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**Chair**

**Mr. Marcel Proulx**

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•(1845)

[Translation]

**The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)):** Good evening.

[English]

Welcome to the legislative committee on Bill C-38.

Welcome. Thank you very much for being available and for coming to Ottawa to meet with us.

I'm sure you've been told of the way we normally proceed and in which we will be proceeding tonight. Witnesses have 10 minutes for an opening statement. Then there is the first round of questions and answers and comments, which is seven minutes for each party. Then we move on to rounds of five minutes for questions, comments, and answers.

We start at 6:45, so we will be done at 8:45, unless it breaks down or we stop, but I don't think so.

Let's start with Mrs. Cohen for the Coalition of Canadian Liberal Rabbis, for 10 minutes.

[Translation]

This evening, we will be welcoming three witnesses: the representative from the Coalition of Canadian Liberal Rabbis, and Ms. Young and Mr. Goertzen, who will testify as individuals.

[English]

**Ms. Joanne Cohen (Coordinator, Coalition of Canadian Liberal Rabbis):** Good evening, ladies and gentlemen.

My name is Joanne Cohen. I am a legal studies scholar and a published scholar in Jewish studies. I am here as coordinator of the Coalition of Canadian Liberal Rabbis for Same-Sex Marriage.

We were an early and influential intervenor in the same-sex marriage cases before the B.C. Court of Appeal and the Ontario Court of Appeal, and at the Supreme Court reference on same-sex marriage. As well, we were presenters at the justice committee hearings on same-sex marriage in 2003.

I am also co-author and organizer of the interfaith submission in support of same-sex marriage and religious freedoms, heard in February 2003 in Ottawa, with presentations by Rabbi Justin Lewis and Reverend Jackie Harper of the United Church. I've published in this area, and I'm lead author on two grants from an arm's-length granting agency of the Government of Canada, the court challenges program, which funded us in the amount of \$70,000 in support of

our interventions at the B.C. Court of Appeal and the Ontario Court of Appeal.

In the Jewish tradition, we have an expression, "We should meet on happier occasions".

**Some hon. members:** Oh, oh!

**Ms. Joanne Cohen:** I'd like to present that to you as well today. It's great to see you and to be on your show, but I wish this show were not necessary.

Briefly, to outline our submission in the Supreme Court factum, which you have a copy of, the Coalition of Canadian Liberal Rabbis for Same-Sex Marriage was formed in 2002 at my instigation. I'm not a rabbi, but a graduate of Hebrew school and a past board member of the Association for Canadian Jewish Studies. I'm published in Jewish studies, and I'm also Canada's first openly gay representative to the Canadian Jewish Congress.

Early on, when we saw the testimony in this case, we were very concerned by the thinly veiled hatred presented before the courts, as if to suggest that same-sex marriage in any way, shape, or form would interfere with religious freedoms in Canada.

We represent a coalition of over 25 rabbis across the country from liberal Jewish denominations who are now ready, willing, and able, and already performing, same-sex marriages. They regard the inclusion of gay and lesbian congregants and their families as a key aspect of their theology; this is reflected in their theological resolutions dating back to the early 1990s. As well, they fully support, as a matter of social action and social justice, akin to that of the prophets in the Bible, the full equality of gays and lesbians in Canadian society.

Accordingly, we submit the following: we believe that our right to freedom of conscience and religion, pursuant to paragraph 2(a) of the Charter of Rights and Freedoms, and our right to the equal protection and equal benefit of the law, pursuant to subsection 15(1) of the charter, are affected by the legislation before this committee. That is why we are here tonight.

We submit that we support the right of Jewish same-sex couples to celebrate religious same-sex marriage ceremonies, duly recognized in Canadian law. We support the right of interfaith and non-Jewish same-sex couples to obtain binding civil same-sex marriages that are portable and recognized across Canada and duly recognized in Canadian law. We support the right of rabbis and their congregations to celebrate a marriage between a same-sex couple, if they so choose, and we protect their autonomy in this regard. Various rabbis and various congregations have their own policies and procedures on this. We similarly support the right of other religious denominations and their clergy to make their own determinations and to have their autonomy respected. We support the right of interfaith and non-Jewish same-sex couples to obtain binding civil same-sex marriages in city halls, for example, across the country, duly recognized in Canadian law.

Right now, our rabbis in Toronto and Montreal, and in B.C. and other provinces, or in seven provinces and territories in Canada, can perform same-sex marriages, but we have rabbis and couples in Alberta whose families and interests are also affected by this legislation. If our couples married in Toronto and then moved to Alberta, their marriages and relationships would not be recognized. Accordingly, our religious freedoms, our equality rights, and our human dignity, as in *Law v. Canada*, continue to be negatively affected. It remains painful to us and members of the gay and lesbian community that we repeatedly have to come before the government to defend our very lives, which are being negatively affected by the stigma of homophobia, as thinly veiled in many of the presentations you've had from other witnesses.

• (1850)

Briefly, now I'd like to turn to two related cases. As a Jewish studies scholar, I'm happy to outline the history of homophobia and of religious homophobia to you in detail, including the history of the Holocaust, in which Jews and homosexuals, on the basis of popular plebiscites, suffered terrifically together because they were unpopular minorities at that time.

That is the same process that members of this committee are in fact imposing on our community right now, and we would beg you to stop. I refer right now to a related case, *Zylberberg v. Sudbury Board of Education*. It was a case where the Lord's Prayer was required to be recited in public schools. The court found that the state's imposition of the Lord's Prayer in public schools in a multicultural society was unconstitutional.

Similarly, in a very influential case from 1985, *R. v. Big M Drug Mart Ltd.*, the court found that a Jewish drugstore owner in Alberta was unfairly discriminated against when he was penalized for opening on Sunday because he did not celebrate the Christian Sabbath. Then-Justice Dickson defined religious freedom as follows. I'd like to read this as my final presentation to the committee at this time because I think it's germane to the committee's deliberations on this particular issue and on the protection of religious freedoms and the role of the state:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms.... Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person

chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal....

Freedom can...be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be...free.

By deferring to this testimony of the Catholic church and Christian denominations and other denominations opposed to same-sex marriage, by saying you are just following the orders of your constituents who are opposed to same-sex marriage, by threatening us with the tyranny of the majority and the vicissitudes of the ballot box, you are effectively acting in an anti-democratic way, in a way that is unconstitutional in Canada, and in a way that offends against, according to numerous courts of appeal and the Supreme Court of Canada and extensive jurisprudence in this issue, our very human rights, dignities, and freedoms.

In closing, ladies and gentlemen, thank you for your attention.

I look forward to your substantive questions on our brief.

• (1855)

**The Chair:** Thank you.

Mrs. Young.

**Professor Katherine Young (McGill University, As an Individual):** I would like to draw your attention to the fact that I have three different briefs. One is called "Gay Adults Versus Children: Rights in Conflict". I believe that was translated and everybody has it.

**Some hon. members:** No.

**Prof. Katherine Young:** Well, it was given a week ago, so I don't know what happened.

By tomorrow you will get my short brief, which is what I'm going to read tonight. It contains my proposed amendments to Bill C-38. I also have an article from *The Globe and Mail*, which is relevant to my discussion of academic freedom.

So to my amendments.

Preamble:

Whereas ethics requires scholars to monitor the impact of their research on the people affected;

Whereas redefining marriage to include same-sex couples is an unprecedented experiment, one that involves risks for children and others;

Whereas lobby groups, journalists, and even academics have intimidated researchers who come up with data that do not support redefinition and actively have tried to silence them;

Whereas there is no societal consensus on the redefinition of marriage to include same-sex couples; and

Whereas freedom of conscience and academic freedom are important Canadian values;

I propose the following amendments to Bill C-38.

1. The government will instruct Statistics Canada to collect data on how this new legislation affects children, both those with same-sex parents and those with opposite-sex ones, to find out if biological kinship, parents of both sexes, and marriage matter.

2. The government will strike a committee of social scientists, scholars in the humanities, and ethicists to establish appropriate questions and methods for collecting data on the effects of the redefinition of marriage. This committee will either not include scholars who already support either side, or include equal numbers of supporters of both sides.

3. The government will ensure free access to these data and provide research funds so that scholars can analyze them from multiple perspectives.

4. A parliamentary committee will review the research on these data every five years for the next 50 years to learn about any negative effects of redefinition on children, women, men, and society. If negative effects show up, the committee will recommend that Parliament reconsider the Civil Marriage Act.

5. The government will take steps to ensure the academic freedom of teachers and students to do research on this topic or debate the research of others without challenge from human rights commissions.

Those are my recommendations, and now my discussion.

As Dr. Paul Nathanson—he appeared before an earlier version of this committee—and I have written, in order to:

...satisfy legal and moral scrutiny, those who want to redefine marriage would need strong supporting evidence from either psychological or sociological studies that children are unlikely to be harmed. But they don't have it. Nor do they have supporting evidence from either historical or cross-cultural studies.

Redefining marriage to include same-sex couples amounts to a massive and historically unprecedented experiment on children and therefore on future generations. Modern western democracies have recognized that children are the most vulnerable group of all because they lack the maturity to give their informed consent.

With the new marriage legislation being proposed, we will need, one, longitudinal studies, that is, studies of several generations, and two, studies based on sound, impartial methods, that is, and including, comparing children born through reproductive technologies or reared by two married social parents of the same sex with children reared by their married biological parents.

● (1900)

In the meantime, we must continue to assess the evidence of the studies we do have. In fact, existing social science evidence clearly shows that children who do not live with both of their married biological parents are at a statistically significant disadvantage than those who do. The working assumption of researchers, until proven otherwise—which could happen—should be that by analogy the same risk would be present for the children of same-sex couples and single parents.

Because children cannot give informed consent to this or any other social experiment, we should at least take very seriously the testimonies of those children who have already been born through artificial insemination and those who have already been adopted

about their deep desire for enduring relationships with their biological parents.

Here is another problem. Canadian courts have dismissed the risks for children, let alone acknowledged that the rights of gay adults are in conflict with those of children. The analysis of risk found in the affidavits for Halpern, for instance, was dismissed by the judges as mere speculation or advocacy. I suggest this indicates serious negligence.

Every ethical analysis depends after all on risk assessment. "Risk is often among the most important of the ethically relevant facts, writes Margaret Somerville:

Even when we turn just to physical risks, there can be uncertainty, because the scientists cannot agree on the magnitude and prevalence of a given risk. This means that we cannot insist on certainty. What we can insist on [are] honesty, good faith (especially in the absence of conflict of interest) and non-negligence in risk assessment.... It matters as well, whether a risk is likely to be reversible should [the worst] occur. We have the most serious obligations not to engender irreversible harms when children are involved.

I would add that being born by design through artificial insemination, when no record of the donor is kept and there's therefore no chance to ever find the biological father, is potentially irreversibly harmful to the child so conceived.

Redefinition of marriage involves, moreover, a redefinition of adoption. If marriage gives the right to found a family, which will happen if the new legislation goes through, then adults will have the right to adopt. This makes adoption an adult-centred institution rather than what it has always been, a child-centred one.

What about the risks that burden native children who were taken from their homes and placed in residential schools by whites? In those days, the government simply assumed that their biological parents were of no importance. All that mattered was the noble goal, presumably based on common sense, of assimilating these children into white society.

Today we know better. In fact, we pay handsomely for what was done in the name of social engineering. How many times must we make these mistakes?

If the government insists on redefining marriage and giving privilege to the rights of adults over those of children, then I urge this committee to accept the amendments to Bill C-38 that I have outlined at the beginning of this presentation.

I'd like to now conclude with some personal comments. We need to be aware of personal motivations and ideological goals to understand the larger cultural and political context of this debate. With that in mind, I want to tell you about several experiences of my own.

At a meeting of Montreal's Lord Reading Law Society on May 4, 2005, I heard Martin Cauchon discuss his role in this debate over defining marriage. He pointed out that he wanted to be known as the Canadian Minister of Justice who redefined marriage to include same-sex couples and who legalized marijuana. Since the court cases on marriage occurred while he was in office, this suggests to me that he had already made up his mind in the Department of Justice before the debate ever got going.

This admission helped me to understand some other things that I have personally experienced. Although I had written about risks in my affidavit, these were dismissed as mere speculation by the judges. Again, in the appeal case, no one bothered to try to refute my arguments, although they used a lot of material from my affidavit. This lack of engagement with evidence suggests that the judges had no interest in it. Why? Probably because they were interested only in what some academics now call engaged scholarship. Know your goal, they believe, and select the evidence you need to attain it. If so—and if redefining marriage was politically expedient—then why bother to even go through the motions of defending the historic definition? This would explain the fact that the court cases were not appealed to the Supreme Court of Canada.

● (1905)

In my 30 years as an academic I have never been subjected to the abuse I have experienced in connection with my stand on this topic. This began at McGill, when the news that Dr. Margaret Somerville and I were going to appear as expert witnesses for Halpern and the paragraphs that summarized our positions were made public. Several of our colleagues at McGill launched a full-scale e-mail and postcard campaign against us, often with messages that called us homophobic. They demanded that the university revoke our tenure. They instigated demonstrations outside our classrooms.

Unpleasant though these things were, I realize that public debate is perfectly acceptable in any university in a healthy democracy, but not if it ends up by silencing opposition for expert witnesses. Although authorities at both Justice Canada and McGill feared violence and considered offering us protection, this proved unnecessary.

More disturbing in the long run was a recent encounter that Nathanson and I had with Anne Goldwater. This too occurred last month at the Lord Reading Law Society. We were subjected to a screaming torrent of abuse, including four-letter words from a member of the Quebec bar. When lawyers act in this way I worry not only about decorum, not only about being silenced through intimidation, but also about receiving SLAPP suits.

Thank you.

**The Chair:** Mr. Goertzen is next, please, for 10 minutes.

**Mr. Bruce Goertzen (As an Individual):** Thank you very much. I'm going to stick with my speaker's notes, which I electronically sent to you yesterday, so they will obviously be translated in the near future.

My name is Bruce Goertzen, and I'm a marriage commissioner in and for the Province of Saskatchewan. I have been a marriage commissioner since 1984, when I was asked to take on this duty by the person in charge of the marriage section under Saskatchewan Justice. Since that time I've officiated at 288 weddings, with more planned for the summer.

Besides holding the position I've just named, I'm one of the many Canadians who truly means and believes the words of Canada's national anthem. In the anthem it states clearly that we ask God to keep our land. If we can be so bold as to ask God to keep our land, should we not pay him the respect of following his teachings on such things as marriage? The Canadian Charter of Rights and Freedoms

states, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law". Again I must ask, should we not keep God's laws and teachings?

My religious convictions, as a person who has accepted Jesus Christ as my personal lord, master, and saviour, call me to follow the teachings of God's word. I believe God's word is clear in Genesis chapter 2, verse 24: "For this cause a man shall leave his father and his mother, and shall cleave to his wife; and they shall become one flesh." Thus my personal religious beliefs come in conflict with Bill C-38 and the Saskatchewan justice department.

As a marriage commissioner who has strong religious views, which are the same views that were well known before my appointment as marriage commissioner in 1984, I have been forced to appeal to you and the Saskatchewan Human Rights Commission for the protection of my rights.

As a marriage commissioner, I've heard the federal justice minister, Mr. Irwin Cotler, proposing that there should be a way in which the religious liberties of a marriage commissioner such as myself could be protected, while ensuring same-sex couples are able to have their union solemnized. As the federal justice minister suggests, there are ways of protecting the marriage commissioner, but marriage solemnization is a provincial matter, not a federal matter. Until the federal and provincial ministers of justice have agreed to a solution to protect everyone's rights, this legislation should not be passed.

In Saskatchewan, I believe the Minister of Justice, Mr. Frank Quennell, is in violation of both the spirit and the letter of the Saskatchewan Human Rights Code and the Charter of Rights and Freedoms when he refuses to make any provisions for the freedom of religion for myself and other marriage commissioners.

I've applied to the Saskatchewan Human Rights Commission for some protection of my religious freedoms. My submission to the Human Rights Commission went in on January 18, 2005, after receiving a letter dated November 1, 2004, from Mr. Lionel McNabb, the director of the marriage unit, stating, "...you will be required to perform same-sex marriages in Saskatchewan".

At present, I've applied to have my complaint go to mediation with the Saskatchewan Human Rights Commission, but I have not been informed what the Saskatchewan government's position is about going to mediation.

The letter from Mr. McNabb calls a marriage commissioner "a government official". The provincial justice minister, on the other hand, suggests that the government may not be required to accommodate marriage commissioners, in that they are statutory officers rather than employees.

It is very unfortunate that a precise definition for the term "statutory officer" is unclear, because these individuals occupy an office that is created by statute, in which the functions of the office are set out in greater or lesser detail. It is noteworthy that most federal and provincial statutes, including Saskatchewan's statutes, do not use the term "statutory officer" at all.

●(1910)

According to officers at the marriage unit of Saskatchewan Justice, marriage commissioners are not employees of the government. They are appointed by the minister, pursuant to the "Civil Marriage" heading of the Marriage Act, to perform one statutory function, that is, to conduct civil marriages. They are not salaried public servants, but are paid a flat fee when they do marry a couple, by the parties of the marriage, not by the government.

It's noteworthy that the government sets the fee. The government sets the time of the marriages and sets the wording of the ceremony. Marriage commissioners are not covered by any public service legislation and do not belong to a bargaining unit and therefore are not covered by a collective agreement. It may also be worth noting that the Marriage Act appears to allow the removal of the office of marriage commissioner without stipulation, criteria, or cause.

The officials of the Saskatchewan Human Rights Commission have suggested that at present there is no clear answer on the question of whether or not and to what degree the human rights protection of the Saskatchewan Human Rights Code may be available for marriage commissioners wishing to lodge a complaint of discrimination in employment based on religion or creed.

After much discussion, it appears that a group of people may be given some right or privilege at the expense of the other. Since the Saskatchewan Human Rights Commission and the Canadian Charter of Rights and Freedoms may not protect marriage commissioners in Saskatchewan, or in any other province, I appeal to you on their behalf to alter the legislation, or even stop it, until the rights of all Canadians can be upheld. What victory would there be for anyone if you simply took a right from one and gave it to another?

In conclusion, marriage commissioners who have strong religious views are not against any group of individuals. We are simply asking you to allow us to say that we are unavailable to do a wedding with the knowledge that we will not be subject to any action taken by the Human Rights Commission or the courts or lose a source of income if the appointment is withdrawn because we stood for our religious beliefs. Please consider the following points when you make your submission on this piece of legislation.

First, do not change the definition of marriage that was voted on and passed 216 to 55 in the House of Commons about five years ago. The vote clearly stated that marriage was a union of one man and one woman. Any change of this definition will force marriage commissioners such as me to go against our personal religious convictions if we wish to continue performing a service for the residents of our communities.

Second, do not pass the legislation, because as it is proposed, it does not protect all Canadian freedoms. Even the Prime Minister, on Tuesday, according to *The Star Phoenix*, said "Yes, we'll protect Justices of the Peace". But in Saskatchewan, Justices of the Peace cannot marry people. What about the marriage commissioners? Do not pass a law and then expect the courts to sort out the grey areas. Marriage commissioners can't afford it.

Third, give very clear protection to marriage commissioners, now and in the future, who object to performing same-sex unions, just as the Canadian Charter of Rights intended.

Thank you for hearing my submission.

●(1915)

**The Chair:** Thank you.

Okay, in the first round we start with the Conservative Party.

Mr. Moore, please, you have seven minutes.

**Mr. Rob Moore (Fundy Royal, CPC):** Thank you to all of the witnesses.

We appreciate your submissions. I think it's particularly helpful to hear from marriage commissioners, because you are individuals who, because of your religious conviction or because of your strongly held beliefs, are being impacted by these decisions. It puts a human face on it when we say there could be an impact on other people's rights by changing the definition. And we heard today that you may just be the first. There could be a whole string of Canadians who are perhaps not fit to be involved in public life because of their religious beliefs.

My first question is for Professor Young. Could you comment a bit on the international context? We're told that no high court of any country, including in our own Supreme Court of Canada, or any international court, has found that it's necessary to change the definition of marriage to accommodate human rights. Perhaps you can comment on the international experience in other cultures, other countries, if you know how they've treated this.

**Prof. Katherine Young:** There are two contexts here, obviously. One is the context historically where marriage across cultures always, as a norm, had a man and a wife. I've done cross-cultural research on a large-sample scale and there are about nine universal characteristics. There are several nearly universal characteristics and then there are variable characteristics, so this new law is historically unprecedented, except in recent few years in a few western countries.

Having said that, I think it's very important for Canada to remember the UN position on this. The UN is against same-sex marriage. The UN Convention on the Rights of the Child, article 7, states the child has a right to know and be cared for by his or her parents, and that was written at a time when we knew that parents implied a male and a female parent.

The International Covenant on Civil and Political Rights, article 23, part 2, recognizes the right of men and women of marriageable age to marry and to found a family. All other references in that document are to everyone. This one goes back to the language of a man and a woman.

The UN same-sex marriage position was challenged in New Zealand. There was a case, *Quilter v. Attorney General*, and I'm sure many of you know it, in 1998. It then went to the UN in *Joslin v. New Zealand*. There was a decision of the UN Human Rights committee, July 2002, and it upheld the UN position that marriage is between a man and a woman.

Canada had signed these UN treaties, so we are against the UN on this issue. Now, we may go with moral superiority and argue that the rest of the world will come on line.

I am a professor of Hinduism. That's my specialization, and comparative religion and comparative ethics. I know Asian cultures very well, having worked and studied there: India, Indonesia, Japan, and so forth. These are strong family traditions, and when you take these strong family traditions and you deny them their definitions of marriage with those universal characteristics, then you create fundamentalisms, because the centre is lost. These are very religious populations, and they move to the right. So this is the sort of thing that happens.

We're against the UN...and as this debate enters the UN, Canada has been lobbying to try to get sexual orientation and same-sex marriage into UN documents, but it's now mobilizing on the other side, and internally with those countries, I predict a growth of fundamentalism as a result.

•(1920)

**Mr. Rob Moore:** Thanks, Professor Young. I have a couple of other questions if I have time.

What I'm hearing from you is that in the international context this has not been declared a human right that would require changing the definition of marriage, and we know there have been other proposals put forward to address any equality concerns when it comes to rights, benefits, and obligations associated with same-sex couples. But I'm also hearing from Mr. Goertzen that you feel your rights as an employee, your rights as a marriage commissioner, have been taken away.

I'd like you to comment a bit on it. I've heard about your experience. Are there others in your province? We heard from someone from Newfoundland and someone from Ontario, marriage commissioners who had a similar story to yours, but I'm wondering about your colleagues, how they're approaching this, how they're dealing with it, and whether they feel they're being marginalized or pushed to the side because of a belief in the definition of marriage that a few years ago would have been taken at face value. No one would have ever questioned it when you became a marriage commissioner. Could you comment on that?

**Mr. Bruce Goertzen:** Yes, I can.

At present in Saskatchewan, two people, one being myself, have gone to the Human Rights Commission. Three of us appeared on national television indicating we were against same-sex marriage. Eight other marriage commissioners have resigned. I am sure there are many more sitting in the woods waiting for the Human Rights Commission to make their decision, and following that, whatever the decision is, there may be many more who will be resigning.

**Mr. Rob Moore:** Okay.

For those who stay, is there a sense, do you think, from talking to them, that even if they continue on, this is something they feel is a violation of their rights?

Also, do you feel there's room here? You've rightly stated that the Supreme Court was very clear that to protect marriage commissioners requires an act of the province; it's outside the jurisdiction of the federal government to do that. Do you feel it would be reasonable for the federal government to negotiate with the provinces before implementing this act, so that they have those safeguards in place for reasonable accommodation to accommodate people of faith or people whose beliefs this goes against?

•(1925)

**Mr. Bruce Goertzen:** I would actually think it would be a very wise thing for the Minister of Justice to talk to the other ministers of justice. I think we have a kind of unusual situation happening. The human rights department has a very specific, narrow part that says if you get discriminated against because of religion, they will come to your defence and stand up for you. Now, what difference is there between my being discriminated against because of the fact that I do not believe in same-sex marriage and someone else who may have a different religious belief and come to them?

What we have, I sense, in Saskatchewan is that many of the members, like me, when I get a phone call.... If you phone today and ask me to do your marriage ceremony, I'll first ask you to tell me the name of the bride, the name of the groom, and all that. If I can ascertain that you're a male and a female, then I go on to look in my journal and see if I'm available.

If I am approached by, let's say, two females, which I was just a few days ago...the lady asked simply, "Do you do same-sex marriages?" I had to say, "No, I don't." But when I did that, I referred her to another marriage commissioner who is well prepared to do that.

The Saskatchewan government, under the human rights department, is forced to make accommodations for people of religious belief. I ask only that they make accommodation for me.

**Mr. Rob Moore:** Thank you.

[Translation]

**The Chair:** We will now continue with the Bloc Québécois and M. Ménard.

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

My question is for M. Goertzen. I do not clearly understand what your status is. You are not a member of the clergy, you are not a public service employee and you speak as though you were not a government official. Legally, what is your status in the eyes of the Saskatchewan government?



[English]

**Mr. Bruce Goertzen:** My status is a marriage commissioner. According to the Government of Saskatchewan, I am not an employee; I'm a statutory officer.

Personally, my personal religious beliefs in our church—

[Translation]

**Mr. Réal Ménard:** That is not what I'm talking about. If you will allow me, we will come back to your convictions. We need facts. It is not possible for you to be neither a member of the clergy, nor a salaried public servant, nor a government official. You must be one of these three if you have the right to officiate at weddings. Your personal opinion—excuse me—is of no importance if you are a government official, and I understand that is what you are. You administer a Saskatchewan law. Are you a government official, yes or no?

[English]

**Mr. Bruce Goertzen:** Okay. I would take the definition that yes, I'm a public officer. Because I am a public officer, there are some protections of my personal beliefs.

[Translation]

**Mr. Réal Ménard:** All right, we will discuss this matter. However, we must put things in their proper perspective. With all due respect, you are changing the subject.

This bill was introduced by legislators who have all been elected. Being elected must mean something in your system of values. This bill protects members of the clergy, who will never be required to officiate at same sex ceremonies in violation of their beliefs or their religion. No member around this table would feel comfortable if these provisions did not exist.

But you are turning the argument on its head. We are speaking of civil marriage, you say you are a government official, you administer a Saskatchewan law and you want the same protection as a member of the clergy. I regret, but there is something illogical there. When the conservatives gave the names of the witnesses, I had the impression that members of the clergy had been required to officiate at same sex ceremonies in violation of their beliefs. That would have made me feel most uncomfortable.

You are not a member of the clergy, you are a government official. Your personal opinions are of no importance for the duties for which you have been selected. You have complete freedom of speech and religion. When one is a government official, like all government officials under any circumstances, one must administer the law for which one is responsible. I did not understand the arguments justifying an exemption in your case. You can think what you want, say what you want, but if you are a government official, have the honesty to present yourself as such before us.

It makes quite a difference, Mr. Chairman, if we don't make this distinction. Do we agree on this? As regards intellectual honesty, there was a small departure in your speech.

• (1930)

[English]

**Mr. Bruce Goertzen:** I would think, sir, that I was honest. I introduced myself as Bruce Goertzen, a marriage commissioner, in

and for the Province of Saskatchewan. In my mind, that is very honest.

Can I speak about personal beliefs, because you've referred to that?

**Mr. Réal Ménard:** No, I don't want to ask a question about what you think about that.

**Mr. Bruce Goertzen:** I'm not asking what I believe, sir; I'm asking what you believe.

For example, do you believe in capital punishment, sir? What I'm trying to get at, sir—

[Translation]

**Mr. Réal Ménard:** Let me ask Ms. Cohen a question and then I will come back to you. We can discuss what I think about capital punishment afterwards. I understand your status better and I thank you for clarifying it for me.

Ms. Cohen, you have carried out a great deal of research. We are not living in a legal system like Germany or some other countries. International conventions do not affect our internal law, except under treaties that are subject to ratification. According to your knowledge of texts produced by the United Nations, contrary to what certain academics say, have you ever seen in the International Convention on the Rights of the Child a reference other than to the family? If we asked our research officer to produce a copy of this Convention to which Canada is a signatory, would we find the words "homosexual" or "heterosexual" there? Is it your conviction that we should limit ourselves to the word "family" with no further definition? It is absolutely absurd, ludicrous to think that Canada is not meeting its international obligations because it wants to redefine the family. Do you have any information on this matter?

[English]

**Ms. Joanne Cohen:** Yes, and thank you for your question. I am not an expert in the UN's policies and procedures, but as a former legal studies researcher at the Addiction Research Foundation of Ontario, I'm certainly familiar with Canada's role as a signatory to UN conventions on the rights of the child, on international drug policy and so forth, and on social policy as well.

In my reading...and I think this would be subject to reinterpretation at the UN, given that there is increasing development of laws permitting same-sex marriage in process in the Netherlands, in Belgium, in Spain, in the U.K.—in the EU. Israel has a legal challenge under way. So the language referred to by the professor that a child has the right to know his or her parents or declarations on the rights of children or families.... We do have adoption, for example, in Canada, and we do have in vitro fertilization or other forms of families in Canada, and we do have limits within Canada. The UN regulations as well respect the relative autonomy of countries and cultural differences, as referred by the professor.

I would also correct her suggestion that only in modern times have we heard the discussion of same-sex families, because in fact native culture, which is part and parcel of Canadian culture, has long honoured two-spirited peoples and their families. We have Roman law, which is the basis of western jurisprudence, which also makes reference to this.

So I would suggest that Canada's rights under the UN are not abrogated.

[*Translation*]

**Mr. Réal Ménard:** All right. Ms. Young, I will ask you a quick question.

I know about your systematic mind, which has made your reputation at McGill and at other places. I ask you to read to us the provisions of the international convention. I am not asking you to give us your interpretation or the results of your work. I know you are a well-known academic.

For the sake of thoroughness, I would like you to bring to the committee's attention the precise provisions of the international Convention on the Rights of the Child, to which Canada is a signatory party, which contain the terms homosexuals or heterosexuals. To improve our knowledge of the law, please just read to us the words of the Convention, without your interpretation. You must have it before you, because you quoted from it. You tell the committee that Canada is about to contravene the International Convention on the Rights of the Child because it is preparing to recognize homosexual marriages. You can be against the homosexual marriages: you have that freedom as an academic. Read to me exactly, in a literal and non-interpretative manner, what it is in the Convention that permits you to make that claim.

• (1935)

[*English*]

**Prof. Katherine Young:** I read the convention precisely to you, so I don't know why I should do that again, okay?

[*Translation*]

**Mr. Réal Ménard:** Because I am asking you.

[*English*]

**Prof. Katherine Young:** It's because you are asking. Okay, we can take time. I don't know why we'd do it twice.

The UN Convention on the Rights of the Child, article 7: the child has "the right to know and be cared for by his or her parents".

The International Covenant on Civil and Political Rights, article 23: "The right of men and women of marriageable age to marry and to found a family" should "be recognized".

[*Translation*]

**Mr. Réal Ménard:** I will end with this, Mr. Chairman.

Do you agree that, strictly logically speaking, there is a gulf between the interpretation that the witness is giving, with all the respect I owe her, and the literal understanding that we can have of it?

I thank the witness for reading it. I accept her extrapolations as being a personal opinion, but you will understand that, legally speaking, it has no rigour.

[*English*]

**The Chair:** Mrs. Young, briefly.

**Prof. Katherine Young:** I hate to reply to this because that interpretation was tested in New Zealand and went up through the

different levels of the UN and was upheld. This is not my own personal interpretation whatsoever.

Thank you.

[*Translation*]

**The Chair:** Thank you, Mr. Ménard.

[*English*]

We now move to the NDP. Mr. Siksay, please, for seven minutes.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Mr. Chair, and thank you to all the witnesses for your testimony tonight.

Ms. Cohen, I wonder if you could just comment on whether you and the rabbis you represent have confidence in paragraph 2(a) of the charter and subsection 15(1) of the charter. Do you see those provisions as effective? Do you have concerns about those particular sections of the charter?

**Ms. Joanne Cohen:** We do hope the charter will continue to be upheld by our parliamentary representatives, given that it is the foundational law of our country. We do have a great deal of faith, as does the justice minister, in the current provisions within paragraph 2 (a). This was reflected in our submissions to the Supreme Court. We believe the protections of religious freedom under the charter are sufficient to protect those religious groups or clergy opposed to same-sex marriage.

I would submit to you, sir, that the claims of religious groups opposed to same-sex marriage are red herrings and alarmist arguments. We have heard at the Supreme Court extensive submissions from Canadian and provincial human rights commissions that have stated very explicitly that were a gay couple to try to sue a church that didn't want to marry them or host their wedding, there would be no basis to do so under provincial human rights codes, which also protect freedom of religion and which prohibit discrimination on the basis of religion.

These claims that our marriages somehow take away from their own or that this is a thinly veiled attack on religious freedom in Canada, it is our submission, sir, are absolutely false. It was the opinion of the B.C. Court of Appeal, the Ontario Court of Appeal, the justice committee, after hearings in 2003, and the Supreme Court that these claims are speculative and absolutely lacking in intellectual merit. I would suggest to you as well that these committee processes and these court processes viewed reams and reams of sociological and psychological evidence, including from sociologists of the family who'd already done empirical studies on same-sex parents and their children, showing no harms to children and showing no harms to society.

It is the submission of our rabbis that we have great confidence in section 15 and section 2 of the charter and that therefore there needs to be no more debate and tinkering with this particular legislation before the committee in order to adequately protect the religious freedoms of groups opposed. They are already well protected by the charter, and they are already well protected by provincial human rights codes.

I would also submit to you that it is the regulation of various provinces with respect to marriage commissioners and justices of the peace, as with doctors who don't do abortions...that all they ask is that they be free, if they don't want to do abortions...and if marriage commissioners don't want to do same-sex marriages, to refer couples seeking such services to another practitioner who will do so. As long as there is a referral available, then no one is disadvantaged. The marriage commissioner or the doctor is free to refrain from practices abhorrent to their religious beliefs, and same-sex couples or people seeking abortions or anything else will have the public services available to them.

It's very simple. There really doesn't need to be that much debate on the issue.

Thank you.

•(1940)

**Mr. Bill Siksay:** I was glad to hear Mr. Goertzen say it was his current practice to do that kind of referral in those circumstances.

Have any of the rabbis you represent been forced, by an action of the court, to provide religious services they might have denied someone?

**Ms. Joanne Cohen:** Absolutely not. As outlined in our submissions, there are resolutions of the Central Conference of American Rabbis, which represents about one and a half million Jews in North America, that explicitly state rabbis and their congregations are free to have their own deliberations on these issues. They are free from any kind of compulsion or professional reprisal if they decide they don't want to do gay marriages; that's fine. Rabbis, like clergy in other denominations, have a certain amount of autonomy in what their faith and the expression of their faith may be.

It's the same with the United Church and it's the same with Unitarian congregations. Some congregations have come to an understanding and say "Yes, we do perform gay marriages here; this is our policy; our pastor or our rabbi does this". Others do not.

So absolutely, there would be no basis whatsoever. As a member of the Jewish community familiar with the diversity on this issue, which we have outlined in our submissions, I can tell you as well that religious freedoms given Orthodox rabbis or Conservative rabbis...where they do have women rabbis, for example, in the Conservative movements, but they don't yet do gay marriages. Orthodox rabbis don't have women rabbis and they don't do gay marriages. There's no basis to compel them whatsoever. Were a couple to try to do so, they would not succeed.

In fact, this was the submission as well of counsel for the Association for Marriage and the Family and counsel for the Interfaith Coalition on Marriage and Family, who are opposed to same-sex marriage. In their own meeting with defendMarriage in December 2003 in Toronto at Canada Christian College, they said—because they're lawyers and they need to know the law—if Christian evangelical congregations opposed to gay marriage have defined policies in place, defined theological statements, no one can ever sue them to force them. They can simply refer to that policy or that statement, if they're of good faith, and be protected by that.

We believe in a literalist and fundamentalist interpretation of the Bible that Jews abandoned 2,000 years ago? Fine. We don't believe in gay marriage? Fine. No one is going to force them in any way, shape, or form to do so.

**Mr. Bill Siksay:** We've heard here tonight and other times that the way things are going in Canadian law, equality always trumps religious freedom. Is that your experience of the case law in terms of equality cases or religious freedom cases?

**Ms. Joanne Cohen:** No, actually. We are a very small minority in Canadian society. Jews as a whole in Canada are about 1.5% of the Canadian population, so we're very familiar with the tyranny of the majority. We are a minority population that has been historically disadvantaged. We continue to suffer from hate crimes and anti-Semitism in bombings of Hebrew schools in Montreal, for example.

Nevertheless, we've taken a leading role in advocating for justice in this case. We are very much familiar with the shared suffering through history of Jews, homosexuals, people of colour, and other disadvantaged minorities. It is certainly the theology within liberal Judaism to ameliorate these, as it is the view of the Supreme Court in cases such as *Gosselin v. Quebec*, to explicitly recognize the value of ameliorative remedies for historically disadvantaged groups.

So there is a possibility within this law and within other laws of rectifying old wrongs—in this case 3,200 years of suffering—and of balancing. This would make religious groups equal in their freedom to choose yes or no on same-sex marriage as well as reaffirm the equality of gay and lesbian Canadians.

Thank you.

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

**The Chair:** Thank you.

We will now move to the Liberal side.

Maître Boivin.

[*Translation*]

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

My first question is to you, Mr. Goertzen, because I want to be clear and because one of the arguments against the adoption of this Bill C-38 that have come up most often relates to the risks to people who occupy positions like yours, that is, marriage commissioners.

I want to be quite sure. Did you go before the Saskatchewan Human Rights Tribunal?

•(1945)

[*English*]

**Mr. Bruce Goertzen:** Yes, I have. As I mentioned in my brief, I have, but at this moment—

**Ms. Françoise Boivin:** Sorry, I don't have your brief.

**Mr. Bruce Goertzen:** I'm sorry, it's in limbo. I have said that I'd go for mediation. The Saskatchewan government has not replied to Saskatchewan human rights—

**Ms. Françoise Boivin:** I want to understand a bit more your recourse.

[Translation]

Am I to understand that Saskatchewan has required you to officiate at same sex ceremonies? How did that happen? What did the letter you received say exactly?

[English]

**Mr. Bruce Goertzen:** Actually, the letter came November 1. In November, the courts in Saskatchewan were deciding if they would okay same-sex marriages. The court action wasn't finalized until about November 15.

**Ms. Françoise Boivin:** Just tell me what it says in the letter.

**Mr. Bruce Goertzen:** The letter says, and I quote, "...you will be required to perform same-sex marriages in Saskatchewan".

**Ms. Françoise Boivin:** Did it say you would be fired if you refused?

**Mr. Bruce Goertzen:** I did not personally write the Minister of Justice, but the other marriage commissioner who has appealed to human rights had a lawyer write the Minister of Justice. The Minister of Justice said, they are statutory employees and they will do what they're asked to do or they will have their assignment removed from them.

**Ms. Françoise Boivin:** You said there was a couple who approached you and asked if you were performing those marriages.

**Mr. Bruce Goertzen:** On January 18, the day I sent my thing out to the human rights department, I was approached by a lady who wanted to have a same-sex marriage. In that case, I was going to be in Saskatoon at the university hospital at the same time she wanted the marriage. So I couldn't do it. I referred her to another person.

Just a few days ago, I was approached by another person. I tried to refer her to a marriage commissioner who I knew had no problems with same-sex marriages, but that marriage commissioner in Prince Albert is off, not doing any marriages in June, because of family health problems with her dad. I had to say to her, "I do not do same-sex marriages".

**Ms. Françoise Boivin:** What was the reaction? Were you sued?

**Mr. Bruce Goertzen:** Not so far.

**Ms. Françoise Boivin:** Not yet?

**Mr. Bruce Goertzen:** No, but it will happen sooner or later. That's why I went to the human rights firm. I don't want to be sued. I would like the chance to say I'm not available.

**Ms. Françoise Boivin:** Right now, it's my legal mind talking. You have not been fired. It's a recourse you took to make sure you have the right to say no. Am I correct?

**Mr. Bruce Goertzen:** That's correct.

**Ms. Françoise Boivin:** Okay. Thank you.

[Translation]

Ms. Young, I have tried to understand your request for a study of the effect of this bill on children. I am trying to be as open-minded as possible. Are you asking us to suspend its adoption for 50 years? I want to make sure I have correctly understood your statements and that it is not fatigue that is making me delirious. Are you asking us to wait 50 years before adopting this law so that studies can be carried out?

**Prof. Katherine Young:** No.

**Ms. Françoise Boivin:** That is not what you said? I apologize.

[English]

**Prof. Katherine Young:** No, that's not what I said. I said that if the bill is passed, then we should have studies every five years to check what is happening.

• (1950)

**Ms. Françoise Boivin:** So there's a possibility to adopt the law, and after the law is passed, you may make—

**Prof. Katherine Young:** That's right. You study it. We need the statistics. We need good, sound methodology. We need academics and money to do those studies. We do it to make sure nothing serious is happening to children. I ask for 50 years.

**Ms. Françoise Boivin:** Were there any made after divorce, and adoption, to verify all the effects on society?

**Prof. Katherine Young:** Yes. In fact, the divorce literature is very interesting on this. In the first few years after the liberalization of divorce laws, they didn't see much effect on children. But 15, 20 years later, the psychologists now concede that there was a massive effect. This is well-known in the divorce literature.

The argument here is that you have to take several generations. When I heard earlier today that nothing had happened in two years, I was not surprised. It's probably not going to happen in two years. You really have to systematically study it.

Based on my empirical research, I don't like this bill and I'm not for it. But if we're going to go this route, then we have a moral responsibility, because as a government you have to protect the most vulnerable group.

**Ms. Françoise Boivin:** How do you respond, Madame Young, to the people who say

[*Translation*]

is it already the law? It is already the law in seven provinces and territories. It's being done regularly as we speak. The effects already exist. The federal government has an obligation to comply with the law and in Canada, that means the Charter of Rights and Freedoms. It's the law of the land. So how do we justify not falling into step?

[*English*]

**Prof. Katherine Young:** First of all, the charter has both subsection 15(1) and section 1, and section 1 can be used if there are pressing and substantive reasons that you have to protect another group. You can have conflicts between groups and you can use section 1.

**Ms. Françoise Boivin:** The Supreme Court of Canada said no, you can't, that it wouldn't be justified—

**Prof. Katherine Young:** That was not the Supreme Court of Canada. These cases have never gone to the Supreme Court. Okay? It was the appeal court.

**Ms. Françoise Boivin:** I won't argue with you on that.

**Prof. Katherine Young:** Well, it didn't go to the Supreme Court. I think we all know that.

[*Translation*]

**Ms. Françoise Boivin:** December's referral went directly to the Supreme Court, as far as I know.

[*English*]

**Prof. Katherine Young:** It went to the Ontario Supreme Court, I believe; it didn't go to the Supreme Court of Canada.

**Ms. Françoise Boivin:** Okay.

**Prof. Katherine Young:** So we have this context of the importance of trying to protect children, and we need to do academic studies to do that. Now, if something is going wrong with a new marriage regime, then societies may have to change it. If we change the marriage law now, we're changing it, and maybe down the line if something is going wrong, we may need to change it.

I bring this up before this committee, and even if it doesn't make an impact here, it's part of the record now of the Government of Canada that we have to do these kinds of studies, because on contentious issues in Canada, I know the statistics are often not collected by StatsCan. That's a political decision.

If we don't do these studies, are we doing right by children, the most vulnerable group in society? And if we renege on that and don't take that ethical responsibility, which is part of practical ethics.... You have to do risk assessment and to follow up the group that's being affected, and therefore I would argue that we have a mandatory moral responsibility to have amendments in here that take my recommendations seriously.

**Ms. Françoise Boivin:** Thank you.

[*Translation*]

**The Chair:** Is that all right?

**Ms. Françoise Boivin:** Yes.

[*English*]

**The Chair:** Thank you.

We are now into our second round. This further round and the others will be five minutes.

We go to the Conservative Party and Mr. Jean.

**Mr. Brian Jean (Fort McMurray—Athabasca, CPC):** Thank you.

Madam Cohen, when did you provide your brief to the committee?

**Ms. Joanne Cohen:** As soon as we were contacted by the clerk of the committee, we sent it electronically for translation, sir.

**Mr. Brian Jean:** How long ago was that?

**Ms. Joanne Cohen:** About a week or more ago.

**Mr. Brian Jean:** And you didn't send it in both French and English?

**Ms. Joanne Cohen:** No, our brief was translated by the translators of the Supreme Court. We were assured by the clerk that it would be translated here and that it would be presented to you in time for our deliberations tonight.

**Mr. Brian Jean:** You don't remember exactly when it was sent, but it was approximately a week ago?

**Ms. Joanne Cohen:** I would say about a week ago. You should have the brief before you, sir.

**Mr. Brian Jean:** I do. It's the only brief I received, and I received it today at committee.

**Ms. Joanne Cohen:** I apologize.

**Mr. Brian Jean:** I understand.

**The Chair:** Excuse me, I just want to put a point on the table.

Mrs. Young's brief was sent to translation on June 2. We were told it would be back from translation by June 7 at 1 p.m., because we knew Mrs. Young was going to be here today and we wanted the members to have the document in English and French. Unfortunately, we received a confirmation from the translation services that we would not get it for June 7, but June 9 at 5 p.m. By the way, the brief was 8,601 words.

So it is beyond our control as far as the translation is concerned, and we apologize to the witnesses and the members, but this is the situation.

• (1955)

**Mr. Brian Jean:** I understand, sir.

Could you clarify, sir, just since we're on that point, when Ms. Cohen's brief was received by translation? Would it be possible to provide that to the committee?

**The Chair:** Yes, we could check and let you know at the next meeting.

**Mr. Brian Jean:** Thank you very much, sir.

**The Chair:** Thank you.

**Mr. Brian Jean:** I hope you're not going to take all of that time off my intervention.

**The Chair:** No, sir.

**Mr. Brian Jean:** Thank you.

**The Chair:** I wouldn't think of doing that to you, sir.

**Mr. Brian Jean:** Unfortunately, I have 11 years of practice at litigating and cross-examining witnesses, so from time to time, I'm a little bit more anxious than I should be—and I apologize if I do appear to be so in the future.

I suppose my first question deals with page 4 of your brief, where you state in paragraph 8 that the liberal rabbis group submits that “religious officials have full freedom of conscience”, etc., “not to perform any marriage”.

What about state employees, such as Mr. Goertzen, who have religious beliefs and do not want to perform marriages? Would you protect that as well, because I notice that's not in your brief?

**Ms. Joanne Cohen:** This is a copy of the factum that was presented to the Supreme Court for the reference. We were concentrating on answering the questions in the reference.

Our submission would be the protection of religious freedom in Canada. I believe this could easily be rectified and resolved by allowing marriage commissioners and justices of the peace to refrain on religious grounds from performing same-sex marriages and retaining their jobs as long as there are provisions available for referral of same-sex couples to others. It would be like the medical example I gave on abortion.

**Mr. Brian Jean:** How many rabbis are members of your group?

**Ms. Joanne Cohen:** We started with 25. One took a pulpit in the States, so we're currently at 24.

**Mr. Brian Jean:** So you represent 24 rabbis?

**Ms. Joanne Cohen:** That's correct. That is by far the majority of the liberal rabbinate in Canada. We're quite a small community in Canada.

**Mr. Brian Jean:** Do you have any training? Are you a lawyer?

**Ms. Joanne Cohen:** No, I'm a sociologist of law.

**Mr. Brian Jean:** Are you trained in international law issues, for instance?

**Ms. Joanne Cohen:** No, I'm not an expert in international law.

**Mr. Brian Jean:** So your comments in relation to the UN conventions, etc., were just opinion. They weren't based on any legal education?

**Ms. Joanne Cohen:** As I said, sir, and I was quite clear on this point, I am not an expert in international law. I am a legal researcher who has studied issues of alcohol and drug policy in law and UN policies and similar policies on the rights of children. My reading of that language refers to the word “parents”. As a sociologist, I would argue that in Canada parents and families, even in the Jewish community, come in all shapes and sizes. The fact that the UN resolution refers to men and women of marriageable age is not a limiting definition. It is a definition that states the sociology or the reality of the majority of marriages, but it cannot necessarily be amended in future.

**Mr. Brian Jean:** You do understand, though, that it has been interpreted by courts. The International Court of Justice, for instance, has interpreted it. Other UN bodies have interpreted it already to mean man and women. In fact, some countries have already said that same-sex marriages are not going to be allowed. Have you done any

studies or do you have any information in relation to other countries that have passed legislation?

**Ms. Joanne Cohen:** I'm generally familiar with the fact that the Netherlands and Belgium perform same-sex marriages. I have heard lectures from international legal scholars such as Professor Rob Wintemute of King's College, London, who is an expert on EU same-sex rights law and British same-sex rights law. We understand there are changes under way there.

As a Jewish studies scholar, and as someone monitoring the current press on this issue, I am aware that Israeli couples and gay rights groups in Israel are now mounting a legal challenge. But I cannot say that this is the area of my expertise. I beg the committee's indulgence. My time has been taken for three years with this case.

Thank you.

● (2000)

**Mr. Brian Jean:** Thank you.

Ms. Young, I've had similar concerns in relation to the residential school issue, a situation similar to this one. I've thought to myself that the empirical evidence points to both sides of the question. I'd like to hear some more empirical evidence on the issue.

**Prof. Katherine Young:** It's an analogy I am using here. When the state takes a group of children away from their biological parents and institutes a new mode of life for them, this is social engineering.

**Mr. Brian Jean:** I'm a single father who raises my kids part-time. It's fairly normal for our society to have that. But specifically dealing with same-sex couples, what's your empirical evidence?

**Prof. Katherine Young:** There is a lot of it. First of all, we often hear this claim that there is empirical evidence that there are no harms. There's a lot of critique of those studies. Very often they compare lesbian couples with single mothers. They're not comparing lesbian couples with parents of both sexes in a stable marriage relationship. You can't compare apples and oranges.

**Mr. Brian Jean:** Are you referring to Philip Belcastro's 1993 review of database studies addressing the effects of homosexual parenting in children's sexual and social functions?

**Prof. Katherine Young:** That's one of the studies. There are a lot of critiques.

If you want references, you have to give me a moment because I don't have these memorized.

Do you want to hear them?

**Mr. Brian Jean:** Yes, please.

**Prof. Katherine Young:** Okay, here we go.

In Creighton, “An Epidemiological Study...”, there are two kinds of evidence. One is the same-sex marriage evidence. But the really interesting evidence here is where we have only good studies. So when you look at the different kinds of family forms, you can see there are statistical advantages for children when the parents are biological and married. It turns up in two kinds of statistics. There's better care and there's better protection.

The kinds of scholars who look at this literature range from biologists, to sociologists, to people who study families. You can look at child abuse and neglect in such journals as *Ethology and Sociobiology*, *Current Directions in Psychological Science*, and *Archives of Pediatrics & Adolescent Medicine*, and sex power conflicts. You can look at child abuse and neglect in the *Journal of Family Psychology*. You can look at *Divided Families: What Happens to Children When Parents Part*.

**Mr. Brian Jean:** Are you suggesting to the committee today that all of those state empirical evidence and conclusions from empirical evidence suggesting it is not in the best interests of children to be raised by same-sex couples? What are you saying?

**Prof. Katherine Young:** I'm saying the evidence is in that it's best to be raised by biological parents of opposite sexes. When it's single mothers or single fathers, all of these long-term prospects for children.... Individual cases can be excellent. We're always talking about statistical norms versus individual cases. But the statistical evidence points in that direction.

We don't have this kind of evidence on the same-sex marriage side, so the very least we can say is that the evidence is not in. That takes in the longitudinal studies I mentioned before.

**Mr. Brian Jean:** Are you familiar with any studies that have been done in Belgium or the Netherlands?

**Prof. Katherine Young:** No, because marriage has been legalized there just within a couple of years. You need longitudinal studies, like we did with divorce, before we have this data. That's why I'm calling for the collection of data and its periodic analysis.

**The Chair:** Thank you.

We're back to the Liberal side.

Mr. Powers.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you, sir.

I have a question that may lead to some others.

Ms. Cohen, I want to be sure I didn't hear incorrectly what you said. I'll use the terminology “portability of matrimonial status”. Could you just reintroduce that? I hope I didn't hear what you were saying about it.

• (2005)

**Ms. Joanne Cohen:** I understand, and based on our submissions to the justice committee hearings in 2003, one of the issues the justice committee was considering was a civil union option instead of same-sex marriage.

We argued—as did legal experts on human rights commissions, the Canadian Bar Association, and others—that marriage was

recognized in family law in ways that common law status was not. We further argued at that time that places like Nova Scotia did have a civil union option for same-sex couples, but if those couples moved to Alberta or another province where those civil union options were not available, their status as a family would no longer be recognized.

The easiest way to ensure federally—it is the job of the government under the Constitution to define marriage—that if you get married in Toronto and move to Calgary you'll still be married and treated as married is to allow same-sex couples that benefit across the country. That is the cheapest, easiest, and most legally recognized way to assure equal access to the full benefits of law and the responsibilities of law for same-sex couples across the country.

**Mr. Russ Powers:** I heard exactly what you said originally, and it caused me some angst. Let's say my marriage 36 years ago was legitimized by the law of where I was in Europe, and I chose to come to Canada. No matter where I settled in Canada, whether it was in the provinces or the territories, I would expect that relationship, in order to be done.... In the same situation where there was a same-sex relationship, like marriage, I would expect that to....

In my opinion here, and perhaps it gives more validity for me as to why there needs to be some levelling, if you want to call it that, of the playing field, or the establishment of...some people wouldn't call it standards, but basically a need...is what I would suggest is reverse discrimination. In other words, it's okay in Ontario or in any of the other seven provinces and territories that do recognize that relationship; yet you go somewhere else in Canada and it's not the case. So that's somewhat hypocritical in the laws.

**Ms. Joanne Cohen:** If I could just comment on that briefly, from my familiarity with the jurisprudence on this issue we are aware of the fact that same-sex couples are now already launching legal challenges in places like New Brunswick and the Northwest Territories. They're not waiting even for the deliberations of this committee, because they know that same-sex marriage is an unpopular political issue, and often the courts, given the jurisprudence we've already established, may come to their assistance before this government may do so, depending on its longevity.

So it is very much right now for us, our congregants and their families, an issue of considerable concern. What if somebody gets a job transfer, for example? They were married last year in Toronto and then they get transferred to the oil sands in Alberta. Right now they're no longer considered a family. Right now there is a differential treatment that affects the real-life interests of our constituent members and their families. For example, as I mentioned, a rabbi in Montreal, Toronto, or Vancouver can marry someone, but a rabbi in Calgary cannot.

[*Translation*]

**The Chair:** We come back to the Bloc Québécois.

Mr. Ménard.

**Mr. Réal Ménard:** Thank you, Mr. Chairman. If you will permit me, I am going to return to my conversation with M. Goertzen where we left it.

Mr. Goertzen, I just want to understand. Do not think that your personal convictions do not concern me. I would be very happy to discuss them with you after this sitting, over a beer or in another situation.

What are the conditions for being hired as a marriage commissioner in Saskatchewan, what type of remuneration do you receive, and who pays you?

[*English*]

**Mr. Bruce Goertzen:** I was appointed by the Saskatchewan government in 1984 to be a marriage commissioner. My remuneration comes from the people I prepare a marriage for. If you chose to come to me to get married, you would buy a marriage licence and then pay me a fee, set by the Saskatchewan government, to perform said marriage.

• (2010)

[*Translation*]

**Mr. Réal Ménard:** Without making a bad pun, I will say that in a way you are paid a fee-for-service. That is a little astonishing. It is even disturbing, Mr. Chairman, but I will not make any analogy.

When you live in Saskatchewan, what are the conditions for being hired, and what are the conditions for officiating at weddings?

There is one thing that troubles me in your testimony. Marriage is a complex phenomenon. The basic conditions fall under the federal government. The federal government can decide who can get married. It had never defined any conditions, until the conservatives had a law passed on prohibited degrees with respect to marriage. This had been governed by the common law.

The provinces decide on officiation, You administer a law. We can respect your personal convictions, but I want to know what are the conditions for getting married in Saskatchewan and who can become a marriage commissioner. What are the conditions governing hiring?

[*English*]

**Mr. Bruce Goertzen:** That I cannot answer. I cannot tell you what the conditions are for being appointed a marriage commissioner.

When I was appointed a marriage commissioner, I happened to be a Justice of the Peace for the Province of Saskatchewan. At that time, I was also a coroner for the Province of Saskatchewan.

Every Justice of the Peace receives a number. Mine happens to be 1662. There was a shortage of marriage commissioners in Saskatchewan. So they went to Justices of the Peace who had low numbers, thinking we were mature, steadfast members of the community. In my case, they phoned me and asked if I would be a marriage commissioner. Because I believe I should help my community in whatever way I can, I said yes. So that's how I was appointed.

Now, you asked the question, how do you get married in Saskatchewan? Right now, if you have chosen to get married, you have to buy a marriage licence in Saskatchewan. The fee is \$50. You go to a jewellery store. The marriage licence becomes effective 24 hours after you buy it. It is good for three months. You would then come to a marriage commissioner, who is listed in the telephone book under "Marriage Commissioners"—it tells you every marriage commissioner in Saskatchewan. You select one you'd like.

You would phone me and ask if I would be prepared to do the wedding and I would check to see if I'm available. At that time I would send you a letter telling you about the basic format of the wedding. I would send you a form about the registration of marriage. I'd also tell you about the cost of getting married.

[*Translation*]

**Mr. Réal Ménard:** Thank you.

Will you permit me a final question, Mr. Chairman, if I still have time?

I would not like to be deprived of talking again with Ms. Young. I know that when all is said and done, she is my friend. I am perhaps the type of son that she would have wished to have, Mr. Chairman. But I don't want to talk about that this evening.

I would ask her whether she knows that the Canadian Psychological Association appeared before us just last week. I imagine that a cultivated and educated woman like you would give a certain credence to professional bodies. I understand that you are in religious studies or in ethics—which does not take anything away from the merit of your work, but the psychologists who appeared before us spoke on behalf of all Canadian psychologists, and their remarks were based on scientific evidence: that is their profession. What troubles me, Mr. Chairman, is that they told us that for 25 years, cohorts of children have been followed in Canada and the United States using a tried and tested scientific methodology, reviewed by their peers and published in scholarly journals, and that no possible correlation of any kind was found between being raised in a single-parent family and being homosexual.

You are not a psychologist; I am trying to reconcile your version with a point of view as professional, documented, scientific, credible and rigorous as that of the psychologists, and I confess that I am unable to do so.



Obviously, Mr. Chairman, I can't wait to read the references: I believe that the written submission will contain your references. You would not be the kind of woman to appear before a committee and say things that are not documented. It would be unlike you.

I can't wait to read your references, but I find it difficult to reconcile your point of view with the scientific evidence.

• (2015)

[English]

**Prof. Katherine Young:** Well, first of all, the references are there. I hope you do look them up and read them. This is a highly charged area. There's a lot of engaged scholarship in it. It has entered all kinds of debates.

So why do I look at this literature? You're saying I'm in religion, I'm not in psychology. When you look at the area of religion, a lot of religious messages are sort of coded biology and coded sociology. Since I'm doing a comparative study of marriage, I look at the definition of marriage, for example, that tries to create durability and I look at that with reference to children. So there is a lot of cross-cultural data. I also then, as interdisciplinary research, draw on other sources as well.

[Translation]

**Mr. Réal Ménard:** Are you a psychologist?

[English]

**Prof. Katherine Young:** No, I am a professor of comparative religion and comparative ethics.

[Translation]

**Mr. Réal Ménard:** That is what I remembered about you. You are not a psychologist.

[English]

**Prof. Katherine Young:** That's right. You draw on interdisciplinary studies as they relate to your particular area of expertise. In the course of doing this, and also watching these debates, you're well aware of that literature. I think this committee should also be aware of that literature.

[Translation]

**Mr. Réal Ménard:** Do we time to listen to Ms. Cohen?

**The Chair:** Officially, no, but unofficially, yes.

**Mr. Réal Ménard:** You are merciful, Mr. Chairman. We know where you will go when you die.

**Ms. Joanne Cohen:** Thank you, Mr. Chairman.

[English]

Briefly, as a sociologist who is familiar with the sociology of the family, I am pleased to tell you that I've referred my colleague, Professor Bonnie Fox, a tenured professor of sociology at my alma mater, the University of Toronto, to the justice committee hearings of April 2003. She and I and other academics in the room were scandalized by the academic poverty of some of the so-called references, such as those referred to by Professor Young, presented before the committee. It was quite hateful. It was thinly veiled, ideological hatred.

I can refer the committee specifically to Professor Bonnie Fox and to publications that have shown, using good, peer-reviewed empirical studies of the family, that same-sex parents, particularly lesbian couples, often nurture their children in ways better than those of heterosexual couples, and that there are no social harms to the family from same-sex marriage. Thank you.

**The Chair:** Okay. We're going back to the Liberal side.

Mrs. Neville, go ahead, please. You have five minutes.

**Ms. Anita Neville (Winnipeg South Centre, Lib.):** Thank you, Mr. Chairman.

My question involves the area of research. I guess my original question to you, Professor Young, is why you find it necessary to have the need for the research incorporated into the bill. That's my first question. I have others as well.

**Prof. Katherine Young:** I think you have to have a commitment by the government to children in a formal way that says we are going to study what happens. I think that's an ethical commitment. I think it should be written into the legislation.

**Ms. Anita Neville:** To my knowledge, and I may well be wrong, it's unprecedented. But I don't want to argue the issue. I don't think there's anybody around this table who's not concerned about the well-being of children.

There are many areas that impact on children, many areas that have been studied on children, many longitudinal studies that have focused on different areas with children. In the research, they've incorporated a whole host of things, whether it's poverty, migrancy, cultural background, economic income, educational background of the family, etc. Would you see all of those factors as being important in the research you would propose?

**Prof. Katherine Young:** Well, obviously there are a number of variables here. This is always the difficulty of analyzing trends and then trying to explain what happens and why those trends have occurred.

I have asked for a committee of experts that would define the methodology and define the questions. I don't want to do that here. I think that is part of the mandate that would come through this amendment. I don't want to pre-empt that.

• (2020)

**Ms. Anita Neville:** Thank you.

My question is to Ms. Cohen. I've gone through your brief. I'm not a lawyer. I'm going through it and I have your web pages as well. I'm sure they're your web pages: equal marriage for same-sex couples. Yes.

**Ms. Joanne Cohen:** No, that's not ours. We're listed there I think as one of the supporters.

**Ms. Anita Neville:** Oh, all right. Sorry.

Point number 28 that you make, when you speak to the fact that it's restrictive for those who wish to perform same-sex marriages.... We've heard much in this committee about those who do not wish to. I wonder if you could just expand on that a little bit more, please.

**Ms. Joanne Cohen:** Thank you. I wanted to address that question.

We submit that paragraph 2(a) of the charter ensures that there ought not to be any state support for the domination of one particular religious view over another. There is extensive jurisprudence on this issue in cases I've referred to, such as *R. v. Big M Drug Mart Ltd.*, which is the landmark case on that, *Zylberberg v. Sudbury Board of Education*, and others.

The justices, in their determinations in these cases, have found, as in cases we've referred to here, such as Freitag, where the Ontario Court of Appeal also indicated that state action cannot and should not be used to impose the moral tone of one religion, even a dominant religion in the population, on those who do not adhere to that religious belief....

For example, in Canada, the largest religious denomination is Catholic, but that does not mean the state ought to ensure that we live in a Catholic theocracy. We live in a multicultural society. As Jews, and the liberal rabbinic group among them, we are a small minority within that society.

But we read the charter's protection of religious freedom and equality rights guarantees in the charter, as well as the multicultural guarantees under section 27 of the charter, to ensure, as does the jurisprudence in the cases I've referred to, that there is a separation between church and state, or synagogue and state, as the case may be. It is not the role of the state, either implicitly or explicitly, to cater to the religious predilections of one majority in the population to the detriment of another.

We submit to you that were this committee, in their deliberations on this legislation, to capitulate to the alarmist claims of religious opponents of same-sex marriage, who are majoritarian, they would in fact be doing just that. It would be the state supporting the denomination of one religious viewpoint over another. Our submissions do not suggest that any one religious viewpoint should dominate, but rather there should be a pluralism of religious viewpoints and a freedom of choice for Canadians.

If you want to profess the faith of your choice, find a church or a synagogue or a mosque that meets your needs. Go to one, if you wish, to have a gay marriage. Go to one that will do it. If you don't believe in gay marriage, go to a church that doesn't do gay marriages. All Canadians are free as a result.

In answer to your question, we submit that the idea that the state would act as a kind of agent of majoritarian religious opinion would abrogate the very separation of church and state and equality before the law that are the hallmarks of a democratic society, as well as the protection of vulnerable minorities in democratic societies, which, according to theories such as those of Alexis de Tocqueville, are always a risk. That is why in Canada we fund checks and balances, like judiciaries and universities, and so forth, in order to inform public policy to the best extent that we are able.

On that basis, we would submit further that this point was reiterated in Trinity Western University by the Supreme Court. I quote from the judgment there, at paragraph 31 of our brief:

Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute.... As the Court has reiterated many times, freedom

of religion, like any freedom, is not absolute. It is inherently limited by the rights and freedoms of others.

By that I mean to say that the right of these religious opponents of same-sex marriage to limit same-sex equality in civil settings that they have no right to interfere with, to engage the state in the imposition of a state monopoly, is improper.

Similarly, in the same judgment, the court found that although the freedom of belief is very broad in Canada, the freedom to act on those beliefs is limited, and it is limited by the rights and freedoms of others. Similarly, the court found that, as a result, the charter must be read as a whole so that one right may not be read at the expense of another right.

It is our submission and conclusion—thank you for listening—that we can have religious freedom.

• (2025)

[Translation]

**Mr. Réal Ménard:** [Inaudible]

[English]

**Ms. Joanne Cohen:** Is that of religion or a cabinet minister?

**Mr. Réal Ménard:** Cabinet.

**Ms. Joanne Cohen:** Thank you.

We therefore submit that the charter must be read as a whole. You can balance a plurality of lifestyles. Heterosexuality remains popular. Homosexuality is popular for some in Canada. Some believe in gay marriage and some don't. There ought to be a thousand points of light.

May I conclude simply by saying that if you do anything for love, in what has been a very hateful parliamentary session this year, please do this for love. As a non-partisan gesture, please rectify an old historic wrong and let love and faith in all its different forms in Canada prevail, because that's the Canada I grew up in.

Thank you.

**The Chair:** Thank you, and thank you very much to commentator Ménard.

Thank you for your time, Mrs. Neville.

We will now go to the NDP, Mr. Siksay.

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

Professor Young, in your opening statement you seem to suggest that there should be limits on the ability to lay a complaint with human rights commissions. Something in I think one of the "whereases" you originally read out in your statement referred to human rights complaints and concerns about how they were being used.

**Prof. Katherine Young:** No, there was no human rights commission in the whereases.

**Mr. Bill Siksay:** Okay. I apologize if I've misrepresented what you said.

You were very critical of the former Minister of Justice, however, later in your statement, and seemed to be critical that he had actually taken a position on the issue of same-sex marriage. Is that something that you feel is inappropriate for someone in his position, to have an opinion on a major justice issue of the day?

**Prof. Katherine Young:** I think what I was concerned about is that he had it before the discussion ever began, and when your Minister of Justice—and you, then—have a well-formed opinion about what the outcome should be, and this is how you want to become well known and it's the legacy you want to leave from your job, then that may—and everybody has to interpret this for themselves—indicate some of the decisions that were occurring along this process.

**Mr. Bill Siksay:** Would you feel the same way if he'd been a strong opponent of same-sex marriage?

**Prof. Katherine Young:** Yes, because I think on an issue like this you have to look at the evidence. You have to engage the arguments. And my big concern when I look at those court cases, which I've studied very carefully, is that there was no risk assessment according to section 1. And where children are concerned, you need that risk assessment.

So why did that occur?

**Mr. Bill Siksay:** I find it a little strange that you would put a limitation on the ability of a political leader to take a stand on an important area in their jurisdiction or would suggest that it's even proper to be considered.

But I wanted to come back to the whole question of divorce in Canada. You talked about the problems the liberalization of divorce has caused. Have there been studies done of the effect of that on children that correlate with what the situation was before the liberalization of divorce?

**Prof. Katherine Young:** Well, there are certainly well-known studies in the U.S. I believe it was Judith Wallerstein in California who did one of the major longitudinal studies with a large-scale sample.

**Mr. Bill Siksay:** But this is post-liberalization, not necessarily divorce—

**Prof. Katherine Young:** Post-liberalization of divorce.

**Mr. Bill Siksay:** So there's nothing to compare it with the situation before, when people didn't have the option of divorce and were often trapped in a marriage situation that wasn't helpful. We don't know the exact effect on children in that circumstance.

**Prof. Katherine Young:** I would have to look into that question.

• (2030)

**Mr. Bill Siksay:** Are you an advocate or a lobbyist for changes in the divorce laws in Canada?

**Prof. Katherine Young:** I am an academic researcher. Now, out of your research, at a certain point, especially when you do ethics and practical ethics, you come to a position. But good ethics is dependent on good facts, and one of the things that I found in this case is that there haven't been a lot of good facts around, so I see that as the first part of my job.

The other is to analyze them, such as risk assessment—being an important part of ethical analysis—and to be accountable to the groups that are so affected.

**Mr. Bill Siksay:** Have you ever called the liberalization of divorce a “massive human experiment”?

**Prof. Katherine Young:** Well, it was massive. I'm willing to say that.

**Mr. Bill Siksay:** Okay.

In one of the articles I have that you and Dr. Nathanson wrote, you make the statement: “For one thing, we would lack even the ability we still have to provide public cultural support for heterosexuality” if we went ahead with this bill. Can you tell me what you meant by that statement?

**Prof. Katherine Young:** Yes. That's a really big theory of ours. It goes back to the idea that heterosexuality is a complement of nature and culture, and if you take the public culture away, if we can't speak about the importance of fathers, for example, if you take that public culture away, then there's some basic damage that will occur to heterosexuality.

The argument here is that animals reproduce via instinct. Humans replaced a lot of that instinct with freedom and with culture; therefore, the culture is a necessary complement to the biological aspect of being human.

**Mr. Bill Siksay:** Ms. Cohen, you look like you want to get in on this.

**Ms. Joanne Cohen:** If I may, there is very much a difference of opinion in the sociological and psychological and anthropological literature on this particular question. The witness is referring specifically to a perspective known as evolutionary anthropology, which seems to suggest that biology is destiny.

Now as we all know, there have been many different forms of families in society. There continue to be many different forms of families in society. As Douglas Elliott, counsel for the Metropolitan Community Church of Toronto, argued before the Supreme Court, heterosexuality remains very popular. I don't think that recognizing... and if heterosexuality is so weak an institution, really, that gay equality would threaten it, then perhaps, given your 50% divorce rates—we don't have anything near that kind of divorce rate yet—this is something this professor and others might like to study. But, really, heterosexuality is not under attack by gay equality.

**The Chair:** Thank you, Mr. Siksay.

We're now moving back to the Liberals, Mr. Macklin.

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

Thank you, witnesses, for being with us tonight. You certainly have gotten us into a rather interesting debate.

For me, I guess when I look at the question before us—we were originally supposed to be looking at our bill and seeing whether we could get some technical advice on how we might improve that bill, and it does appear that maybe we have deviated slightly from that. But I still think there have been some very interesting and fundamental questions raised that I think are worthy of this debate we're having.

I guess specifically, Professor Young, when as an individual parliamentarian I look at issues before us, obviously one of the concerns that parliamentarians have is the state's interest in children. But I also know that children have a habit of arriving without necessarily scheduling themselves into a particular format of relationship.

I guess from my perspective the concern is knowing what we should be looking at as we approach the issue from a state interest. Is it more important that we look at the form of the relationship, or is the fact that there is a good, nurturing home created within the environment of the child most important?

**Prof. Katherine Young:** This is always the argument. Of course, you always want a good, nurturing home, but what makes for a good, nurturing home? That's the question.

Again, I go back to the fact that when culture ties men to women and children—and you need extra culture to do that—then the father, knowing that the children are his biological children, generally provides better care and protection. That's found throughout human history, and that is found in the statistical studies.

So do we have a culture that encourages men to bond with women and children, or are men now, in this new regime, simply social or legal fathers? For those who have any kind of custody dispute, no biological claim will ever count any more. Men have been reduced to wallets, what they can pay into that particular relationship.

Now, of course, there's love and people gain affection and bond and so forth, but we have taken away a very fundamental role that culture has played in every human society. Is it important? Let's study it. I think it probably is, in the long run.

• (2035)

**Hon. Paul Harold Macklin:** So you're suggesting that this hasn't been studied yet—in other words, the nature of the relationship between the parenting process and the child.

**Prof. Katherine Young:** As for the parenting process, yes, there are studies of marriages. There are studies that show that two biological parents—and there are always some good exceptions—generally provide better care and protection for their children.

**Hon. Paul Harold Macklin:** I see Ms. Cohen is trying to get in on this debate.

**Prof. Katherine Young:** Well, she's got her research and I've got another collection of research. I think all we can say at this point is that there's a lot of dispute out there.

**Ms. Joanne Cohen:** I think it's fair that the committee hears this dispute, with all due respect.

**Hon. Paul Harold Macklin:** I think we want to hear the debate. I think it's important for us to at least be sensitive to this issue in the broader picture.

**Ms. Joanne Cohen:** We, as far as our liberal rabbis group is concerned, and in the Jewish community, recognize the importance of families. But we recognize that families come in all forms. We are doing our best to rectify the exclusion in the past of gay and lesbian parents and their children, because those families do exist and pre-existed this marriage legislation in Canada. And their interests continue to be studied. Their interests continue to be affected by the issues under debate by this committee.

I would agree with the professor that cultural factors encouraging the formation of lasting families and nurturing families are very important to children's well-being, but I would submit that some of the citations she has given you are a little out of date in their over-emphasis on the necessity of heterosexual, biological parents. I recognize that from an evolutionary biology point of view we do encourage men to be monogamous in society, generally since caveman times, and we do hope they will care for their children, because women are often disadvantaged by raising children. That is not to say that that is an exclusive definition of all the forms families have taken over history, or do take now in history, because as I've mentioned to this committee, there is explicit sociologically evidence on same-sex parenting that shows that it takes two loving parents to raise a child—maybe in Hillary Rodham Clinton's world it takes a village to raise a child. But our—

**A voice:** [*Inaudible*]

**Ms. Joanne Cohen:** Excuse me, Madam, I did not interrupt you. I was recognized.

**The Chair:** Okay. Excuse me. We're not going to enter into a debate—

**Ms. Joanne Cohen:** She interrupted me.

**The Chair:** I'm speaking, Madam Cohen.

We're not going to get into a debate between you and Ms. Young. Ms. Young spoke. You spoke. The five minutes is over. We're going to go to the Conservative Party.

Mr. Warawa, please.

**Mr. Mark Warawa (Langley, CPC):** Thank you, Mr. Chairman. Thank you to the witnesses for being here. It's been quite interesting.

Mr. Goertzen, I would like to begin with you.

You shared that you were a Justice of the Peace and a coroner before you were a marriage commissioner. Is that correct?

**Mr. Bruce Goertzen:** That's correct, sir.

**Mr. Mark Warawa:** And you have been a marriage commissioner since 1984. How long were you a Justice of the Peace and a coroner?

**Mr. Bruce Goertzen:** I was appointed a Justice of the Peace in 1972.

**Mr. Mark Warawa:** And you were a coroner at the same time? So you've served Saskatchewan for a number of years.

**Mr. Bruce Goertzen:** Yes. I just recently resigned as coroner, and the certificate they gave me said 32 years of being a coroner.

**Mr. Mark Warawa:** Thank you for serving your province. You probably are very well respected.

You've received a letter from the province stating that you'd have to conduct same-sex marriages. Is that correct?

**Mr. Bruce Goertzen:** That's correct, sir, I have.

**Mr. Mark Warawa:** And you are aware of the marriage commissioners from British Columbia—that's my province—who have been forced to resign if they will not do same-sex marriages. Is that correct?

**Mr. Bruce Goertzen:** I'm also aware of them, yes, sir.

**Mr. Mark Warawa:** Is it out of fear of being fired that you've gone to the Human Rights Tribunal?

**Mr. Bruce Goertzen:** I would say that's probably the best way of putting it, yes, sir.

**Mr. Mark Warawa:** This is based on your faith, and you've shared your faith.

I just have a quick comment. I found your comments very honest, and I find it unfortunate that a colleague would insinuate that your presentation was anything but.

I have a question for you regarding conducting a civil union. Now it's against your faith to conduct a marriage.... A majority of Canadians do support a civil union as an option. In fact, that was where this marriage committee was going in the previous Parliament, considering a civil union. And a majority of Canadians, two-thirds approximately, do support that as the option that would provide the same rights and benefits for a same-sex union, called a civil union, keeping marriage as the traditional definition of being between a man and woman.

Would you feel comfortable, because of your faith, because of your belief, doing a civil union as opposed to a marriage?

• (2040)

**Mr. Bruce Goertzen:** At this moment, I would not do a civil union, but since you mentioned my faith, before I make any decision, I spend time in prayer and meditation on it. Then I'd have to look at what the law says. So in truth, I can't answer your question. But right at the moment, anything that says that a couple is married, it has to be a man and a wife, in my opinion.

**Mr. Mark Warawa:** Okay. Thank you very much.

Now to Ms. Young, thank you for your presentation. During your presentation you commented on the treatment you have received, a form of discrimination. You were called homophobic, I believe you said. Did that occur around the time of Bill C-38, or prior to it, or after Bill C-38?

**Prof. Katherine Young:** Actually, the first incident—there are two, and I have copies that will go out with my brief—was when I said I would be an expert witness for the Ontario government for the Halpern case. I have a one-paragraph summary, which I can read to you:

Through a comparative analysis of the world's religions and cultures, Dr. Young will show that marriage has been a heterosexual institution. This common pattern of norms suggests that culture complements biology, and cannot be set aside without consequences in social terms.

On the basis of that, there was an enormous e-mail and postcard hate campaign, with all kinds of messages of, "How dare you say that". That was the paragraph. That was all anybody had ever seen. There were sit-ins, and there was a fear of violence at one point. So there was an enormous kerfuffle around that.

It happened to Dr. Somerville at the same time. I think she was a witness before your committee a few weeks ago. We then wrote about this incident to CAUT, which is the Canadian Association of University Teachers, and they refused to publish the letter. That was disturbing to us because here's a question of academic freedom, for we have, and everybody has, been called names on this.

I realize the other side has been called all kinds of names, and I regret that. I don't think this should be there at all, but the question is, when you're called as an expert witness, is this a kind of intimidation, to discourage anybody from being an expert witness?

Now, as this article says, when the government tries to find expert witnesses, many of them refuse out of fear of intimidation. They have a hard time finding expert witnesses. That was another point of this.

Just last month, a few weeks ago, when Paul Nathanson and I addressed the Lord Reading Law Society, Anne Goldwater, who led the gay and lesbian cause in the Quebec case, as everybody no doubt knows...and I included a long paper because I wanted to give you exactly the paper that then sent her into an absolute screaming and swearing fit at us. This is a member of the Quebec bar in a group of professionals debating same-sex marriage. Absolutely no decorum. At that point she proudly said she managed to keep the affidavits out of the Quebec case. Now, how she did that...I know they weren't there because I know mine went in, and then of course it never became part of the record.

So my concern is, as an academic, what happens now when—and you can see I'm a little feisty—I want to debate and do research on this topic? Will the Human Rights Commission support me? CAUT didn't. They didn't stand up. Yes, there is academic freedom for tenured professors in universities, but now if it's against the Human Rights Commission, I'm not too sure what will happen with that. A number of legal cases now are showing that freedom of conscience is really freedom of conscience in your own house. You can say and think anything you want there, but what, as a professor, if I open this discussion in a classroom? What if I teach both sides? What if a high school teacher says, "This is a big issue. Let's look at the pros and cons. Let's bring the different positions in." Is this going to be allowed? I think we're going to see a restriction on that, and if not, there is enough intimidation that it will close this kind of discussion.

That's why I think academic freedom is as important as special protections for religious freedom. They go together in some ways and they're very different. Mine is a secular position. I'm not arguing from a religious position whatsoever, although I use data that's found in religious traditions.

• (2045)

**The Chair:** Thank you. This brings our meeting to an end. I want to thank the witnesses for appearing in front of the committee this evening.

I tell you what, Mr. Ménard. If you want to continue with your comments, you can sit here, you can use the sound system, and you can hope that you're going to have witnesses and colleagues for another hour.

[*Translation*]

**Mr. Réal Ménard:** [*Inaudible*] Mr. Chairman. Never forget that. I know that some of you travelled from far away. Have a safe trip home.

**The Chair:** I thought about it.

[*English*]

Thank you very much.

The meeting is adjourned.

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