In the past, on this subject, Charter protection was only applied to limit government action under section 32 of the Charter. The Charter, therefore, will not apply to the internal workings of a given religious group. Neither Parliament nor the Canadian government will have the authority to intervene on this matter. Disciplinary measures under a provincial or territorial human rights code could apply where matters of employment are concerned. However, the majority of codes contain an exception for religious groups.

The bill which we are debating concerns civil marriage, and not religious marriage. All provisions pertaining to religious marriage remain unchanged. Religious groups will continue to make their own decisions as to how the question will be dealt with; they will not be affected by this bill. The Supreme Court has clearly stated that religious leaders will be protected, be they officiating religious or civil ceremonies.

● (1420)

Mr. Richard Marceau: You have answered Mr. Toews' question on the constitutionality of clause 3. As you have just stated, the Supreme Court and the courts of appeal of British Columbia, Ontario and Quebec recognize that freedom of religion is protected. As somebody who is very familiar with the Constitution, are you not worried that, due to the Supreme Court decision, and in particular because of paragraph 37, section 3 will once again be declared unconstitutional as the matter at hand is one of provincial jurisdiction? I would ask you to be succinct in your answer, because I have many more questions for you.

Hon. Irwin Cotler: I have discussed the issue with my provincial and territorial counterparts who had asked me the same question. In particular, I have had discussions on the subject with the former Quebec Minister of Justice, Jacques Dupuis, and the current Quebec Minister of Justice, Yvan Marcoux. I assured them that the Government of Canada has no intention of interfering in matters of provincial jurisdiction. We agree with the Supreme Court of Canada's view that marriage officiation is strictly a matter of provincial and territorial jurisdiction. However, experience has

taught us that it is critical that we directly address this issue which is a primary concern for many Canadians. I doubt that a simple reference to section 2 of the Charter will suffice. The reason why we included a declaration to this effect was to reassure Canadians of the protection afforded to them, and also protect provincial jurisdiction.

Mr. Richard Marceau: I would like us to turn our attention to the issue of marriage commissioners. This is an issue which has been raised by my colleagues in the Conservative Party, amongst others. I would like to hear your comments on the subject. To my understanding, if a marriage commissioner cited religious grounds for refusing to marry a Black person with a Caucasian, or an Asian and a Caucasian or a Black person, the person would not be allowed to be a marriage commissioner. Does the fact that somebody is a marriage commissioner, a state official, exempt that person from having to respect legislation on civil marriage between same-sex partners, a law which already exists in seven provinces and territories, and which will exist all across Canada once Bill C-38 has been adopted?

Hon. Irwin Cotler: As I said, I discussed this matter with my counterparts at the annual conference for federal, provincial and territorial Ministers of Justice. We shall deal with the matter. The Attorney General of Ontario, Michael Bryant, said that more than 1,000 same-sex marriages have been held in Ontario, and that no problems have been encountered on this front. The former Quebec Minister of Justice, Jacques Dupuis, said the same of Quebec. I have told my counterparts that they are welcome to add additional protection at a provincial or territorial level if they deem it to be necessary, as this is a matter of provincial jurisdiction. As Mr. Bryant and Mr. Dupuis have said, no problems have actually been encountered; however, given that this is an area of provincial jurisdiction, the provinces are free to add additional protections, if they see fit to do so, in case of future problems.

Another point which should be raised is that this issue has been around for a while. This bill has no bearing on how the issue of marriage commissioners could be resolved. The majority of situations where freedom of religion is an issue are not matters of federal jurisdiction; they are matters pertaining to provincial and territorial legislation on human rights. The outcome is dependent on the particular facts of each case.

However, the Supreme Court of Canada has clearly stated that freedom of religion has full Charter protection, and that provincial human rights tribunals should also study ways to protect this fundamental freedom. In theory, all provincial tribunals must interpret these issues in a matter which affords protection of freedom of religion. In light of the Supreme Court's unanimous decision, in light of the wording of the Charter, and given the series of decisions handed down on our interpretation of how the law has to be applied, decisions which state that freedom of religion must be considered when interpreting the law, I do not perceive any problems. In practice, we have not encountered any problems thus far, and I hope that we will not run into any in terms of principles.

● (1425)

[English]

The Chair: Merci.

For the New Democratic Party, Mr. Siksay, you now have seven minutes.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

Thank you, Minister, for being here. It's a great occasion for gay and lesbian Canadians that this bill has made its way to Parliament and has begun its journey through Parliament. Hopefully we'll be able to complete that journey. I'm optimistic, although it's not looking good for us optimists these days, that we're going to be able to complete this important work. But speaking as a member of the gay and lesbian community, I think this is important legislation for us, because it addresses our equality directly.

We started the afternoon by hearing about the adverse effects on people of this bill. In my way of thinking of it, it addresses adverse effects of inequality in Canada for the gay and lesbian community, and I think it's terrific that we've finally gotten this on the agenda. It might have been nice if it had come a little sooner, but here we go.

I appreciate that you've taken the time to come again and that you've put this legislation forward. It was interesting that you began your comments this afternoon reminding us of young people and their participation in the political process. It's not lost on me that young Canadians are very supportive of this legislation and are probably the most supportive group of Canadians. That's certainly been my experience in years of working on gay and lesbian issues, that young Canadians understand the situation of gay and lesbian people and appreciate equality issues very dramatically and personally.

Minister, I wanted to ask this. We often hear the discussion around religious freedom, and religious freedom in regard to this bill, framed around concern about protecting the ability of people to discriminate on the basis of their religious beliefs, but discriminate negatively. But I think this bill also addresses the freedom of people to make a positive decision as well around marriage.

I'm wondering if you might comment on protecting the religious freedom of churches and synagogues that choose to marry gay and lesbian people in the context of their traditions.

Hon. Irwin Cotler: I think it's important to appreciate that the matter cuts both ways. Religious officials cannot be coerced into performing a same-sex marriage if it is contrary to their conscience or belief, and that is protected at law under the decision of the Supreme Court, which in fact relies upon section 2(a) of the charter to that effect. But the converse is also true. Those who wish to perform a same-sex marriage for the same reason have their freedom of religion protected. Therefore, you would find, in the various religions, that there are members of the priesthood or the rabbinate and the like who may wish to perform same-sex marriages. That is permissible for them to do.

Certainly these issues arose before we had questions of same-sex marriage. We had issues with regard to divorce and different views that were taken in the different religions. Again the law protects freedom of religious belief and the freedom to manifest that religious belief, to make what pronouncements one wishes on the matter of divorce, but of course it protects those who wish to perform those divorces as well, which are now protected at law.

● (1430)

Mr. Bill Siksay: Minister, I suspect that you or your officials have probably looked at what other countries have done that have enabled same-sex marriage. Is there any difference in their approach to this issue from the one you've taken? Did you learn anything from their approaches that has assisted in bringing this bill forward?

Hon. Irwin Cotler: I did look at what other countries have done. I think in this respect, as in every other respect, a constitution, as it is sometimes said, is an autobiography of a nation. A constitution reflects the historical evolution and the legal culture of that country. It's always useful to look to see what has been the experience of other countries, but for adaptive reasons one has to look in particular at what our own evolution is and what our own legal culture is.

We have in Canada—and I think to our credit—an entrenched set of rights and remedies. Regrettably, in the absence of it, we had throughout our history disturbing patterns of discrimination, as I mentioned yesterday, against aboriginals, against religious and racial minorities, against women, against refugees, against gays and lesbians, and the like. Sometimes that discrimination was even state sanctioned, and we have some disturbing examples of state-sanctioned discrimination.

The charter has wrought a transformative impact, as I indicated, not only on our laws but on our lives. We have to look at the situation within the existing constitutional framework as wrought by the Constitution Act, 1982. It centrepieced the Canadian Charter of Rights and Freedoms—what I would call the triologue between Parliament, the people, and the courts, where Parliament adopted a Charter of Rights and Freedoms and vested the protection of those rights guaranteed in the courts. Individuals and groups exercised rights and remedies they now had under the charter to go to the courts to protect those rights, and amongst them were gays and lesbians. The courts pronounced on it. It went up to the Supreme Court of Canada. The Supreme Court of Canada affirmed the constitutionality of same-sex marriage.

We're now back at the last stage of this drama before us here in Parliament, but against the backdrop of our unique constitutional history, legal culture, Charter of Rights, are court decisions that include decisions in eight jurisdictions that are not only binding but are of a constitutional character. Therefore, under our Constitution—not any other constitution—if we want to override the charter and the section 15 equality rights, if we want to override the decisions in eight jurisdictions, if we want to override the fact that thousands of couples have already married under the Supreme Court of Canada's decision and acquired constitutional protection, then the only remedy to override it is the use of the notwithstanding clause.

We have to be open about it and be prepared to publicly say that we are going to use the notwithstanding clause to override the charter, to override the equality rights, to override the protection of minorities, which is a foundational constitutional principle of the succession reference. It shall show that we are prepared to override decisions of eight jurisdictions, override the unanimous decision of the Supreme Court. I don't think this is what, at this point, the Canadian people would like to see done in the context of our legal culture and our law.

The Chair: Thank you.

The Liberals now, for seven minutes.

Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Mr. Chair.

Thank you, Minister, and Ms. Hitch, for being with us today.

I'd like to go back to some of the concepts that we're talking about here, because religious freedom obviously is a fundamental part of the protection that I think all of us want to make certain is covered by this legislation. Although we talked briefly a few minutes ago about relationships with provincial areas of jurisdiction, how do you deal with those who raise this issue within our federal authority, in particular looking at such things as charitable status, how this bill actually gives protection to our religious community in that regard?

• (1435)

Hon. Irwin Cotler: Well, our religious community is protected in the exercise and manifestation of their rights under the charter and under decisions of the courts interpreting and applying the charter.

First of all, the charter applies to all jurisdictions, federal or provincial. Where we are dealing with matters that relate to provincial jurisdictional matters, such as the solemnization of marriage, then we need to look to the provincial and territorial human rights codes. But they have to be interpreted, as I indicated, in a manner that comports with the foundational charter guarantee.

That would also hold true with respect to matters pertaining to charities. In other words, if we look at the issue of charities specifically, registered charities are free to engage in public debate and to conduct public awareness campaigns. They can speak out on any issue, save for the fact that the Income Tax Act, not only with regard to this issue but in a general way, provides some limit on how registered charities can spend their resources that were collected for charitable purposes. In other words, to be acceptable, activities paid for by the resources of a registered charity must be linked to the charity's purpose and must remain an incidental part of the charity's programs. I'm not speaking here in terms of a specific charity on a specific issue; I'm speaking about the general application of the law with respect to charities.

In other words, charities, broadly speaking, can engage in public debate and conduct public awareness campaigns. They are even permitted to engage in limited non-partisan political activities. Partisan political activity would not be permitted at any time.

These rules are applied evenly and fairly to all charities in that regard. So it has to do with what is the purpose of the charity: is it acting in accordance with that purpose, with matters incidental to

that purpose? In so doing, it has the freedom to engage in public debate. There is no specific and distinguishable prejudicial application to any charity because it's speaking or relating to matters of same-sex marriage, any more than if it were to be relating to or speaking on any other matter of public discussion.

Hon. Paul Harold Macklin: Moving on to a slightly different topic, we also come to the issue.... When we talk about provincial human rights tribunals and what has occurred to date, there is always a question that seems to come back. That is that whenever these courts and tribunals are faced with a clash between equality rights and religious rights, it has been stated that equality rights would trump religious rights. How do you address a question like that?

Hon. Irwin Cotler: I've heard this proposition before and I can tell you, as somebody who has written considerably on this issue—and I certainly won't bore or burden anybody with my writings on this matter—that it's simply not the case, either as a matter of fact or as a matter of law.

Where the charter has been applied to determine the balance between equality rights and religious freedom, the Supreme Court has consistently indicated—and it did so in the unanimous decision on the same-sex reference—that both should be reconciled and respected, and that neither should take precedence over the other.

In recent cases involving both equality and religious freedom, religious freedom has been protected, to take by way of example the Trinity Western case. The Supreme Court of Canada also added, in their recent decision in the marriage reference, that provincial human rights codes, as I indicated, should also be interpreted in such a manner as to protect religious freedom.

And where a provincial human rights tribunal order may not appropriately respect freedom of religion, the charter can be used successfully to challenge that order. We've had examples of that, too. I'll take the Brockie case, the printer case where the court on judicial review amended the tribunal's order in order to protect religious freedom.

To sum up, the court's basic proposition is that religious freedom and equality rights need not be irreconcilable; on the contrary, that the two rights can be reconciled and should be mutually respected; that as the Supreme Court said, in most of the cases there is not an irreconcilability; that in most of the cases the two can in fact be reconciled; that in those cases where they may have an appearance or a question of reconciliation, as the court says, you can always find a remedy for that purpose—and they have been found, and there are principles of reasonable accommodation and the like.

So on the facts and as a matter of law, the notion that equality rights have always trumped religious freedom is simply not correct.

• (1440)

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you.

Minister, I'd like to read a quote from your predecessor:

Counsel for my department have successfully defended and will continue to defend this concept of marriage in court. I continue to believe it is not necessary to change well understood concepts of spouse and marriage to deal with any fairness considerations the court and tribunals may have. I fundamentally do not believe that it is necessary to change the definition of marriage in order to accommodate the equality issues around same-sex partners which now face us as Canadians.

This quote was made in the context of a debate that this House was having on this very issue of marriage, a debate and a vote in which many members around this table, including members opposite, voted in favour of maintaining the traditional definition of marriage. In light of this, for you to sit here and suggest that no one should be alarmed just because you make assurances that their religious freedoms would be protected is incredible to me and many other Canadians. I think they definitely have cause for concern. A couple of years from now we could be back, and you or your successor could be saying that times have changed once again, and it looks like we can't protect religious freedoms.

There's an irony in the Supreme Court of Canada's reference decision. You asked the court whether the traditional definition of marriage was unconstitutional. The court did not find that the traditional definition of marriage was unconstitutional. You asked if you could protect religious freedoms, and the court said that religious freedoms could not be protected.

Canadians are split on this issue. You and your department did not look for a compromise solution, one that would be reflective of what Canadians believe, one that would grant equality rights to all Canadians and all relationships while protecting the traditional definition of marriage. It's fine for us to sit here and say what will or won't protect religious freedoms. Some individuals have already been affected. Some Canadians whose rights you're duty bound to protect have already lost their jobs because of their religious belief in the traditional definition of marriage.

I'd like to read from the bill itself. "It is recognized," it declares, "that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs." So we have an assurance that no one is going to hold a gun to your head and force you to marry someone. Thank you very much, but that's a very high threshold when we are talking about religious freedoms. Moreover, there are other impacts that this bill could have on religious freedoms. The Supreme Court of Canada has said that you cannot, acting alone, protect religious freedom.

Why should Canadians believe you now when they've been misled in the past? Why did you not seek a compromise, a Canadian compromise? No international court and no national court, including our own, has ever said that the traditional definition of marriage is unconstitutional.

I'd like you to comment on those two things.

Hon. Irwin Cotler: First of all, I'm not asking you to trust me. I'm asking you to respect the Constitution. That's what this is all about.

Second, I'm not unmindful of the resolution of 1999. But this was before other decisions were rendered in eight jurisdictions in this country, including three courts of appeal, that are binding constitutional law. So the notion, as a statement of law, as you put

it, that the courts have not declared the opposite sex requirement to be unconstitutional is false. I refer you to several court decisions—the Halpern case in Ontario, the Hendricks case in Quebec—that expressly state that the opposite sex requirement is unconstitutional.

With respect to compromises, I suspect that you were referring to the matter of civil union. In 2001 and 2002, I publicly raised the option of civil union as a possible approach. But that was before the courts pronounced on this. The courts have said that civil union is a lesser form of equality, and that individuals with access to civil unions but not civil marriages would be less respected under the law in terms of their values and their minority rights.

In light of these statements of law, I would have to say you're incorrect, both in law and in fact.

• (1445)

The Chair: Thank you, Minister.

Mr. Boudria.

Hon. Don Boudria: *Merci, monsieur le président.*

I want to welcome the minister.

First of all, we know same-sex couples are now getting married in seven provinces and one territory. I think the very least we could say to those who are trying to indicate that this bill is going to create a big change, for instance, in my own province of Ontario or in the minister's province or in other jurisdictions that together cover roughly 90% of the population, is this: isn't it true that this is not going to change anything in that regard? In other words, they're not going to be more or less married after the bill, unless we're in the three provinces and two territories not already covered.

Second, I'm trying to get the minister to state clearly that some of the things that are being said, for instance in my riding, are factually incorrect. They are saying that the government wants same-sex couples to now have the right to get married in Ontario. But of course, they're getting married now. I've received invitations to go to some of these weddings. It's not a change.

On the issue of religious protection, isn't it true that clause 3 provides greater assurance of protection of religious freedoms for priests and ministers who refuse to perform these kinds of civil marriages than the protection that is there now? It was said in the House, after a speech that I made, that there would be less protection after the bill. How could this be true? I suspect it isn't.

Hon. Irwin Cotler: Mr. Boudria, I've met with a lot of groups in this country, particularly religious groups: Muslims, Jews, Christians. As I've told my Muslim and Jewish colleagues, I have found a certain measure of concurrence between members of the Jewish and Muslim faiths, both of whom are concerned about this legislation.

I understand their concerns. These people have grown up in religious traditions that speak of marriage only in terms of people of the opposite sex. I understand this concept. The answer I would give to them and to you is that this is legislation with respect to civil marriage, not religious marriage. Religious marriage and religious institutions remain unaffected by it. That's number one.

Number two, if we were to withdraw the legislation tomorrow, if we were to say there is no longer any civil marriage act, civil same-sex marriage would still be the law of the land in those eight jurisdictions, and I suspect it will soon be the law of the land in those remaining jurisdictions where the courts have yet to pronounce. So if we were to withdraw the legislation tomorrow—and I think it's very important that Canadians understand it—this would still be the law of the land. The point is, however, that if we have this legislation, we have protections for religious groups and religious institutions that might not otherwise be there in the same declaratory and resonant sense.

What I mean by that is that the cases on same-sex marriage that went through the courts arose within the context of the equality rights principle. At the same time, the Supreme Court of Canada affirmed a second foundational principle: religious liberty. We, in the course of this legislation, have expressly reaffirmed the principle of freedom of religion along with the principle of equality, which underpins the notion of same-sex marriage.

I would also state that the preamble is very expressive with respect to religious liberty. Those who say that preambles are unimportant should read the unanimous decision of the Supreme Court of Canada. It makes express reference to the preamble of the same-sex marriage legislation for purposes of their own interpretation and application in their judgments.

• (1450)

Hon. Don Boudria: Mr. Chairman, may I ask the minister this, very briefly. If I say to my constituents that this does not change the right of same-sex couples to marry in my province of Ontario, except that those performing the ceremony will now have even greater protection of their religious freedom, am I putting it correctly or not?

Hon. Irwin Cotler: You would be correct in stating that same-sex marriage people have the same rights. You would be correct in saying that freedom of religion has been more strongly reaffirmed in this legislation. And you would be correct to say, as a matter of conclusion, that they are better off with this legislation than they would be without it.

Hon. Don Boudria: Thank you.

[Translation]

The Chair: Mr. Ménard.

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chair.

Good afternoon, Minister Cotler. Thank you for being here.

As you know, I have been interested in this issue for several years now.

Hon. Irwin Cotler: In your capacity as a lawyer.

Mr. Réal Ménard: I still have five courses to complete before I become a lawyer.

Hon. Irwin Cotler: You will get there, I am certain. That is why...

Mr. Réal Ménard: You are very kind. My favourite classes are on civil liberty.

Let us take a brief look back. I attended a same-sex wedding in July 2002, when my best friend got married. That was the day the Divisional Court of Ontario handed down its decision. If we had not

appealed that decision, we would not be debating this bill today, because we would have already passed it and it would be the law of the land. I am somewhat saddened to see that, unfortunately, the government—although courageous about today's bill, nonetheless dithered, something that may have delayed our study.

I have no concerns about freedom of religion. In my view, the bill, the Charter and the jurisprudence are very clear on freedom of religion, and on how that might be limiting. In any case, you said in your preliminary remarks that religious marriage was not at issue here.

In a society that gives the right to equality paramount importance in its set of values, why is it so important that we not have two classes of citizens? Why, in the process of recognizing the rights of homosexuals, is marriage important?

I turn 43 tomorrow—I do not know whether you have sent me a birthday card—and I grew up in public schools, where it was considered amusing to laugh at homosexuals for all kinds of reasons we do not need to dwell on today. I believe that with this bill, we enshrine the right of access to the most important lay institution, marriage. If we accept the right to equality and the values we have in our society, why is this bill important, and why are you inviting all parliamentarians to vote for it?

Hon. Irwin Cotler: I must say that some considerations relating to your question can be found in the preamble of the bill. First, the bill stipulates: WHEREAS:

that 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;

This is very important, because it expresses the fundamental principle of equality. However, when it comes to marriage, that is a very important issue. We sometimes hear that this bill may not be sensitive enough with respect to the institution of marriage. That is not the case, since the preamble also stipulates that: 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 and relationships and represents the foundation of family life for many Canadians;

Thus, here we are strengthening the institution of marriage.

Mr. Réal Ménard: So, you believe that having homosexuals marry will do nothing to jeopardize the institution of marriage in any way. It is difficult to understand the thinking of our Conservative colleagues. Marriage is a question of values. We are putting forward a bill that deals with legal implications, but marriage is still a question of values, of the right to equality, and so on. We believe in the values of faithfulness and mutual support. So, you are telling us that having homosexuals marry will not jeopardize the institution of marriage. Is that correct?

Hon. Irwin Cotler: Yes, and that is in line with the spirit of our legal culture and the spirit of both charters. The Quebec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms both enshrine the values of tolerance, respect and equality. In my view, Parliament should give same-sex couples the opportunity to marry civilly in order to respect their rights, but also to respect our values as a society—the values of tolerance, equality, diversity and respect.

We should all bear in mind the significance of the ruling by the Ontario Court of Appeal which talks about the recognition and protection of human dignity.

• (1455)

Mr. Réal Ménard: I would like to ask you another question.

The Chair: Thank you, Mr. Ménard.

Mr. Réal Ménard: Mr. Chairman, it is my birthday tomorrow.

The Chair: Happy birthday.

Ms. Boivin, of the Liberal Party.

Ms. Françoise Boivin (Gatineau, Lib.): Happy birthday, Réal.

Thank you for being here today, Mr. Minister. I am very happy to have this opportunity to hear what there is to hear on this bill. I am proud to be part of the government that, I dare to hope, will succeed in passing it.

That said, I would like to question you on the reference to the Supreme Court of Canada, particularly on question 4 which the government put to the Supreme Court in the reference. The Supreme Court refused to answer. Some opponents of the government's bill are trying to imply that the refusal was tantamount to saying that the opposite-sex requirement for marriage is indeed constitutional.

I believe that anyone making such a statement is forgetting the long passages drafted by the Supreme Court. I would therefore like to hear your views on the subject.

Hon. Irwin Cotler: When we say that the Supreme Court did not answer question four, we are not talking about the complete answer. It is very important to point out that we put question four to give anyone opposed to the government's position in this matter an opportunity to plead before the court. The Supreme Court did give an answer. Of the 28 parties who pleaded, seven or eight took a position on this matter, and question 4 was helpful to them.

Even as recently as last week, some people put forward the idea that, within the Canadian legislative framework, it would be impossible to draft a new definition of traditional marriage and institute a civil union regime for same-sex couples without using the notwithstanding clause, because the Supreme Court had declined to answer question 4. But on the contrary, the Supreme Court did answer at the beginning of its ruling. It stated that legal access to the institution of civil marriage for same-sex couples was an equality issue. An issue flowing from the Constitution, an issue of respect for minority rights and respect for human dignity.

The absence of the Supreme Court ruling on question 4 does not change the fact that the courts—and this is very important— and eight provinces and territories have already amended the law, and that thousands of same-sex couples are now legally married. These

rulings would have to be rescinded by means of the notwithstanding clause to restore the definition of marriage as the union between a man and a woman.

We now have constitutional rulings on the protection of marriage between people of the same sex, and this is very important. On this matter, the Supreme Court stated that we had to recognize the rulings rendered in those jurisdictions, that we had to recognize the fact that thousand of couples had been married, and that we had to take section 15 of the Charter into account. For all those reasons, the Supreme Court stated at the end that it did not need to answer question 4, because all the elements needed to protect equal access to the institution of civil marriage for same-sex couples were already provided in its answers to the other questions.

• (1500)

The Chair: Thank you.

Mr. Siksay, five minutes.

[English]

Mr. Bill Siksay: Thank you, Mr. Chair.

Minister, I think yesterday in your remarks, before we were interrupted by the bells, you had talked about the importance of civil marriage to people of no religious belief in Canada. I wonder if you could speak about that again briefly.

Hon. Irwin Cotler: There had been some suggestion, and it was in the Department of Justice options paper, not only of the option of civil union, which the courts have rejected as being a lesser form of equality and in respect of which the federal Parliament could not legislate in any case because we would not have jurisdiction, but that maybe the federal government should get out of marriage altogether and all we should have is a question of civil unions for both same-sex people and opposite-sex couples, as if this were a measure of equality, because all would have access to the civil unions.

First of all, I might add that no country in the world has supported that option. No witness who came before the parliamentary committee supported that option, and the reason they didn't support that option is that effectively what we would be saying is that in order to deny equality of access to the institution of marriage for civil purposes to *conjoints de même sexe*, to same-sex couples, we would be prepared to deny it to all people. That, to me, would be an absurdity whereby not only would we deny the right of civil marriage, as I say, to same-sex couples, but because we want to deny it to same-sex couples, we would deny it to everyone.

In our view, the proper approach is as we have done it here. We have a civil marriage act. It provides equal access to civil marriage for both gays and lesbians as well as everyone else, and as the court said—and I think this is very important—the conferral of equal rights to same-sex marriage, to gays and lesbians, does not detract from the rights of anybody else, be they religious people or be they opposite-sex couples, and it does not touch on the issue of religious marriage, where people remain free in that context. So we believe this is not only the honourable compromise, but the compromise that respects the rule of law as enunciated by the courts and the Constitution.

Mr. Bill Siksay: Minister, as perhaps a more mundane question, do you know or does your department know how many gay and lesbian couples have been married in Canada since the court decisions began to make the change?

Hon. Irwin Cotler: I will ask. I haven't yet referred any questions to Lisa Hitch. She is really the departmental expert in this regard. I'm not sure we have that data, but if anybody would have it or know where they could get it, it would be Lisa Hitch.

Lisa.

•(1505)

Ms. Lisa Hitch (Senior Counsel, Policy Sector, Family, Children and Youth Section, Department of Justice): And you have to refer to me the question I can't answer.

Unfortunately, those statistics are tracked by the provinces annually, so we don't have exact numbers, but the estimates are over 3,000 couples.

Hon. Don Boudria: Say that again.

Ms. Lisa Hitch: The estimates are over 3,000 couples.

Mr. Bill Siksay: Do we know how many were Canadians and how many were people from other countries?

Ms. Lisa Hitch: My understanding is, again, that it is difficult to ascertain, but the estimates are that some 65% to 70% were Canadians.

Mr. Bill Siksay: Okay.

Do we know how many marriages are done in Canada in total each year?

Ms. Lisa Hitch: We can get you that information, if that would be of use.

Mr. Bill Siksay: Thank you.

Thank you, Minister

The Chair: If you can get the information, put it through the committee, please.

That's it.

From the Liberals, Mr. Savage, for five minutes.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Thank you very much, Mr. Chair, and welcome, Minister.

This is obviously an issue that causes people a lot of difficulty. I've had the opportunity to talk to you about this. As I said when I spoke in the House, people often divide this issue, it seems to me, into those who make up their minds based on religion and those who make up their minds based on law, the Charter of Rights versus their own religion, and I reject that. I think a lot of people of faith are very proud of this legislation, notwithstanding the fact that I've had the chance to meet, as I'm sure all of us have, with people who disagree with our opinion pretty significantly.

Dr. Short, the moderator of the United Church of Canada, put it about as well as I can imagine when he sent a letter, I think, to all MPs, indicating that this legislation represents not an abandonment of faith but an embracing of faith, and that's how I feel about that. I've talked to my own faith adviser about that, and I've also talked to

a number of people whose opinions I respect greatly who disagree with me, but I think it's a proud moment for Canada that we've come this far. I'd like to see us get this done.

One of the things people have mentioned to me on a number of occasions— and we've seen it in the media, getting attention—is that this legislation might lead to other unwanted things, such as polygamy and other things. I wonder if you might comment on that.

Hon. Irwin Cotler: In my view, as well as the Supreme Court of Canada's, there is no contradiction between the protection of the rule of law and the protection of religious liberty. Indeed, the protection of religious liberty is an expression of the protection of the rule of law. Under the rule of law, we would wish to ensure that civil marriage is available to couples who do not wish to marry religiously or who do not meet the qualifications set by their own religion.

As far as possible, the law must not interfere with the ability of individuals to hold religious beliefs. This is set forth in the preamble and in the declaratory provision. At the same time, the law must not impose one set of religious views on those who do not wish to adhere to them. This is indeed the essence of the freedom of religious guarantees. There is a division of viewpoints among religious communities on this issue, not only in Canada but elsewhere in the world. Some religious groups, including Muslims, Jews, Christians, and other religious communities, may not agree with the perspectives put forth by others and may wish to have the ability to celebrate legal marriage between same-sex partners, as I indicated earlier. So what we are saying is that the approach here is inclusive, respectful, and tolerant of diversities and equal views in that regard.

This draft bill, on the polygamy issue, specifically restricts the definition of marriage to two persons to the exclusion of all others. The practice of polygamy, bigamy, and incest are criminal offences in Canada. That is the law of the land. That will not change. These criminal offences are fundamentally different from the civil law that is affected in this bill. They touch on other rights, such as those of women and children. Prohibitions on marriages between close relatives will remain as part of the consequential amendments to this bill...and will be extended by the bill to marriages between same-sex partners in consequential amendments, as I indicated.

Mr. Michael Savage: Thank you very much.

Very quickly, you touched on this during some other questions, but I would just like a very clear answer from you. What would have happened, in light of the Supreme Court decision, if we had not introduced this legislation? What is the other option?

Hon. Irwin Cotler: If we had not introduced the legislation, number one, you would have had binding decisions, from a constitutional law point of view, in eight jurisdictions. They would be the law of the land. That's very important. I mentioned that by way of response to Don Boudria.

Number two, in the absence of this *projet de loi*—and as I say, courts take preambles into account—you would not have those references in the preamble to the protection of freedom of religion. They provide a more resonant and affirmative approach to the protection of freedom of religion. This protection is reaffirmed in clause 3 of this legislation.

Finally, we agree with the Supreme Court of Canada that Parliament has a role, and indeed a responsibility, to ensure the uniformity of the laws across Canada, and that rather than leaving such important issues only to the courts, Parliament is best placed to ensure that its laws apply equally to all Canadians. So federal legislation would be the best approach to providing a clear, Canada-wide approach and uniformity of law across the country. Without the legislation, we'd still have the law of the land in eight jurisdictions. With the legislation, we make that law uniform, equal, accessible, responsive to religious freedom, and protective of both the principle of equality and the principle of religious liberty.

• (1510)

The Chair: Thank you.

Mr. Bezan.

Mr. James Bezan (Selkirk—Interlake, CPC): Thank you, Mr. Chair.

Mr. Minister, who is ultimately responsible for defending the Canadian Charter of Rights and Freedoms?

Hon. Irwin Cotler: That depends on the level of responsibility you are speaking of. As I said, it is a dialogue between Parliament, the people, and the courts. Parliament adopted the Canadian Charter of Rights and Freedoms and vested in the courts the responsibility to protect those rights and freedoms that have been adopted by Parliament and guaranteed by the charter. It then remains for individuals and groups who wish to see their rights protected to exercise remedies guaranteed by the charter for that purpose. So it's a dialogue. But when the court, by virtue of the authority vested in it by Parliament in the adoption of the Charter of Rights, pronounces on a statement of law in a litigation before it, it is stating the constitutional law of this country as a result of Parliament's delegating that authority to them. We are now a constitutional democracy—

Mr. James Bezan: The Supreme Court of Canada is the final decision-maker on the Constitution and on the Charter of Rights, then. That is ultimately where the final result would lie.

Hon. Irwin Cotler: The Supreme Court of Canada, in matters that come before them with respect to interpretation and application of the laws, including amongst those laws the Canadian Charter of Rights and Freedoms, remains the final arbiter and authority as set forth in the Constitution Act in that regard.

Mr. James Bezan: The one thing that has been expressed from our party over and over again is freedom of religion and freedom of conscience, to make sure those freedoms aren't being trumped here on the basis of equality.

I have a situation in my riding, and it has happened also in Saskatchewan and B.C., where marriage commissioners have been forced to resign because they refused to perform same-sex marriage. Either on the basis of their freedom of conscience—some of these

people are not religious individuals, but just based on their own conscience, they don't want to perform same-sex marriage—on the basis of freedom of religion, they've refused and are now being forced to quit. Of course, some of them are challenging it under the Manitoba Human Rights Commission.

If we're to be defenders of the charter and believe in what the charter has for all Canadians, to make sure that we have a diverse and multicultural society, then we need to accommodate these individuals to make sure their rights aren't being trod upon. So I'm just wondering why the government has not gotten involved in defending those rights.

Hon. Irwin Cotler: As I indicated earlier, when it comes to questions of the solemnization of marriage or related matters that are within provincial jurisdiction, it is a matter for the provinces and territories to regulate within their jurisdiction. When they do so, they need to take into account, number one, that paragraph 2(a), to which you referred, on freedom of conscience and religion, is a fundamental right protected by the charter and applicable to provinces and territories; number two, that provincial human rights codes are to be interpreted in a manner that is protective of religious freedom; number three, that the Supreme Court has said that the principles of equality and freedom of religion need not be irreconcilable but can be reconciled; and number four, that in practice on the ground, in fact, there have not been problems at all in Quebec or Ontario, and that where such problems might occur in places outside of those jurisdictions... I've been advised that similarly in other jurisdictions there have been no problems, but where those problems do occur, we have had in our law, apart from the Constitution, in regard to matters of same-sex marriage, in pronouncement of the Supreme Court, principles of reasonable accommodation with respect to protecting people in their exercise of conscience and belief.

I would say that if more specific protections are desired in terms of civic marriage officials, commercial provisions of services and rentals, they can be added by provincial and territorial laws. In fact—

• (1515)

Mr. James Bezan: It can't be done in Bill C-38. So in Bill C-38, the declaration—

The Chair: Excuse me, your five minutes is over.

Minister, I understand that you had an hour and 15 minutes for us. However, if members of the committee agree, would you accept to answer two more questions of five minutes? Two of the members around the table have not had the opportunity.

Hon. Irwin Cotler: Yes.

The Chair: On a point of order, Mr. Toews.

Mr. Vic Toews: The issue of the questioning is beginning to concern me. What I have seen now, in the first round, is that we had a Conservative, a Bloc member, a New Democrat, and a Liberal.

The Chair: Yes, sir.

Mr. Vic Toews: In the second round, we've had a Conservative, a Liberal—

The Chair: Excuse me.

Mr. Vic Toews: No, this is a point of order.

We've had a Conservative, a Liberal, a Bloc member, a Liberal, a New Democrat, and a Liberal.

So we have five Liberals. They get three questions.

Hon. Don Boudria: Yes.

Mr. Vic Toews: We have four Conservatives, and we get one question. So quite—

Hon. Don Boudria: What?

The Chair: Excuse me—

Mr. Vic Toews: No, in each round.

Hon. Don Boudria: Three of them have asked questions.

The Chair: Excuse me. We have discussed this at the—

Hon. Don Boudria: Those are the rules we established.

The Chair: Excuse me, please.

At the first meeting, we agreed on rules. I have no objection to looking at these rules again, but not at this precise time. We have the minister with us. We have the opportunity to let two members who have not had the opportunity, one on the Liberal side and one on the Conservative side—

Mr. Vic Toews: All right.

The Chair: —to ask brief questions of five minutes to the minister, and then the minister will have to leave.

Mr. Vic Toews: That's the point I want to make. I just want to say that this process is simply not fair to the Conservative Party.

The Chair: We can revisit it. We can look at the minutes of the first meeting, Mr. Toews.

Ms. Françoise Boivin: It was already accepted—

The Chair: Excuse me. We can look at the minutes of the first meeting, Mr. Toews, and discuss it again later.

Quickly, each for five minutes, we'll start with Mrs. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, and thank you, Minister.

Much of the argument that one hears when one hears concerns about this bill comes from community members who feel that their own marriages will be lessened by virtue of the extension of civil marriage. I'm wondering if you could comment on that, particularly in light of the court's comment that the mere recognition of the equality rights—and you referred to this earlier—of one group cannot in itself constitute a violation of the rights of another.

Hon. Irwin Cotler: If I may—I had this in my initial text but didn't get to it yesterday—I would like to draw your attention to one of the statements in the Supreme Court of Canada decision, which I think was one of the more compelling statements in this regard. It says: “The mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the rights of another”. And here there is an almost foundational approach in terms of laws and values: “The promotion of Charter rights and values enriches our society as a whole and the furtherance of those rights cannot undermine the very principles the Charter was meant to foster”.

So I think, as the court said elsewhere in its judgment, that extending civil marriage to gays and lesbians is not only consistent with the charter but, as the Supreme Court put it, flows from the

charter. I think that is something we should bear in mind in appreciating this fundamental constitutional law pronouncement of the court.

• (1520)

Ms. Anita Neville: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you.

Ms. Ambrose.

[*Translation*]

Mr. Richard Marceau: Mr. Chairman, I have a point of order.

The Chair: Yes, Mr. Marceau.

Mr. Richard Marceau: I thought that we had agreed that during the first round of questions, a member from each party would be called upon to speak, followed by a Conservative Party member, a Liberal Party member, a Bloc Québécois member, a Liberal, a New Democratic, a Liberal, a Conservative, a Liberal and a Bloc Québécois member. I thought that members were always to be recognized in that order. At least, that is how I interpreted it. I certainly do not want to blame Ms. Ambrose and I hope that she will not be upset with me either, but I do believe that it is now the Bloc Québécois' turn, and not the Conservatives', given that Mr. Bezan asked the last question on the opposition side.

The Chair: You are right. According to the agreement that we reached, which is indicated in the minutes of the first meeting, you are absolutely right.

The only difference is that I had asked the minister if he was prepared to answer questions from two people that still have not had an opportunity to ask a question. I thought that committee members had consented to this. Should you not agree, permission will be revoked and the minister will have to leave, unless he himself should decide to stay longer.

Hon. Irwin Cotler: No, I am expected elsewhere. When Parliament rose today, a cabinet meeting was organized. They are expecting me at 2:00 p.m.

The Chair: Thank you, Minister.

Hon. Irwin Cotler: The cabinet meeting was supposed to take place this evening, but it was brought forward.

The Chair: Mr. Marceau, do you give your consent or not?

Mr. Richard Marceau: It is our turn.

The Chair: So, you are not giving your consent. In that case, Ms. Ambrose will not be able to ask a question. So, I would like to thank the minister for having participated in today's meeting.

Mr. Richard Marceau: But we still have the time. If the minister has time to answer a question from Ms. Ambrose, then he has the time to answer one of mine.

[*English*]

Mr. Réal Ménard: Two more questions. Be generous.

[*Translation*]

The Chair: If the minister wants to answer, I would invite him to do so.

Mr. Richard Marceau: I only have one question.

Mr. Réal Ménard: He wants to answer two questions. He is generous.

The Chair: Should the minister agree to answer two questions, we will have to recognize a member from the other side.

Hon. Irwin Cotler: Okay, I will answer two questions.

Mr. Richard Marceau: Minister, it is stated...

The Chair: Just a moment, Mr. Marceau. I think that Mr. Toews wants to raise a point of order.

[English]

Mr. Vic Toews: Some members have had more than one question. I don't understand.

The Chair: Mr. Toews, we will revisit that if you want.

Mr. Vic Toews: I certainly do, but Mr. Chair—

The Chair: Excuse me, Mr. Toews. The situation is that I had asked for unanimous consent for the minister to answer two questions: one from Ms. Neville, one from Ms. Ambrose. My understanding is that I had unanimous consent. I understand now that I did not, because Mr. Marceau is saying that he did not give consent.

If he's not giving consent, we can't ask Ms. Ambrose to ask her question.

Mr. Vic Toews: Mr. Chair, you proceeded, everyone proceeded on that basis. Now to suddenly say.... You know, this is beginning to look very suspicious to me. Not only does the Conservative Party, out of this entire process, get one in every round, but now you're cutting—

The Chair: Mr. Toews, we will revisit that.

I have suggested that Ms. Ambrose be allowed to ask a question if we have unanimous consent around the table.

Mr. Vic Toews: That appears to have proceeded.

The Chair: It appears that Mr. Marceau has not given—

[Translation]

Mr. Réal Ménard: Mr. Chair, you have made a decision. Can we move on? You have made a decision and the minister is prepared to respond to Mr. Marceau and Ms. Ambrose. Let us move on and come back to that later.

The Chair: After Mr. Marceau, we will have to hear from the Liberals.

Mr. Réal Ménard: Let us move on. You have made a decision.

The Chair: Mr. Cotler, do you want to answer a few more questions?

Hon. Irwin Cotler: No. I have to leave soon. I said that I was prepared to answer two more questions. Then I will have to go to another meeting to answer questions that other people want to ask me.

The Chair: Do you agree to answer Mr. Marceau's and Ms. Ambrose's questions?

[English]

Hon. Irwin Cotler: *Mais je suis fashionably late maintenant.*

The Chair: Okay, the Liberals have agreed to let Ms. Ambrose ask afterwards.

So Monsieur Marceau, *rapidement*, and Minister, very quickly, please.

[Translation]

Mr. Richard Marceau: Minister, some people claimed that the courts did not say that the traditional definition of marriage does not comply with the Charter, including but not limited to section 15. I am going to quote the Court of Appeal of British Columbia and the Ontario Court of Appeal. The Court of Appeal of British Columbia said:

• (1525)

[English]

I agree with the trial judge that the appellants have established that the common law definition of marriage—which operates as a common law bar to same-sex marriage—breaches their right to equality under section 15 of the charter.

[Translation]

The Court of Appeal of Ontario said:

[English]

It is our view that the dignity of persons in same-sex relationships is violated by the exclusion of same-sex couples from the institution of marriage. Accordingly, we conclude that the common-law definition of marriage as “the voluntary union for life of one man and one woman to the exclusion of all others” violates subsection 15(1) of the charter.

[Translation]

It seems clear that the Ontario and British Columbia Courts of Appeal have very clearly said that the so-called traditional definition of marriage violated the Charter. That is very clear. Am I mistaken?

Hon. Irwin Cotler: You are right, it is very clear. It is now law.

Mr. Richard Marceau: Thank you.

[English]

The Chair: Ms. Ambrose.

Ms. Rona Ambrose (Edmonton—Spruce Grove, CPC): Finally.

Thank you, Mr. Chair.

Mr. Minister, I have a question for you that's a little more on the personal side. My sense is that your argument—I've followed it and I understand the constitutionality and the lower court decisions—is essentially one that concerns itself with what seems to me to be the inevitability of lower court decisions. I guess this is more a political and personal question to you. Instead of arguing it that way, you seem to be instead couching your arguments and language around the charter and around human rights.

You talked about young people. I just wanted to ask you why you use that kind of language. For myself, I find it deeply offensive. I believe very strongly in the charter and in human rights and equality rights, and neither the United Nations Human Rights Commission nor the European Convention on Human Rights considers the right to marry a fundamental human right, but you use that kind of language. I wondered why you do that, and whether you consider this to be something that you might admit to being offensive to some of us who may not believe in or agree with your position but believe strongly in the charter and in human rights and equality rights.

Hon. Irwin Cotler: I'm not sure I fully understand your question. If I don't, you can clarify it for me.

I can say to you only that—

Ms. Rona Ambrose: I'll clarify it by saying that I've heard the Prime Minister say that those of us who don't believe in your position do not believe in the charter, are violators of the charter, of the things that matter in the charter, and don't believe in human rights. That's the language I find has inflamed this discussion politically, and it's not useful.

Hon. Irwin Cotler: I've said this over and over again, that we must respect the plurality of views and perspectives in this country, number one; that I respect that people have deeply held views on this that may arise out of religious or cultural considerations and the like; that I understand that the situation has even had sometimes differing perspectives within one's own family—and my family is an example of that. So I do respect other views and perspectives.

What I've said is that as Minister of Justice and Attorney General, I have the responsibility to respect the Constitution and to respect the Charter of Rights. The law of the land, as a result of the decisions of courts in eight jurisdictions, clearly stated that this is not a matter of the right to marry, because we all have that right. It is a matter of the right to equal access to civil marriage while respecting all others' views and perspectives on religious marriage. And granting equal access to civil marriage does not take away the rights of anyone else in terms of their views of opposite-sex requirements and legitimacy and the like.

All I'm saying is that once the law of the land has pronounced in eight jurisdictions, upholding section 15 of the Canadian Charter of Rights and Freedoms and stating that the principle of equality extends civil marriage to gays and lesbians, or equal access to the

institution of civil marriage, it is my responsibility as Attorney General to respect the rule of law, to respect the charter, and to respect the court decisions.

Everybody is free to hold whatever views they wish, either personally, religiously, or otherwise. That's all I'm saying.

Ms. Rona Ambrose: If the language you'd used was the argument you've made about the inevitability of lower court decisions, if you'd stuck to that, perhaps I wouldn't feel that kind of offence. But I think you know the kind of language I'm talking about, which we've seen used by people on the opposite side towards people who may not believe in the same view. It's been very political. It's inflamed the debate, and I think it's not useful.

● (1530)

Hon. Irwin Cotler: It's cuts both ways. If those differing views are views that support extending civil marriage to gays and lesbians, then those views need to be respected. If courts pronounce with regard to those views as a proposition of law, then I, as Attorney General, have to respect it as a proposition of law at the same time as I continue to respect those who may hold other views.

But when it comes to upholding the law of the land and fidelity to the Constitution, that's my responsibility as Attorney General.

[*Translation*]

The Chair: Minister, thank you for your patience. You are a victim of your own popularity. Have a good meeting. And thank you for coming.

Hon. Irwin Cotler: Thank you.

[*English*]

The Chair: We are now adjourning the committee.

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Publié en conformité de l'autorité du Président de la Chambre des communes

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