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Chair

Mr. Marcel Proulx

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• (1535)

[English]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Order, please.

Good afternoon.

Before we go to the witnesses this afternoon, members, you have in front of you a copy of the report from the subcommittee on agenda and procedure. Last week the subcommittee looked at the different possibilities for witnesses, looked at the potential witnesses, and the committee arrived at a recommendation, which you have in front of you. This subcommittee report has to be accepted by the committee. Do I have somebody to propose the adoption of this report?

Mr. Toews.

Mr. Vic Toews (Provencher, CPC): I'd like to debate that first, Mr. Chairman. I have a few comments to make.

The Chair: Okay. Well, could we have a motion to accept it, and then we'll go to a debate on it, sir?

Mr. Vic Toews: Fine.

The Chair: Who was proposing? Mr. Siksay, seconded by Monsieur Marceau.

Yes, Mr. Toews.

Mr. Vic Toews: Thank you.

I don't have the exact list here in front of me, but I am concerned about the list and I am concerned about those individuals who were excluded and some who in fact were included.

The first issue I would like to deal with is with respect to the Canadian Bar Association. The concern I'm raising with the Canadian Bar Association is that it doesn't simply represent lawyers; it represents judges. There are numerous judges in the Canadian Bar Association.

Now, the Canadian Bar Association will be making propositions in respect of how the law is to be changed. It's not appropriate that the Canadian Bar Association, in representing the judiciary, comes here and explains how the law is to be changed. They had specifically said they're in support of this change in legislation. The Canadian Bar Association, as an advocacy group, may include judges; however, I think it's totally inappropriate for an association representing judges to come here to Parliament to tell us how to change the law. That in fact ignores the divide between what is the parliamentary process and what is the judiciary.

In Canada, we have a very clear distinction between the separation of the judiciary, who interpret the law and interpret the Constitution, and Parliament, which makes the law. By bringing these individuals forward from the Canadian Bar Association, what they're doing is violating that separation between the legal law-making process and the judiciary that is supposed to interpret the law. That concerns me.

I would make an amendment to ensure that the Canadian Bar Association is not a part of this and that it cannot give recommendations in that respect. So I make that motion.

Further on, then, in respect of the Barreau du Québec, I am not aware whether there is a similar division, whether this relates simply to a bar association or what we call in other provinces "the Law Society". If in fact it has judicial representatives in that Barreau du Québec, then they should be excluded as well. I'm going to withhold making any comment on that, pending how the committee votes in respect of the Canadian Bar Association.

I notice that in respect of the Canadian Conference of Catholic Bishops, a very important group of individuals, the Catholic bishops have made a very clear statement in respect of where they stand in respect of the definition of marriage. I certainly support their presence here.

What I am concerned about, in looking very quickly through the list—and I stand to be corrected—is that nowhere here is any reference made to Bishop Henry. Bishop Henry is a unique case, and I believe he should in fact be included on our witness list.

I want to make reference to a number of articles in the *Calgary Sun* and the *National Post*. First of all, Bishop Henry, in the *Calgary Sun*, gave an editorial on February 27, 2005. It's under the byline "Bishop Fred Henry", and states: "Religious freedom falls under threat". The subheading is "Liberals practise heavenly deception".

Bishop Henry quotes the Liberal Minister of Foreign Affairs, Pierre Pettigrew, who stated: "I find the separation of church and the state is one of the most beautiful inventions of modern times". Then, Bishop Henry said, he went on to add that the church is obligated to remain silent on the issue of same-sex unions, as the government and the churches should not get involved in each other's affairs.

This is a significant issue, and it's not just significant in respect of the issue of religious freedom being under threat. We heard the minister saying here the other day that clause 3 of the bill would in fact enhance religious protection, when in fact we know from the Supreme Court of Canada that that clause is ultra vires, unconstitutional, beyond the jurisdiction of the federal government. And then the minister said in his—

•(1540)

The Chair: Please, if I may, I have no objection that we look at the witnesses who are included or whom you would wish to have included, but I don't think we need to go into the full description of what their positions might be. I appreciate your position of wanting to tell us what it's all about, but I think we can look at it as to whether these witnesses are accepted or not accepted. So I understand that you wish Bishop Henry to be included as a witness, sir.

Mr. Vic Toews: Yes, and I'm certainly going to make that case as to why he should be included, Mr. Chair.

Thank you for your comments. The—

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): A point of order, Mr. Chair.

I am sorry to interrupt my colleague but perhaps you should see if it is the will of the majority or even a consensus to hear the witnesses first and then come back to adopting the report during the second part of our sitting.

I have no objection to discussing the list. My colleague, Richard Marceau—[*inaudible*]. Still, since the witnesses are here with us, we could show some respect for them by hearing them first and then discussing the report.

•(1545)

[*English*]

Mr. Vic Toews: Well, I have the floor, Mr. Chair.

The Chair: Mr. Toews, have you finished your comments for Bishop Henry, sir?

Mr. Vic Toews: No, I have not.

The Chair: Please, let's not go into the editorial and let's not go into all of what he has said.

Mr. Vic Toews: All right.

The Chair: We're trying to see if we want to accept or refuse witnesses. We don't need all of their position to decide.

We also have on the table a point of order suggesting that we may want to hear the witnesses first and then go to the report from the subcommittee. If you want to complete your comment on this particular witness, then we can look at the possibility of changing the agenda to accommodate the witnesses, sir.

Mr. Vic Toews: I move that we also add Bishop Henry, and I will give the reasons why. I will then agree, subject to what the committee says about hearing the witnesses, and then proceed to the adoption of the witness list later.

The concern here is what Bishop Henry said in respect of the institution of marriage. This is not a general concern that affects the Catholic bishops. I understand why the Catholic bishops have been brought forward as a general group. But Bishop Henry, as a result of what he stated, was threatened, according to the newspaper reports I've seen, by an official from Revenue Canada during the last election because of his stand in respect of same-sex marriage. The bishop made certain comments about that, and he indicated on the public record that as a result of the comments he made, the charitable status of the Catholic church was threatened. Those were the comments made to him. Those were the threats that he understood.

That's why I'm moving that not only Bishop Henry attend, but that the official from Revenue Canada who had that conversation with Bishop Henry also attend.

The third individual I want—and I'm making that motion—is Scott Reid of the Prime Minister's Office, who indicated on the public record that that did not happen, after Bishop Henry indicated he had been threatened by Revenue Canada, a Revenue Canada person. We need to have that person from Revenue Canada here to explain exactly what he said, and then we need to hear from—

The Chair: Mr. Toews, would you not think, sir, when you're talking of the employee from Revenue Canada and when you're talking of Mr. Reid...? These should not, in my appraisal, be heard at this committee, sir, but rather at either the House affairs or estimates.... I question the relevance of this having to do with this particular committee.

[*Translation*]

Mr. Boudria, did you have a point of order?

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): Mr. Chair, I would not want to be disrespectful of my colleague, who is familiar with the law and, I presume, with parliamentary procedure. Nevertheless, questioning the administrative operations of government departments usually takes place during consideration of the estimates.

At that time, the minister responsible for the estimates that caused a controversy, which may or may not be justified, can be questioned on alleged actions by the department's officials with respect to an individual constituent. I would like to know in what way this concerns Bill C-38.

The Chair: Mr. Ménard, you had a point of order.

Mr. Réal Ménard: A point of order has been raised: the issue must be settled in this sitting. I ask that you put my proposal to a vote, to decide if we will proceed with the witnesses first. Then we can take all the time we need to adopt the report, with whatever amendments the members want to add.

I call upon the courtesy of the official opposition. We have called these witnesses to appear. I believe there was agreement on the list of witnesses. We should not be impolite to them.

•(1550)

The Chair: Mr. Ménard, as for courtesy, you will have to speak to your Conservative colleagues. According to procedure, I must recognize that Mr. Toews has the floor regarding the motion.

Mr. Réal Ménard: You are holding firm on your convictions? Would you just verify, nevertheless, in a spirit of accommodation and smooth operations, if the official opposition could, informally, agree to hear the witnesses first?

[*English*]

The Chair: Mr. Toews.

Mr. Vic Toews: I have the floor on this issue.

The Chair: Okay. Go ahead, sir.

Mr. Vic Toews: Thank you very much.

What I am prepared to do is this. I do want to make the motion in respect of Bishop Henry, which I've already made in respect of the Revenue Canada official and in respect of Mr. Scott Reid, who indicated that the conversation as interpreted by Bishop Henry did not happen. What I want to know, and I think what this committee is entitled to know, is how does a member of the Prime Minister's staff know what took place between an official in the department of Revenue Canada and Bishop Henry?

On that basis, I move those three individuals as well, as separate motions.

What I would suggest—and I do see that we have witnesses here—is that if there is unanimous consent of the committee to hear these witnesses first and then proceed back to my debate on the motion and the amendments I will be making, I will do that. If not, then I will continue, as I am entitled to do, in respect of the witnesses I feel are omitted from this list.

The Chair: If I understand correctly Mr. Toews, you want unanimous consent for the members to proceed with the witnesses who are in front of us today and then to agree to return to this discussion so that you may continue.

Mr. Vic Toews: That's correct.

The Chair: Is there unanimous consent?

Some hon. members: Agreed.

Mr. Vic Toews: Thank you.

The Chair: Thank you, sir.

So we have today two witnesses: Mr. Munter, representing Canadians for Equal Marriage, and Mr. Arron, representing Egale Canada.

Have you agreed to which is which? Will you be starting, Mr. Arron?

Mr. Laurie Arron (Director, Advocacy, Egale Canada): Yes, I'll be starting, followed by Alex.

The Chair: We have informed you that you have 10 minutes for your opening statement and then we'll go to questions and answers, and it will be the same for you, Mr. Munter.

Did you want to have 10 minutes, one after the other, and then go to questions? It will be easier this way. Okay.

Mr. Arron, you have 10 minutes.

Mr. Laurie Arron: Thank you very much, and thanks to this committee for giving us the opportunity to present today.

As was mentioned, I'm speaking on behalf of Egale Canada. Egale is Canada's national organization committed to advancing equality and justice for lesbian, gay, bisexual, and trans-identified people and their families.

We'd like to congratulate the federal government for introducing this bill and for officially approving it in principle in the second reading vote on, I believe, May 4. Passage of this bill will send a very strong signal not only about the place of gay and lesbian people in society, but also about the government's commitment to upholding the Charter of Rights and Freedoms for all Canadians. We urge this

committee and Parliament to pass Bill C-38 into law before any federal election.

Bill C-38 reflects the constitutional imperative to legislate equal marriage. This constitutional imperative has been found by court after court after court after court after court after court after court—that's eight jurisdictions, eight provinces and territories, in which courts have found that excluding same-sex couples from civil marriage is unconstitutional. These courts have all heard the arguments and reviewed all the evidence that opponents of equal marriage could muster and have repeatedly and consistently found no merit whatsoever to their arguments, including those about any conflict with religious freedom or the best interests of children. As a result of these court decisions, equal marriage is already the law in 90% of Canada, and so whatever concerns you have about equal marriage becoming the law, the fact is that it already is the law, and passing this bill will simply make that law uniform across the country.

Thousands of same-sex couples have married in both civil and religious ceremonies. These were not quickie weddings. These couples had been together for years and years, and in some cases decades and decades, before they had the opportunity to marry.

Last December the Supreme Court gave the green light to the government's equal marriage legislation. It said that including same-sex couples in civil marriage is consistent with the charter and, in fact, flows from it. It also stated that there is a need for a uniform law across Canada, and that the decisions it refused to reopen are binding in those jurisdictions.

The Supreme Court also said that Parliament lacks the jurisdiction to implement any civil union scheme. It said that "civil unions are a relationship short of marriage and are, therefore, provincially regulated". That was at paragraph 33 of the reference decision. This fact is aptly noted in the preamble to Bill C-38. I'm sure you all have your bills handy.

The Supreme Court not only said that Parliament lacks the power to create a civil union scheme, it also said that civil unions are a relationship short of marriage. Civil unions are second-class status. They are not at all equal. The only way to treat same-sex couples equally is to end marriage discrimination by letting us walk through the door of civil marriage, and Bill C-38 does just that. It accomplishes fully the goal of ending discrimination against same-sex couples in federal marriage law, both symbolically and in fact. It takes Canada from a complex and incomplete patchwork of marriage equality and inequality to a uniform, comprehensive, and charter-compliant law.

I asked before if you actually had your Bill C-38 with you, because I'd like to turn your attention to one provision of it. Perhaps you would take a look at the explanatory notes at the bottom of page 1(a), entitled the Federal Law and Civil Law of the Province of Quebec Act, also known as the Harmonization Act.

If you go to the top of page 2(a) of the explanatory notes, you'll see section 5 of that act, which says, "Marriage requires the free and enlightened consent of a man and a woman to be the spouse of the other." So this is federal legislation that contains an opposite sex restriction.

Now if you look at clause 9 of the bill, which is on page 4 towards the bottom, you'll see the amended version of that section of the Harmonization Act, which says, at proposed section 5, "Marriage requires the free and enlightened consent of two persons to be the spouse of each other."

●(1555)

The reason I point this out is that, as you all know, equal marriage was extended in Quebec on March 19, 2004. What you may not know is that in Quebec it wasn't only judge-made law that was challenged; section 5 of the Harmonization Act was challenged as well. Parliament passed section 5 of the Harmonization Act. Section 5 is not judge-made, it's not common law, and it was in fact passed very recently. Royal assent was given on May 10, 2001, to that passage.

That mattered not to the Quebec Superior Court or to a unanimous five-judge panel of the Quebec Court of Appeal. For the same reasons as in the other provinces and territory, the opposite-sex restriction was struck down. Courts simply won't allow unconstitutional laws to stand. Section 52 of the Constitution does not permit them to allow unconstitutional laws to stand. Some people have stated that only the common law opposite-sex restriction has been struck down and that courts would in fact allow unconstitutional laws to stand if they were enacted by Parliament. This is simply untrue. Clause 9 of the bill is proof of that.

I hope this sets the record straight on that point. I think it's an important point.

I'd like to talk just a little bit about religious freedom. It was stated earlier today that one of the members here doesn't think Bill C-38 actually does anything to enhance religious freedom. But clearly it does, because there are many religions that want to marry same-sex couples. These include the United Church of Canada, the Canadian Unitarian Council, the Quakers, most Reform rabbis, many Buddhists, and clergy from various other religions who are in the process of coming to grips with equal marriage for same-sex couples, and who I think will get there after some period of time.

The B.C. Court of Appeal has stated that if equal marriage were not allowed, then these religious groups would be forced "to accept the religious practices of others". So equal marriage and Bill C-38 clearly enhance religious freedom, at least in those jurisdictions where it's not already the law, by giving each religion the choice of whether or not to marry same-sex couples.

During the justice committee hearings, religious groups opposed to equal marriage said they were concerned that clergy, as agents of the state in performing marriages, be protected against human rights complaints. The Supreme Court of Canada has clearly stated that they are protected, in both their civil and religious capacity, from taking any action to assist same-sex couples in getting married.

Clause 3 of the bill recognizes the charter protection of religious freedom that was confirmed by the Supreme Court. It lets Canadians

know that this protection exists, and thereby gives them comfort and security. I think it's important to recognize that the law is important not only in terms of what the black letter of the law is; it's also important in that it communicates a message. It's important that Canadians know that religious freedom is protected. It's important that clergy across the country, whether or not they support or believe in marriage of same-sex couples, see it written into the law so that they know the protection exists.

Since the charter is the highest law in the land, charter protection is superior to protection in either federal or provincial law. It's superior because both federal and provincial law must comply with the charter. This means that if any provincial legislation, human rights legislation or otherwise, penalizes clergy for refusing to perform a marriage for same-sex couples, that legislation is unconstitutional. The provinces know this. That's why Ontario recently explicitly wrote this protection into its Human Rights Code. The language they used mirrored the Supreme Court exactly. That's Ontario's Bill 171, as noted in our submission.

So the protection that religious groups wanted is in the charter. The Supreme Court has made that clear. The provinces accept that. Religious freedom is protected.

I'd like to now turn things over to Mr. Munter.

●(1600)

[*Translation*]

Mr. Alex Munter (National Coordinator, Canadians for Equal Marriage): Thank you, Mr. Chair.

I am here to represent Canadians for Equal Marriage. This coalition was formed in 2003 as a multi-partisan Canada-wide campaign to ensure passage of the federal equal marriage bill. CEM partner organizations represent millions of Canadians. These include Egale Canada, the Canadian Federation of Students, the Canadian Labour Congress, the Canadian Psychological Association, the Canadian Association of Social Workers, and many others working at the grassroots and national levels.

CEM believes that passage of Bill C-38 will convince Canadians that the law reflects the social and legal reality of Canada. It will convince Canadians that same-sex couples are not second-class citizens and are entitled to the same legal rights and protections as everyone else, including Charter protection. It will tell Canadians that Parliament stands up for everyone's Charter rights, and that it will not selectively apply those rights.

[English]

I think it is important to reflect on the fact that this debate has now gone on for two years in Canada. Many of you—including, I believe, Mr. Toews, Monsieur Marceau, Monsieur Ménard, Mr. Macklin, and Ms. Neville—were members of the justice committee that travelled the country in 2003 and heard from hundreds of groups and individuals from across the country. You heard from a total of 467 witnesses. We've had two years of debate in our country, including during a federal election and in Parliament, and eight court decisions. I think the fact that 3% to 4% of Canadians, according to public opinion polls, have no opinion after two years of debate—presumably Canadians who have never picked up a newspaper—means that it's time for Parliament to act. It's time to close this chapter and to move on.

Bill C-38 reflects what the justice committee heard from Canadians during its cross-country hearings. It reflects clear support for equal marriage rights from a majority of regionally diverse witnesses; it reflects the wishes of some faith communities to be able to perform same-sex marriages; and it reflects the concern of some faith communities not to be required to perform same-sex marriages.

• (1605)

[Translation]

It is important to point out that Bill C-38 accomplishes the goal of full marriage equality not only in the five “have-not” jurisdictions, but also in the eight jurisdictions where equal marriage is now the law.

While same-sex couples can access civil marriage in these eight jurisdictions, there are inconsistencies in the law that remain. Bill C-38 addresses these inconsistencies through the consequential amendments contained in various articles of the bill. Bill C-38 provides relief to same-sex couples from having to go to court, either to secure equal marriage or to secure equal treatment once married. In every jurisdiction where same-sex couples have brought claims to equal marriage, the federal government has been ordered to pay their legal costs. Passing Bill C-38 will save the government both its own legal costs and the legal bills of the couples that it will be ordered to pay should the bill become law.

[English]

There's a larger point here. The choice that Parliament faces in whether or not to adopt Bill C-38 is a choice between social peace, by adopting a piece of legislation that protects religious freedom while ending exclusion and discrimination, or social division, by forcing people to continue to go to the courts to obtain their rights at the expense of the taxpayers of Canada.

[Translation]

If Bill C-38 does not pass, the current patchwork of laws will continue to exist. Same-sex couples will continue to marry in jurisdictions representing almost 90% of Canada's population. They will be forced to go to court to secure access to civil marriage in the remaining jurisdictions.

It is also important to note that a recent Ipsos-Reid poll showed that 39% of Canadians believe the equal marriage debate has

increased discrimination towards gay and lesbian people, while only 9% said it has decreased discrimination.

If Bill C-38 does not pass, there will undoubtedly be attempts to turn back the clock on equality, to take away the right to marry and to annul existing marriages of same-sex couples. This raises the issue of the notwithstanding clause, which would be the only way for Parliament to do this. Bill C-38 recognizes this in its preamble.

I think I will stop there.

[English]

I'd be happy to answer any questions, along with Mr. Arron.

The Chair: Okay, the first round is for seven minutes.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you both for your testimony today.

I want you to comment on what many Canadians saw as a major reversal in the position of the federal government. As you know, this debate has gone on for some time now. Canadians were concerned a few years ago, in 1999, about changing the definition of marriage and were calling upon the government to take some action. Members of the Liberal Party—the Prime Minister at the time, the current Deputy Prime Minister, the Minister of Justice at the time, the cabinet—voted in favour of a motion to defend the traditional definition of marriage. As you're aware, for some time in the Court of Appeal in Ontario and the trial divisions in British Columbia and in Quebec, the federal government was defending the traditional definition of marriage, and there has been quite a reversal. Meanwhile, groups seeking to change the definition of marriage were working their way through the courts. I'd like a comment from each of you on that reversal.

But also, when it comes to funding these challenges to Canadian laws, has either of the groups you represent received federal funds under the court challenges program or some other federal money during that process? If so, how much money has either of your groups received?

I'd like to have a comment on that and also on the reversal of the federal government.

• (1610)

Mr. Alex Munter: Well, in reverse order, Canadians for Equal Marriage is a coalition that was formed in the summer of 2003. It does exclusively political advocacy and has not been involved directly in going to court.

Let me just say on the first point, the question of the position of the Government of Canada, that in a democracy a government is obliged to follow the law, and the highest law of the land is the Charter of Rights and Freedoms. The government has confronted the fact that, as my colleague pointed out, court after court after court across the country has made clear that excluding same-sex couples from civil marriage is unconstitutional, that it is discriminatory to tell lesbian and gay Canadians, who are members of your community, who are taxpayers, who are citizens, that they are not entitled to the same treatment under the law. So faced with decisions that have told the government that the law as it was was exclusionary, was discriminatory, and in fact contravened the Constitution, the Government of Canada has done what I believe any responsible government would do, which is to obey the law.

Mr. Laurie Arron: I'd like to echo Mr. Munter's comments and say that it's important that governments learn and not have completely closed minds. When court after court after court after court says the same thing, at some point it's time to accept those court decisions and to move on and stop wasting taxpayers' money, and to stop forcing same-sex couples to put their lives into the public view and go through this very difficult process of going to court. That's why I think Parliament and the Government of Canada decided that they had to go along with the charter; it was just so crystal clear what the charter required, and the only way to go against that would have been to use the notwithstanding clause.

In terms of your other question, Egale was involved in the court cases as one of the key intervening parties in B.C. and Ontario, and we are part of a coalition in Quebec. We got some limited funding in B.C., but not in the other jurisdictions.

I would add that when the charter was brought in, all of its sections went into force immediately in 1982, except section 15, because the government realized that bringing all of its laws into compliance with the charter and equality was a difficult and complex task. So three years—

• (1615)

Mr. Rob Moore: I have a couple of more questions.

Mr. Laurie Arron: No, I think it's important that—

Mr. James Moore: You've answered my question on that.

We've talked a lot about the courts and we know there have been various court decisions, but the federal government has asked the Supreme Court several questions in a reference case. One of those questions was, is the traditional definition of marriage unconstitutional? The court very clearly refused to answer that question, in effect pushing it back to Parliament. I'd like an acknowledgement of that, because unless we're saying that the Supreme Court of Canada is not supreme in this country, we're ignoring that very important legal distinction, that they did not in fact rule that the traditional definition of marriage is unconstitutional. I'd like your comment on that.

Also, the court ruled specifically that the provision in the draft bill purporting to protect religious freedom was ultra vires or unconstitutional, that the federal government acting alone cannot protect religious freedoms. Okay, so we've seen in various provinces that certain marriage commissioners have been forced to resign as a result of this. I'd like your group's comment on the Supreme Court

reference, but also on how you think we should deal with marriage commissioners in jurisdictions who are perhaps being asked to go against their faith by solemnizing a marriage that is against their faith.

The Chair: You have 15 seconds to answer, so you better take 10 seconds each. We'll make it 20 seconds, then.

Mr. Laurie Arron: In terms of the reference, Egale actually argued before the court that it should not reopen the decisions of the lower courts, because to do so would question the finality of those judgments and amount to a backdoor appeal. The court agreed, and it did affirm that those decisions were binding in those jurisdictions.

Clearly, I think the law of the land is that same-sex couples must be allowed to marry; that's what the law is, though we can speculate all we want about a very infinitesimal possibility. The fact is that Parliament has to pass laws based on what the law is, not on speculation about what the law might be. The Supreme Court has not examined every law; it's only examined very few.

The Chair: Thank you.

Monsieur Marceau, pour sept minutes.

[Translation]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): I thank the witnesses. I am pleased to see you again here. I will ask some brief questions and I would appreciate brief answers, too, because time is short.

We often hear the argument that the Supreme Court has not ruled on this issue. How many courts have clearly determined that the so-called traditional definition of marriage was incompatible with the Canadian charter of Rights and Freedoms, and thus illegal?

[English]

Mr. Laurie Arron: Ten courts.

[Translation]

Mr. Richard Marceau: Ten courts.

[English]

Mr. Laurie Arron: Yes, ten courts.

[Translation]

Mr. Richard Marceau: As I understand it, that included the Quebec court of appeal in a unanimous five-person decision, the Ontario and British Columbia appeal courts. That represents about 90% of Canada's population.

[English]

Mr. Laurie Arron: That's right.

[Translation]

Mr. Richard Marceau: In the legal system we have, once an appeal court has made a decision and struck down a law, that creates law, especially in common law. The law is clear: today, the definition of marriage known as traditional—and we could debate that as well—is unconstitutional. That is clear.

[English]

Mr. Laurie Arron: That's right. It is unconstitutional to exclude same-sex couples from marriage, and that has been affirmed by the Supreme Court in those eight jurisdictions. That's clear, and that's the law.

[Translation]

Mr. Richard Marceau: Moreover, in one of those cases before the Quebec court of appeal, the definition was not the common law one dating from 1866, but in fact the definition adopted by Parliament in 2001. Thus, the five judges of the Quebec court of appeal said unanimously that the so-called traditional definition of marriage, adopted as such by members of Parliament—and many of those members are sitting around this table right now—was unconstitutional. Would you not agree?

[English]

Mr. Laurie Arron: Yes. That's exactly right.

[Translation]

Mr. Richard Marceau: Perfect. Thank you very much.

I know you do a lot of research. Have you found any religious group, in the history of Canada, especially since 1982, that has been forced to perform any ceremony in which, for religious reasons or reasons of dogma, it could not participate? For example, has there ever been a case where a Catholic priest was forced—by a court or anyone else—to marry a divorced Catholic? Or has there been a rabbi in Canada who has been forced to marry a Jew and a non-Jew, against his religion's dogma? Has there ever been a case like that?

• (1620)

[English]

Mr. Laurie Arron: No. That has never happened. In fact, there was research to that effect in preparation for the reference, and we could not find one single case of that happening. I couldn't imagine somebody even bringing a case and hoping to win, especially in light of the Supreme Court's decision in the reference.

[Translation]

Mr. Alex Munter: I think it is important to point out that some members of the clergy have been prevented from performing marriages they wanted to perform. For example, ministers of the United Church of Canada, the Unitarian Church of Canada and others, such as rabbis in the Reform tradition of Judaism, have not been able to perform the marriages they wished to. It may seem ironic given the current debate, but the only examples in Canada are those of people who could not live with their religion's dogma, when it concerned same-sex spouses.

Mr. Richard Marceau: Thank you very much.

In your opinion, does Parliament have any other way to preserve the so-called traditional definition of marriage except by invoking the notwithstanding clause?

Mr. Alex Munter: It is clear that if the Parliament of Canada wanted to move backwards and withdraw the rights already acquired in seven provinces and territories, the only way to do so would be to use the notwithstanding clause in the Constitution.

Mr. Richard Marceau: Right.

I think we agree somewhat less about clause 3. In your legal opinion, as it is written, is clause 3 constitutional, since it is said to be declaratory?

First, is clause 3 necessary, given the protection already included in section 2 of the Charter, and especially in view of the decisions by the appeal courts? Finally, is there not a danger that this clause, after the referral to the Supreme Court on this subject, may be declared unconstitutional, since the celebration of marriages is within provincial jurisdiction?

[English]

Mr. Laurie Arron: There's no doubt that solemnizing marriage is provincial jurisdiction. It's my understanding, though—and we have not gotten a legal opinion on this or anything—that the wording was changed following the reference. So the wording in the bill is different from what was referred to the Supreme Court. It is meant to merely recognize what is the law, which is the charter, which binds both federal and provincial governments.

As I mentioned earlier, I think it's important to say it right in this law to let people know that protection exists. I don't think that's an attempt to step on anybody's toes. As the minister said the other day, he actually conferred with his counterparts in the various provinces, so I would imagine that if it's okay with them, then it's fine; nobody's going to bring that case.

[Translation]

Mr. Richard Marceau: Thank you.

The Chair: Is that all?

Mr. Siksay.

[English]

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

I want to thank both Alex and Laurie for their presentations this afternoon.

I want to pay a bit of a tribute to both Egale Canada and to Canadians for Equal Marriage.

Egale Canada, over its long history from the mid-1980s to the present day, has worked tirelessly on behalf of gay, lesbian, bisexual, and trans-identified Canadians and has been a significant player in improving our situation and our rights here in Canada. That work has made a huge difference for all of us, so I want to thank you for that.

Canadians for Equal Marriage is a new organization on the scene, but it has done terrific work to bring to the fore the whole issue of equal marriage and full citizenship for our gay and lesbian Canadians. So thank you very much for all of that work, and to your colleagues as well.

I have a question. Both of you, I think, mentioned the legal costs and the personal costs to couples who've had to fight in the court system for the legal right to be married. I wonder if you can tell us a little bit more about that. Do you have any sense of what the actual monetary cost was to some of these couples for these kinds of legal challenges? Maybe you could say something about the actual personal costs some of them have faced.

● (1625)

Mr. Laurie Arron: Sure.

We've certainly been in touch with every couple that has challenged the laws across the country. Many of them were told by their lawyers that their houses were on the line, and they went to great personal expense to mount these challenges. Now, as it turned out, in the end—and this is a point I was going to make earlier with Mr. Moore—courts awarded costs against the government. What they said was that these couples should not have had to go through such difficult and expensive proceedings, so it was the government that was ordered by the courts to pay the costs of the various couples. That happened in every jurisdiction. It also happened in B.C., where Egale was involved.

So regardless of whether or not there is a court challenges program available, which, by the way, only pays a very small amount, this is going to cost the government a lot of money if the government insists on couples having to go to court to secure what is clearly their right under the charter.

Mr. Bill Siksay: There's another challenge on the horizon, too, I believe, in New Brunswick. Can you tell us anything about what's happening there?

Mr. Laurie Arron: Certainly.

There are a number of couples in New Brunswick who had actually wanted to challenge the law a while ago, and when this legislation was introduced they decided, well, you know what, we're not going to go to court. We don't want to have to do that. We'd much rather have the government legislate and save us all this trouble, save us from having to be in the public eye. And they have essentially given up.

I hope they're not wrong. I hope Parliament actually does see this legislation through before an election. But they have decided that they can't wait any longer. They want to get married, they're aching to get married. Most of them have been together for a long time, and they don't see any reason why couples in other provinces can marry and they can't. Some of them have gone to other provinces to marry, and then it's not recognized in New Brunswick. Some of them want to get married in New Brunswick. They don't want to travel to another place; they want their families there, and they want their friends there. They want to get married at home.

So that's why this challenge is being brought forward.

Mr. Bill Siksay: Do you know of any province that's not committed to freedom of religion in terms of their human rights work, not passionately committed to that?

Mr. Alex Munter: Is that a rhetorical question?

Mr. Bill Siksay: Sort of.

Mr. Alex Munter: No, we're not aware of any such province, but thank you for asking.

Mr. Bill Siksay: Do you have any sense of how many of the gay and lesbian couples who have been married since the various court decisions have had religious marriages as well as a civil marriage, or what the proportion is there?

Mr. Laurie Arron: I don't have any statistics on that. Certainly a lot of them have been religious. We know of many, through MCC,

through the United Church, through the Unitarians, Jewish marriages. But I can say that generally in Canada 75% of marriages are religious marriages and 25% are civil only, with no religious component whatsoever. So I think it's important to make clear that civil marriage is very important to many Canadians, and not just gay and lesbian Canadians.

Mr. Bill Siksay: Thank you very much.

The Chair: Mr. Macklin, seven minutes.

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

We talk about the number of marriages. Is there an indicator as to how many marriages have actually been performed at this point?

Mr. Laurie Arron: There aren't any good statistics on that. In many cases the statistics are kept municipally, and in many cases either the municipalities or the provinces don't track which couples are same-sex couples and which couples are not. They just say, this is a marriage licence, here you go. They don't really care whether it's a same-sex couple or an opposite-sex couple.

We know of at least 3,000 to 5,000.

Hon. Paul Harold Macklin: You talked about the Harmonization Act and the changes that were made there. How significant do you think that is in the entire legal arguments that have been brought forward?

Mr. Laurie Arron: What has been striking about the cases is that not a single one of the opponents' arguments has held any water with the courts. It's really a lot of rhetoric. When you look at the facts, when you look at the evidence, it's just not there.

So the fact that in Quebec there was federal legislation and in other provinces there wasn't really doesn't make a big difference. The Conservative leadership are saying it will make a difference, and we're saying clearly it won't. They're saying it's never been tested, and we're saying it has. I think that's a fact you can't ignore.

● (1630)

Hon. Paul Harold Macklin: So you believe that was a significant step in the process of getting the courts to acknowledge the rights that are there—recognizing the harmonization.

Mr. Laurie Arron: I think it set a very clear precedent, so in that sense it's significant.

Hon. Paul Harold Macklin: Earlier on when you made your opening remarks, you said this process was important for children. I wonder if you would comment further on that, because I don't believe you had the time in your presentation to do that.

Mr. Laurie Arron: As Alex mentioned, both the Canadian Psychological Association and the Canadian Association of Social Workers are part of Canadians for Equal Marriage. The reason is that the studies show that children of same-sex couples do just as well as children of opposite-sex couples.

The one thing everybody is agreed on is that marriage brings certain benefits. One of those very important benefits is the benefit it brings to children, in terms of security and protection. Children of same-sex couples deserve to have that same protection and support as children of opposite-sex couples. In fact, I would argue that perhaps they need it even more because of the stigma surrounding their parents' relationship, in many cases. So I think that's important.

It's also important that the only evidence submitted to the courts by those who oppose marriage for same-sex couples—and this wasn't submitted by the federal government, it was submitted by Focus on the Family and REAL Women—were studies comparing two-parent families to single-parent families, and in both cases they were heterosexual families. There were no same-sex parents involved in those studies, yet they held up those studies to show that same-sex couples should not be allowed to marry.

This is the sort of disingenuous and specious argument that we saw raised in the courts, and this is why the courts said that when you put this to the test, there's nothing there. There's no reason not to let same-sex couples marry.

Mr. Alex Munter: I think there's a point of principle that's important. We can have an interesting debate, which sometimes veers into language that is hurtful and harmful, about whether or not lesbian and gay people should raise children. Lesbian and gay people are raising children. Same-sex couples are providing homes, raising children, and investing emotionally, financially, and in every way in building safe and secure families for their kids.

I think the question, as it relates to Bill C-38, is really whether or not the Parliament of Canada will adopt a piece of legislation that reflects the reality of our country; that reflects not just the legal reality, as has been determined in jurisdictions comprising nearly 90% of the population of Canada, but also the social and cultural reality of people in every community and in every riding of the country.

Hon. Paul Harold Macklin: Do you have a sense of how many gay and lesbian couples have children within their relationship?

Mr. Laurie Arron: No, we don't have good data, although I've seen some studies. Certainly more lesbians than gay men are having children. There's a so-called lesbian baby boom going on. But I'm not sure exactly what the numbers are.

Mr. Alex Munter: I think one thing that is evident—and you see it from groups like Family Services, as they speak out in favour of the equal marriage bill—is that more and more lesbian and gay people are assuming full citizenship and full participation in community life, which includes raising families. When I was...and I don't usually start sentences with, "When I was young", but when I was a teenager growing up, I had a very clear belief that there were things I would not be able to do because I was gay, that there were limitations and restrictions I would face because I was a gay person. I never made a list, but if I had made a list, probably having a family would have been on that list.

I think that has changed over 20 years. As a result of the Charter of Rights, equal treatment under the law, and social evolution, in fact, the sense of self-negation that once existed, and that is still present, is diminishing. I think with that you will see much more

active participation of lesbian and gay people in the raising of children.

● (1635)

Hon. Paul Harold Macklin: Thank you.

The Chair: We're now into the second round.

Mr. Warawa, five minutes.

Mr. Mark Warawa (Langley, CPC): Thank you to the witnesses for being here.

I believe, Mr. Arron, we met a few months back. It's good to see you again. You had the opportunity to ask me questions at that time, and now I look forward to having the opportunity to ask you some questions.

The focus of my questioning will be the difference between a civil union and the civil marriage concept. But before I go into that, there was a question asked by Mr. Moore regarding federal funding. I think Mr. Arron said there was provincial funding, and I don't believe Mr. Munter answered the question.

Again, to both of you, was there any federal funding to either of your organizations?

Mr. Alex Munter: I did answer the question. The answer is no, we're a political advocacy organization, and we haven't received any funding from any government.

Mr. Laurie Arron: As I was explaining to Mr. Moore, the court challenges program was set up because the government has a duty to ensure that its laws are in compliance with the charter. Section 15 is particularly difficult, so in order to, I think, save money, the government said, well, rather than have our staff of lawyers working on this, we're going to allow private individuals and groups, when they see something that is not right, to go to court. And we're not going to give them very much money—we're not going to give them anywhere near what it actually would cost—but we'll give them a little to help them get started.

That's what the court challenges program does. Egale did get funding under the court challenges program in B.C., but that funding was actually much smaller, and in fact it was reduced when the court awarded Egale money from the federal government. The amount of money awarded from the federal government in terms of a cost award in those cases was many times greater than the amount of funding we received from the court challenges program.

Mr. Mark Warawa: Would you be free to share the amount of the funding?

Mr. Laurie Arron: At the reference, it was \$35,000, I believe.

Mr. Mark Warawa: Thank you.

I've been in touch with my constituents and sent out a number of ways for them to contact me, and 96% of Langley residents—that's the community I represent—would like to see the traditional definition of marriage protected, but they also support the legal requirement within Canada to provide equal benefits and rights to all Canadians. So could you elaborate on the difference between civil marriage and civil unions?

Before you answer, I'd like to zero in on some of the material you presented to us here. You have said that the institution of marriage reflects and affects society. I would agree with you there. You've gone through the history of marriage, saying that marriage has evolved with society, that interracial couples have been permitted to marry—I think that was brought up at our last meeting by Mr. Marceau; I don't know if that's particularly relevant.

You then said in the next paragraph, "Most federal laws have been changed to provide equal treatment". I think that under the principle of a civil union with the same rights and benefits, that could be achieved.

Then in the next paragraph—I'm on page 3—there is a paragraph that troubles me: "Creating a separate legal category for same-sex couples and denying them access to civil marriage would only reinforce the message that same-sex relationships are inferior to opposite-sex relationships". I'm concerned about the word "inferior". Consider that Quebec has a distinct society. It's different, but definitely not inferior. Men and women are definitely different, but one is not inferior to the other, and adults and children are distinct and different, but have different rights. So I'm curious, what would be distinct about a marriage as opposed to a civil union that would be...? Why would marriage be superior to a civil union?

•(1640)

Mr. Alex Munter: I'm not sure how much time...I'll speed-talk. I have just two quick points, then, on your survey.

I would certainly be interested in seeing a copy of that survey and whether it asked your constituents if they are in support of the notwithstanding clause and using the notwithstanding clause, which is the prerogative of Parliament, to set aside court decisions in British Columbia. That's the honest question to ask people. If you ask people if they want civil unions, then it is incumbent upon whoever is asking that question to make clear, in asking that question, that to do that would require the Parliament of Canada to say to lesbian and gay Canadians that the Charter of Rights and Freedoms does not apply to them. That is a proposition that we know the vast majority of Canadians reject.

On the second part of the question, I think it's a simple and straightforward issue of exclusion and discrimination; that is, it is wrong. It is wrong in law, as we've seen, but it is also morally wrong for the Parliament of Canada to tell lesbian and gay Canadians, who are citizens, who are taxpayers, who are your neighbours, who are your constituents, that civil marriage, which is an institution owned by the state, which they are part of, is not open to them.

[Translation]

The Chair: Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): Thank you, Mr. Chair.

Welcome. I did not have the pleasure of being present when the various positions were outlined here a few years ago. I think yours is quite clear.

As far as I know, the present committee is mandated to study Bill C-38. My question is very simple. I do not think I can even use the entire five minutes available to me.

Are all of the terms of each clause of Bill C-38, which has been presented to Parliament and which we are currently examining, satisfactory to your organizations or do you wish to suggest some amendments?

Mr. Alex Munter: The bill is clear and simple. On the one hand, it protects religious communities by allowing them to perform only those marriages they wish to, and, on the other hand, it ends the discrimination to which same-sex couples are subject. Consequently, we do not see the need for any amendments at all.

The Chair: Mr. Ménard.

Mr. Réal Ménard: I am pleased to see you again. Whether concerning the amendment of the Canadian Human Rights Act, the Criminal Code amendment on hate crimes, or the nine debates we have had, you have, I believe, closely followed the work of the Justice Committee and the committees specifically created to discuss gay rights.

I will not ask you legal questions, since Richard Marceau and some other colleagues will be taking care of that. I was reminded just now of the amendment to section 718 of the Criminal Code, which created provisions on hate crimes and imposed harsher penalties for gay-bashing, and the first amendment to the Canadian Human Rights Act to include sexual orientation. That was introduced by Allan Rock. I remember a psychiatry association and a young man, a lively and dynamic young man in his early thirties, who presented data to the committee on suicide among homosexuals and spoke about what acceptance of homosexuality in adolescence would mean.

I am not asking this question to be alarmist or because I think we need to be pessimistic. I think that there are two aspects to this debate nonetheless. There is the legal aspect, involving equality, section 15, and all the usual arguments. But there is another aspect, too, which worries me as much as the first: the right to citizenship.

I would like you to give us some details on the implications of full recognition of access to institutions. I think you said earlier that 75% of marriages are civil and 25% religious. Access to marriage is very important to those aspiring to full recognition. I would like you to explain to the committee members—and certain members in particular—why the concept of citizenship is important in relation to this bill.

•(1645)

Mr. Alex Munter: Citizenship really is at issue. When their own condition and the law governing their daily lives is involved, members of certain communities, who are also taxpayers, wonder if this law reflects the reality of their lives. Today we have touched on the concept of social inclusion. You have raised a moral issue, that is, whether gays and lesbians are fully entitled to participate in society.

When there is an attempt to establish a system of civil unions, for example, and it appears this is exclusively arranged to set up obstacles for certain people because of their sexual orientation, that is a rather important message that Parliament is sending to the whole society, namely, that these people are not full members of the community. I think you are right. There is the legal aspect but there is also a moral aspect, which is really very important.

Mr. Réal Ménard: I wonder if your colleague would like to add something or if I should go on with a second question.

[English]

Mr. Laurie Arron: As I brought up before, what's interesting in this debate is that everybody agrees how important and beneficial marriage is to so many people in society. Certainly, if you were to say that we should take away the right to civil marriage from any other minority, or if we were to take that right away from interracial couples or from certain other religious minorities, the public outcry would be tremendous. It would be quite clear that it were an attempt to make them second-class citizens, taking away basic civil rights. However, when it comes to gays and lesbians, somehow it's different or we don't matter. It's said that this is a heterosexual institution, and we don't care to have you in it.

When you look at the rhetoric of many people in this debate, you'll see that it is about how we are a threat to society—to marriage; to children; to families—and that we're immoral and evil. Certainly everybody is entitled to hold these beliefs, but this is the backdrop against which this is playing out. It is why the rate of suicide among gay and lesbian kids is so much higher than among their heterosexual peers. It's also why there are so many gay and lesbian kids on the streets, because they've been kicked out by their parents.

The stigma of homosexuality still exists. You see *Will & Grace* and you think it doesn't, but clearly it does exist in many parts of Canada and in many families. It's important that government not contribute to that stigma. Government would be contributing to that stigma by excluding same-sex couples; alternatively, by including same-sex couples government would be saying, you know what, all Canadians need to be treated fairly and all Canadians should have access to our public institutions, especially an important public institution like civil marriage.

The Chair: Thank you.

Mr. Savage.

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

I have one question, following along the line of some of the other questions you've received.

By the way, thank you for coming today.

The lesbian baby boom that you referred to is interesting to me. I happen to be the godfather of a little girl who has two mothers.

You also mentioned the rhetoric on both sides of this. While I've heard some people in fact say that gay and lesbian couples can't be good parents, I've heard other people say they're better parents, that they're more sensitive and all of that. To me, they're the same. People are people; good parents are good parents and bad parents aren't.

In the case of my goddaughter, I happen to know that she's got the best parents she could possibly have. They would be the same individually. Whether they were homosexual or heterosexual, they're good people. They go to church together like other people, they go to the playground, they go to the same schools, and they go shopping—they're regular people, who have one difference.

My question to you is not legal, but personal. How do gay and lesbian people feel when they're told that they should be happy with a civil union, that such a union is all they need?

• (1650)

Mr. Laurie Arron: Certainly in my life, and before equal marriage came to Canada—and I think just about everyone I have spoken to has said this too—being invited to a friend or a family member's wedding has always been a cause of mixed emotions, because you are there and happy for them, but you know you are excluded and couldn't participate in that. You know that when you fall in love and want to declare your lifelong commitment to the person you love, you won't be permitted to celebrate in the same way as other people are and won't be given the same recognition as other people are. That really does make it difficult.

The question was raised earlier, what's the difference between civil unions and marriage? I would say it's the same difference as between segregated and other schools in the United States. Just before the issue got to the courts or when those challenges were first made, black schools were tremendously underfunded compared with white schools. But as it got closer and closer to the Supreme Court, those states started funding black schools equally with white schools so that they could say, look, this is absolutely equal. In one of the great human rights cases of our times, *Brown v. Board of Education*, the Supreme Court said that was not the case. It said that if you tell kids who want to go to white schools that they can't go to white schools but have to go to those other schools, it does incredible damage to those children. I don't remember the exact quote, but they talked about the damage done to the psyches and souls of those children.

It's the same type of thing being talked about here: to be told that you're immoral, to be told that you're evil, and to be told that if you're to be let into this institution called civil marriage you're going to destroy or taint it.... Yet all you want to do is the exact same thing as opposite-sex couples want to do when they get married.

Mr. Alex Munter: I was on the board of the Children's Aid Society here in Ottawa for three years. It can be a grisly place if you care about kids. You hear about some horrible things that happen to children in this community and in communities across the country. After spending three years at the Children's Aid Society, I came to the inescapable conclusion that any child is blessed to have parents who love and nurture him or her and provide for a healthy upbringing in every way, and that whatever the state can do to support families in that way is an incredible contribution to the welfare of children. Bill C-38, in supporting families, in ensuring that legal rights are recognized, is a piece of legislation that is profoundly family friendly.

Mr. Michael Savage: Thank you.

The Chair: Mr. Siksay, for five minutes.

Mr. Bill Siksay: I have just a quick question. Is there anything in the experience of the Netherlands, Belgium, or Spain that your organizations have found instructive when looking at legislation for Canada?

Mr. Laurie Arron: Well, I will be attending a conference at the end of June about international recognition and legal issues around same-sex couples, but I do know that it's really been a non-event in those countries. None of the rhetoric you hear here really happened very much either in the Netherlands or in Belgium. It's soon going to be in Spain and South Africa. I've heard it said in Parliament that no other international court has said that same-sex couples have to be allowed to marry. In fact, I believe the supreme judicial court of South Africa has found that same-sex couples have to be allowed to marry; it's against their constitution to exclude same-sex couples. The Supreme Court of South Africa was clear in saying that the apartheid and racial discrimination that they faced and the discrimination faced by same-sex couples in being excluded from civil marriage were the same sort of thing; it emanates from the same sorts of places.

In fact, if you look at the interracial marriage case of *Loving v. Virginia*, in that case the same arguments were made against interracial marriage as are now being used against equal marriage for same-sex couples. The Court of Appeals of Virginia, which is just below the Supreme Court, actually wrote in their judgment that God placed black people in Africa and white people in Europe and that God intended the races to be separate, so interracial marriage was against God; and that children of interracial couples would be sickly and weak because the genetics did not mix. So it would be bad for children and against God to allow interracial marriages.

• (1655)

The Chair: Thank you.

Mr. Brown.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you, Mr. Chairman.

I want to thank our witnesses for coming today. I know how important it is to them and their organizations to get this legislation through.

What do you think would be the result of this legislation's not passing?

Mr. Alex Munter: I think the consequences of the legislation's not passing would be that same-sex couples in the remaining five jurisdictions would be forced to go to court to seek to compel the provinces and the federal government to comply with the law. Really, it's a question of whether you believe Parliament should decide this issue or punt it to the courts and have the courts decide it. Based on the enormous body of law that has accumulated on this, I think it's quite clear how those challenges would conclude.

Mr. Gord Brown: Probably one of the biggest concerns about this legislation in my riding—and I've had an unbelievable amount of communication from my constituents on this, more than probably any other issue since I've been here in Parliament—is the religious side of it.

What might we expect? The Supreme Court, in the view of many people, has not protected religious organizations from challenges if

they refuse to perform same-sex marriages or if they refuse to allow their buildings to be used for events or actual performing of those marriages. So can we expect that there will be some court challenges to their right to say no to carrying on those events in their places of worship?

Mr. Alex Munter: I think you're right that there has been concern expressed. I think some of it was expressed because there has been a lack of information about what the state of the law is.

I think the question Monsieur Marceau asked earlier is instructive in this regard. There is no record in Canada of the state compelling any religious organization to perform a marriage ceremony contrary to its beliefs, whether it's a same-sex couple in those jurisdictions where now, for a couple of years, we have had legal same-sex marriage; whether it is the marriage of a divorced person in a Catholic church; whether it's the marriage of a Jew and a non-Jew in an orthodox *shul*, or any other example. There is no evidence of the courts or the state or anyone compelling clergy to perform marriages that they do not want to perform.

The only exception to that is the clergy in those religious groups—the United Church, the Unitarians, the Reform rabbis and others—who have wanted to perform marriages for same-sex couples and who have been prevented, until recently, from doing so.

• (1700)

Mr. Gord Brown: All right, I'll wind up with one last question. Why do you think the Supreme Court didn't rule on traditional marriage being unconstitutional? Why do you think they refused to rule on this question when it was put?

Mr. Alex Munter: Effectively, the Supreme Court did, because it reaffirmed the decisions of the lower courts. In doing so, what the Supreme Court did was what intervenors like *Egale* and others asked the it to do, to affirm that the law has already been changed, that in fact for nearly 90% of the population of Canada, in seven provinces and one territory as of today, those laws of the highest courts of those provinces stand. That's what the Supreme Court reference tells us.

Mr. Gord Brown: Yes, but it was thrown back to Parliament, and that's why we're dealing with it now.

Mr. Laurie Arron: One of the reasons the Supreme Court decided as it did is that it asked the Attorney General of Canada's lawyer if this was going to make any difference to whether or not Parliament legislates. The lawyer for the Attorney General of Canada said no, we are going to bring this legislation forward one way or another.

The couples argued that this amounts to an appeal. To ask the question whether or not the charter allows same-sex couples to be excluded from civil marriage invites the court to take a different position. So for the court to even question, to even reopen, those lower court decisions would amount to a backdoor appeal of those lower court decisions.

The Supreme Court said, you know what, we're not going to do that. It's not going to make a difference. The government's going to bring forward this legislation. Those were final and binding rulings, and they should stand; we're not going to disturb them.

But they are the law of the land, and we do need uniformity. That's what the Supreme Court said. So it said, Parliament, you said you were going to legislate; legislate.

The Chair: Mrs. Neville.

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

I've been struck recently by the number of both colleagues and other organizations that have chosen to conduct surveys or do polls of their constituents on this issue. What I'd like to know from you is, to the best of your knowledge, how widespread has this kind of polling been? Are you aware of other rights where the majority has been polled to determine the rights of the minority?

Mr. Alex Munter: On the latter part, no, but it's an intriguing idea.

On the question of the surveys, the issue there, it seems to me, is in fact what the question is. I teach political science at the University of Ottawa. My students will all tell you that how you ask the question will determine what answer you get; and frankly, many of the surveys that have been done have provided either misleading or incorrect information or have omitted key pieces of information. I think the key example of that is the whole issue of civil unions. I think if you are going to ask that question, you owe it to the people you are asking that question of to be honest. And to be honest means to say that it is the prerogative of Parliament to set aside court decisions, to say that the Charter of Rights does not apply to certain minorities, and to say that Parliament could exercise that prerogative in the notwithstanding clause and institute civil unions.

• (1705)

Ms. Anita Neville: Thank you.

[Translation]

The Chair: Mr. Marceau.

Mr. Richard Marceau: That is all for me, Mr. Chair.

The Chair: Mr. Boudria.

[English]

Hon. Don Boudria: I just want to get back to the issue of rights, and I start from the first question that was raised I think by Mr. Moore. In my own view of these things, how one voted prior to a court decision has very little to do with how a legislator should behave once the recognition of rights has been made by the courts.

Madame Neville raised something that's quite interesting. When the judicial committee of the Privy Council determined the persons case after the Canadian courts acted or behaved—I think most women would now say misbehaved—the way they did in the late 1920s, did we run that by a test of public opinion before we did it? Or did we not say a right's a right, and that's that, and then we moved on it regardless of what reluctance a person might have had prior to the decision being made?

I obviously voted in the way that Mr. Moore refers to, at the time. But that was a decision made before the courts told us, this is that kind of right, and if you're not going to do it, Parliament, we will. And they have done it in seven provinces and one territory. When you answer that, I find it odd that some people in Parliament will say, oh no, the courts are too activist; however, let's refuse to pass the law and let them do some more activism to make the laws that we refuse to change ourselves. Isn't there something wrong with all of this, or should we not look at the right being a right and, once it is determined, behave accordingly? This is from a grandfather who couldn't get much more old-fashioned, but who strongly believes in respecting rights.

Mr. Alex Munter: I think there are two elements to that, and the first is the question of whether or not government should follow the law. The Constitution of Canada, as you've pointed out, is the highest law of the land. The clear question before Parliament today is whether or not (a) it will respect the law, the Constitution, the highest law of the land—and Bill C-38 is the implementing device for doing that—or (b) remaining in respect of the law, it will invoke the notwithstanding clause and set aside court decisions. The Parliament of Canada has the right to do that. And those who advocate that as an honest policy option should advocate honestly.

On the second point, there is no small amount of irony to the fact that those who for years have said Parliament should decide this issue are the very ones whose actions will lead it right straight back into the courts.

The Chair: Thank you.

Mr. Siksay, do you have any comments?

Mr. Bill Siksay: I'm fine, thank you.

The Chair: Mr. Toews.

Mr. Vic Toews: Thank you.

In the reference case, the Supreme Court of Canada considered the provision that dealt with the solemnization of marriage and held that to be unconstitutional. In a desperate attempt to save that provision, the government lawyer said it wasn't a substantive provision; it didn't really enhance any rights at all and was simply declaratory. The Supreme Court then stated that whether it was declaratory or not, it was unconstitutional.

The other day we had the spectacle of the minister coming here and telling us again that essentially the same provision—and there is no substantive difference in law between what was in the Supreme Court and what is now being brought forward—was simply declaratory, which the Supreme Court of Canada has already said is unconstitutional. Then in response to a question from Mr. Boudria, he stated it would enhance religious protection. Just making that statement, if that kind of statement were then used in the constitutional record in the case and given any weight, means that provision would be unconstitutional.

The Attorney General of Canada says this in some way would enhance or try to enhance religious protection in a substantive way. That would be unconstitutional because it goes beyond simply the declaratory. So what we have here is a provision that the Supreme Court of Canada says—whether it's substantive or declaratory—is unconstitutional. The Attorney General came to us and first said it was declaratory. Then he said it would enhance protection. So whatever that means, it's unconstitutional by any reading of the Supreme Court decision.

It troubles me very greatly that the Attorney General of Canada would come here and try to tell Canadians that this provision would do something other than what everyone in fact knows it would do. The Supreme Court of Canada has clearly told us that even if it is declaratory, it is unconstitutional.

My concern is that when we change the law federally, given the shared jurisdiction between provinces and the federal Parliament in terms of marriage, there are repercussions that flow from the changing of that law. So even though things fall within provincial jurisdiction, if the federal law were changed, as Bill C-38 would definitely do, there would be provincial repercussions.

So we have the spectacle of marriage commissioners in Manitoba, Saskatchewan, and British Columbia being fired because they state that this offends their religious beliefs. In every other context, human rights commissions have consistently said that if public servants who are exercising public duties can be reasonably accommodated, they should be.

In Manitoba, for example, maybe 10 of the 600 have actively resigned because of this threat by the provincial government. In other provinces there are similar numbers. Other commissioners have come to me and said they are not going to resign; they refuse to resign.

What steps do you think the federal government can take to protect those individuals who simply want to exercise their faith in a manner that can be reasonably accommodated by Parliament?

• (1710)

Mr. Laurie Arron: You said this bill is going to have repercussions on the provinces, and I think that's true, because the federal definition of marriage attaches to rights and responsibilities that are both federal and provincial. That is something special about marriage that does not apply to civil unions. If the federal government created a civil union, that would not bind the provinces because there is no federal power to create any legal status other than marriage that will have impact on the provinces. That's a very important difference between marriage and civil union, one that I think is being glossed over here.

When it comes to the issue of protecting religious freedom in the provinces, I think we've seen in Ontario a good example of how that flows down. Ontario passed Bill 171; they amended their laws to recognize that same-sex couples can marry. They also put in place protection in their human rights code to say something nearer to what the Supreme Court said in terms of the charter protection, which is clear around marrying same-sex couples, renting sacred spaces, and doing anything else to assist in these marriages.

When it comes to the issue of marriage commissioners, as you said, in some provinces people have jumped the gun here rather than letting this be dealt with by the human rights tribunals to determine how exactly this should be resolved. Obviously our concern is access for same-sex couples. It's important that when same-sex couples go to apply for a marriage licence they not be told they have to come back tomorrow or go and drive a hundred miles or even be told to go to the other side of town. It's important that the access be the same, and it's up to each province to determine how it's going to provide that access and how it's going to accommodate its marriage commissioners. I think that will play itself out, and we'll see where it goes.

• (1715)

The Chair: Thank you.

Are there any other questions?

Go ahead, Mr. Toews.

Mr. Vic Toews: Thank you.

We'll continue, then. What you're saying is that marriage commissioners in these provinces should simply leave themselves to the mercy of these human rights commissions, who have appeared in front of us, and in front of the justice committee when we toured Canada, and told us they supported same-sex marriage and that such individuals should in fact be allowed to marry. So we're leaving the rights of these individuals in the hands of commissions who have already stated what their position is in respect of this particular issue.

Mr. Laurie Arron: No. They've stated their position in respect of allowing same-sex couples to marry and providing the access to same-sex couples; they haven't stated their position in terms of resolving what "reasonable accommodation" is. The two are completely compatible, and it's up to the provinces deal with that. As I said, in Ontario there have been no problems whatsoever.

If you look at B.C., you'll see the province told marriage commissioners they didn't have to perform marriages for same-sex couples; all they had to do was refer same-sex couples to somebody else, yet 20 quit in protest over merely having to refer those same-sex couples to another marriage commissioner. Certainly in B.C., it looks as though it was a political protest more than anything else.

So I think there's a lot of rhetoric here, there's a lot of emotion, and we need to let calmer heads prevail.

Mr. Alex Munter: I'll just add to that. When people show up at the counter to obtain marriage licences—as citizens and taxpayers, to avail themselves of a government service—the issue is that it be provided. By whom or how doesn't really matter from this side of the counter; it's up to the provincial government. Mr. Arron gave the example of how in Ontario the provincial government has dealt with that in how it manages its workforce to be able to deliver that service.

There is certainly a principle in human rights law in Canada around reasonable accommodation. There's no reason to believe that it will not be possible to ensure, on the one hand, that there's access to the service and, on the other hand, to ensure that the employer—the municipality, the province, or whoever—ensures access is provided by whatever mix of workforce that can accommodate that.

Mr. Vic Toews: Right. So what you're saying, then, is that you would have no objection to ensuring that reasonable accommodation occurs at the provincial legislation, certainly from your statements here today.

Mr. Alex Munter: Well, reasonable accommodation is already part of the practice by provincial human rights tribunals. To use a completely different example—the provision of abortion services—there are nurses who may not want to be involved in the provision of that service for reasons of conscience. That doesn't mean that we deny access to a medical service; it means we've managed that.

Mr. Vic Toews: As a principle then, Mr. Munter, you would support reasonable accommodation if the service could be provided by a government official. There's no reason to be firing government officials who for reasons of conscience refuse to perform that kind of marriage ceremony, is that correct?

Mr. Alex Munter: There are two issues. One is the jurisdiction of the Parliament of Canada, which does not extend to the question you're raising.

My second point was that it is up to the employer—provincial government, municipality, or whatever—to ensure that the service is provided.

Mr. Vic Toews: Yes, you've made that point, I agree. So as a general principle, you have no problem with reasonably accommodating those individuals who for reasons of conscience or religious beliefs cannot perform a same-sex marriage, provided that there is reasonable accommodation.

Is that correct?

• (1720)

Mr. Alex Munter: Well, yes, and Mr. Arron has provided good example from British Columbia of what reasonable accommodation is meant. The debate about the reasonableness of the reasonable accommodation is one that will have to be resolved by different employers.

Mr. Vic Toews: I understand that.

In respect, then, of the federal jurisdiction, there may be some impact that we cannot yet foresee. I can't set out every possibility. But if there are public servants in the federal sector who carry out similar kinds of responsibilities—obviously not in respect of solemnization of marriage, but other issues—as a general principle, you see nothing wrong with being able to reasonably accommodate those public officials, do you?

Mr. Alex Munter: Well, you'd have to help me out, because I'm trying to think of an example that would be relevant to Bill C-38.

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

Mr. Marceau.

[*Translation*]

Mr. Richard Marceau: I want to follow up on what Vic Toews said. If I were a marriage commissioner and my religion and my religious convictions did not permit me to marry a black person and a white person, would the principle of reasonable adaptation also apply?

Mr. Alex Munter: That is an interesting question. What does “reasonable” mean? That is the essence of the issue.

Mr. Richard Marceau: All right.

[*English*]

The Chair: Let me remind you that this meeting was scheduled from 3:30 to 5:30 p.m. If you want to continue questioning, I have no objection going to 5:30 p.m., but then it means that we will be discussing the subcommittee's report tomorrow afternoon at the 3:30 p.m. meeting.

Mr. Vic Toews: That's fine.

Mr. Richard Marceau: Do you have enough for five minutes?

Mr. Vic Toews: I have more than five minutes of motions.

The Chair: Excuse me, we will advise tomorrow afternoon's witnesses that we will start with your motion tomorrow. How long might you need for that motion, Mr. Toews. Do you have an idea?

Mr. Vic Toews: I can foresee it taking some time.

The Chair: Some time being five minutes or two hours?

Mr. Vic Toews: I'd say closer to two hours.

[*Translation*]

Mr. Réal Ménard: Two hours, Mr. Chair? Mr. Toews says it will take two hours to adopt the report?

The Chair: On his motion.

Yes, Mr. Marceau?

Mr. Richard Marceau: Mr. Chair, I know that Vic Toews is a very eloquent and voluble speaker. Nonetheless, would it be possible, once Mr. Toews has expressed his point of view, to move along quickly to the question? At some point, we will have to vote on the report. I would like to know what the rules of procedure say.

The Chair: The Standing Orders of the House say that a person introducing a motion has an unlimited time to speak.

Mr. Richard Marceau: All right.

If that is so, Mr. Chair, out of respect for the witnesses we have called to appear tomorrow, if Mr. Toews says he is going to use all two hours, I propose that we ask them to come back another time and that we give Mr. Toews his two hours, because it is his parliamentary right. I suggest this in order to avoid having people pacing around uselessly here for two hours.

I do not know what you think of this.

The Chair: All right.

Who is on the list?

The Clerk of the committee (Mr. Jean-François Pagé): People from Montreal: the Coalition québécoise pour le mariage civil des couples de même sexe—

Mr. Richard Marceau: There also was the Law Commission of Canada.

The Clerk: Yes, the Law Commission of Canada. And there was a third—

Mr. Richard Marceau: I have the list here.

[*English*]

Ms. Françoise Boivin: It's going to take more than two hours, maybe Tuesday and Wednesday, to be quite honest. So let's stop the bullshit right now, okay?

Mr. Vic Toews: What I could suggest is that I can bring forward a list of people who I think are absolutely essential, and then I think we can have that discussion.

Ms. Françoise Boivin: You're hijacking the committee.

Mr. Vic Toews: No, no.

Hon. Don Boudria: No, no. You won't pull the trigger when you're in the way—of course not. It's not hijacking.

• (1725)

Mr. Vic Toews: That's not hijacking. Those are my parliamentary rights, and I resent that someone would make that kind of comment about what I'm entitled to do and what my privileges are as a member of Parliament.

Ms. Françoise Boivin: Just put your list down.

Mr. Vic Toews: I sat very quietly during the hearings on Bill C-250, when an NDP member ate up every single hour allotted to the committee and we could say nothing else. For another member to suggest that it is hijacking the committee if I take two hours or four hours or six hours, when there are substantive issues that need to be determined, is highly improper.

The Chair: Mr. Toews—

Hon. Don Boudria: Mr. Chairman, on a point of order, there's a tremendous difference between this and a legislative committee. I see the Marleau and Montpetit manual beside our clerk. Mr. Toews knows perfectly well that under our rules.... We're talking about what degree of technical witnesses we want here. As far as I'm concerned, our rules provide for the technical witnesses, where we can hear about the technical amendments and so on. It's not the same

threshold. Any parallel between that and the work of a standing committee, may I suggest, is not the same, because we're not governed by the same rules. It's not the same, no matter what anyone says.

[*Translation*]

Mr. Réal Ménard: On a point of order, Mr. Chair. As for the story Mr. Toews was telling, when our colleague Svend Robinson made his interventions—I am thrilled that he could be an inspiration for the hon. member and I hope he will always be so—it was because he had introduced a motion. I was also a member of the committee. It was not about questions of routine, or adopting reports in committee. I think the distinction has to be made.

It is his privilege to speak and we will respect it, but with respect to historical fact, his contention was not entirely accurate.

[*English*]

The Chair: Mr. Toews, you're a man of good faith. Help me out here.

Obviously we will tell the witnesses for tomorrow afternoon that there's going to be a delay. Help me out. When may we be able to invite them back? We have two hours of meetings scheduled for tomorrow, two hours scheduled for Wednesday afternoon, and two hours scheduled for Wednesday evening. When could we ask them back, sir?

Mr. Vic Toews: I think, safely, Wednesday evening.

The Chair: Wednesday evening. So you're going to take tomorrow's meeting and Wednesday afternoon's meeting to discuss the subcommittee's report?

Mr. Vic Toews: Without being able to foretell the future, that's all I can say.

The Chair: Fine. Thank you, sir.

It being 5:30 p.m., the committee is adjourned. As you all know, we'll meet tomorrow afternoon at 3:30 p.m.

Merci, Monsieur Munter. Thank you, Mr. Arron. We appreciate your visit.

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