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Mr. Marcel Proulx

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• (1800)

[English]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Good evening, bonsoir. Welcome to the Legislative Committee on Bill C-38.

[Translation]

Welcome to the Legislative Committee on Bill C-38.

[English]

We have quorum. For witnesses, quorum is three members.

Welcome to the witnesses. Tonight, we have witnesses from the Christian Reformed churches in Canada, from the Home School Legal Defence Association, and on a personal basis, we have Mr. Bill Johnstone and Mr. Gerald...Chipeur?

Mr. Gerald Chipeur (As an Individual): Yes, sir.

The Chair: I have tendency to pronounce this is French.

Mr. Gerald Chipeur: It's a good Polish name with a French spelling. You got it right the first time.

The Chair: Okay. I'll respect that, thank you.

I'm sure you've been instructed on how the committee works. Witnesses have 10 minutes for an opening statement, and then we go to rounds of questions, comments, and answers. The first round is seven minutes each and the following rounds are five minutes each.

Let's get started. We'll work our way down the table, so we'll start with the witnesses from the Christian Reformed churches in Canada, either Mrs. Pleizier or Mr. Hogeterp.

You have 10 minutes.

Mr. Mike Hogeterp (Research and Communications Coordinator, Committee for Contact with the Government, Christian Reformed Churches in Canada): Thank you, Mr. Chairman and committee members. It's a pleasure to be meeting with you today—once again, for some of you.

We represent the Committee for Contact with the Government of the Christian Reformed churches in Canada, a denomination with 80,000 members and 255 churches.

As a denomination, we seek God's justice and peace in every area of life, including politics. We also believe that the integrity of a democratic nation such as Canada rests in the freedom to express diverse points of view through public dialogue. In this light, we've prepared a brief entitled "Just Pluralism: Equality and Diversity".

This brief is part of our ongoing commitment to make a constructive contribution to public debate on the questions related to Bill C-38.

I'll pass it to Mrs. Pleizier.

• (1805)

Ms. Christina Pleizier (Co-Chair, Committee for Contact with the Government, Christian Reformed Churches in Canada): We bring two fundamental commitments to this debate: one, that marriage is a God-ordained covenant between a man and a woman; and two, that government is called to promote justice for all, including those in same-sex relationships. We believe these two commitments are mutually supportive, not contradictory. They relate to a third key principle for us: equality and diversity are deeply interrelated.

Minister Cotler identified equality and religious freedom as foundational principles of Bill C-38. We agree that these are important to this debate, but we sense a need for deeper reflection, a thorough public testing of the assumptions behind these foundations. The debate on these foundations of Bill C-38 has unfortunately included the superficial rhetoric of a rights war. We need to get beyond this confrontation to a more important conversation. We, as a society, need to consider, beyond the superficial, how we can affirm minority rights, equality, and diversity in a rich and thorough way.

Religious freedom is a matter of diversity. Diversity itself is linked to charter interpretations of equality and freedom. Freedom and diversity require a limited state. People ought to be free to pursue lives they value and their own ideas of what it means to flourish.

Social freedom and diversity are grounded in this principle of world-view freedom. When a state imposes uniformity on social institutions, it imposes a particular world view, a particular notion of how humans flourish, and such a state is not appropriately impartial.

Minority rights protections for same-sex couples are a key justice objective of this debate. Thus, in the interest of justice and equality, the state should protect the vulnerable and minimize the potential for vulnerability by encouraging stable commitments and interdependence in same-sex relationships, but it need not do so by imposing a uniform definition of marriage on relationships that are diverse.

Some have said that a uniform definition of marriage is inevitable, is the only approach to dignity, and is rooted in eternal rights that are beyond political reach. This kind of sweeping equality rights declaration implies that there can be no valid counterposition and gives an indication that the government has been swayed by a particular world view about equality in interdependent relationships. For this reason, we have concerns about the ability of the state to accommodate other views about relationships and the nature of equality, and this has consequences for a just policy framework that accommodates social and world view diversity.

The Prime Minister has said that a redefinition of marriage is about minority rights and that minority rights are eternal and not subject to political whim. We agree that minority rights must not be subject to the whim of the majority, but we do not believe justice is served when rights are declared and placed beyond the realm of public debate.

Mr. Mike Hogeterp: The charter is the grounding of rights in the rule of law in Canadian society. The rule of law in our constitutional tradition is rooted in a process of political conciliation, a messy process of discussion and debate in which all viewpoints are heard before decision is made. Thus, minority and equality rights need to be rooted in civilized political conversation that allows full and clear expression of diverse viewpoints, not in declarations that put them beyond political consideration. This requires open discussion between courts, Parliament, and provincial legislatures, citizens, and so forth. This is the very kind of dialogue that Minister Cotler talked about in his conversations with you a few days ago.

In a spirit of conciliation, then, we question the equality rights orthodoxy that informs Bill C-38. It's based on a vision of equality rights that does not, in our view, sufficiently account for diversity, because it assumes that equality is sameness and that distinctions create inequality. But the opposite of equality is inequality, and the opposite of difference is uniformity. Equality is gained by eliminating inequality, not by eliminating differences and imposing uniformity.

The state's role in marriage thus far has been responsive, but limited in common law. It simply has responded justly to needs by protecting the vulnerable and encouraging stability in marriage and family. The state has not constructed a definition of marriage, nor should it, because construction of social institutions leads to a uniformity that is harmful to diversity. And we discuss the implications of this in section 5 of our brief, if you care to look. Marriage, then, is not defined by the state or, for that matter, by religious bodies. It is a dynamic and independent social institution. This is an important principle of social pluralism.

By altering marriage, the state oversteps its bounds. Justice and equality do not, in our view, require a uniform definition of marriage. Instead, justice requires a thorough recognition of, and legal equality and protection for, varying forms of interdependent relationships.

We believe, then, that civil union is a more appropriate way for the state to recognize and address needs that are experienced in committed same-sex relationships. The preamble of Bill C-38 of course says that civil unions are a separate but equal designation, one that violates section 15 of the charter. But the separate but equal argument in this context reveals a foundational assumption, that

equality is sameness. This has implications for diversity and equality that need to be explored much more carefully than this declaration, "separate but equal", has allowed.

The Committee for Contact with the Government believes that civil unions are a substantive way for the state to respect equality and diversity. It is a fair legal resolution to a profound moral and world view conflict over the meaning of marriage. It maintains suitable limits on the role of the state, respects pluralism in civil society, protects religious and world view freedom, and encourages appropriate state impartiality.

The government has outlined important foundations and objectives in this debate: equality, religious freedom and diversity, minority rights. We agree that all of these are critical for justice in a diverse democracy like ours, but we're not persuaded that Bill C-38 appropriately accounts for equality and diversity in interdependent relationships. We believe that the declared foundations and objectives are not sufficiently met, but we do believe that a civil union arrangement is a plausible alternative that respects diversity and equality in a fuller sense. We recognize that civil unions are not an option before this committee; we also know that civil unions imply deep intergovernmental and charter complexities. These obstacles are real and not to be taken lightly.

But all options need to be considered, and in a way that fully accounts for equality and diversity and justice for same-sex couples in the plural reality that is Canada. Therefore, we recommend and call for a more thorough process of conciliation that includes citizens in all orders of government, deeper reflection on the meaning of equality and diversity, and fuller consideration of civil union alternatives as soon as possible.

Thank you, Mr. Chairman.

● (1810)

The Chair: Thank you.

Mr. Chipeur, you have ten minutes.

Mr. Gerald Chipeur: Thank you very much, sir.

Mr. Chair, I have provided the clerk with materials that can be provided to each of the individuals. Included in those materials are a letter prepared by the former president of the Canadian Bar Association, Eugene Meehan; my letter and appendix previously delivered to all members of Parliament; a letter to the president of the Canadian Bar Association containing my resignation from the Canadian Bar Association; a copy of *Liberty* magazine, an issue devoted to the subject of same-sex marriage and including an article written by one of your colleagues, a Liberal member of Parliament, John McKay; and my factum in the Supreme Court of Canada, in the marriage reference filed on behalf of Senator Anne Cools and Liberal member of Parliament Roger Gallaway.

Those materials are provided for the information of the committee, and I will not be repeating the information provided in them, other than to take the committee through each of those items so that they can understand what they have before them.

The Chair: Just as a point of information sir, these documents were supplied to the committee.

Mr. Gerald Chipeur: Yes.

The Chair: The committee has a rule that for a document to be distributed to members it must be in both official languages. So we have sent these documents, which we're not in both official languages, to translation, and as soon as they're obtained from translation they will be distributed to members.

• (1815)

Mr. Gerald Chipeur: Thank you very much, sir.

The most important part of the materials delivered to you today is a copy of the factum filed in the Supreme Court of Canada, and I will be taking you to that momentarily.

There are two points I would like to make at the outset. First, Bill C-38 violates the public trust that was the basis for Quebec joining Confederation in 1865, 1866, 1867. Second, Bill C-38 will empower school boards, local authorities, and provinces to follow the example of the Quesnel Public School Board and terminate the employment of teachers and others in public service. Those two points are the most important that I would like to share with the committee this evening.

In the factum provided to you, and which you will be receiving later, you will see on pages 12 through 14 a discussion of the debates that took place at the time Canada was created. It's important to understand what was at issue at the time of Confederation.

Individuals representing the Province of Quebec did not want to pass on to the federal government responsibility for property and civil rights, even in the area of marriage. Therefore, a promise was both given and assured by the leadership of the delegates to the Confederation debates in 1865 and 1866 that property and civil rights with respect to marriage would not be impacted by Confederation except in one respect: if one was married in one province, that marriage would be respected and given full credit in any other province. But all other aspects of property and civil rights with respect to marriage would not be impacted, and therefore, if one attempted or purported to be married in one province outside the laws of that province with respect to property and civil rights, then

that marriage would not be valid, even if the marriage would be valid in another province.

I refer you to the following quote, which I'll read to you since you don't have it in front of you. This is from the leadership of the government in 1865:

There were part of the resolutions about which there might be some misunderstanding and difference of opinion, as for example those clauses by one of which it was stated that the civil laws of the country were to be under the control of the local governments, and by the other of which the law of marriage was placed under the control of the General Government. The law of marriage pervaded the whole civil code, and he wanted to know how it could be placed under a different legislature from that which was to regulate the rest of the civil law.

This was the response:

I beg your pardon, it means that a marriage contracted in no matter what part of the Confederacy, will be valid in Lower Canada, if contracted according to the laws of the country [sic] which it takes place; but also when a marriage is contracted in any province contrary to its laws, although in conformity with the laws of another province, it will not be considered valid.

This is from debates that took place between February and March of 1865.

The 1865-66 Confederation debates reveal a significant constitutional compromise. The colonies insisted on a federal structure so that they could retain power over local matters. Joint authority over marriage was part of this compromise. It is my submission that Quebec leaders would never have approved Confederation if they knew that Parliament would attempt to change a fundamental social institution involving essential issues of property and civil rights in a manner that completely excluded the Province of Quebec.

• (1820)

The second point I want to make has to do with the abuse of power that occurred in British Columbia recently. In fact, my heart is heavy when I think about what happened to Chris Kempling in Quesnel, British Columbia. The Quesnel School District suspended him—and that happened just one month ago—because as a teacher and a counsellor he chose to enter the debate on the subject of marriage. He simply ran for office as a member of Parliament, spoke out publicly, and then in his own church gave a sermon on the subject. For that he suffered both personal and professional harm.

My submission to the committee this evening is twofold. First, I urge this committee, or an appropriate committee of Parliament, to investigate the prosecution of Mr. Kempling. All members of Parliament are at risk if a citizen can be made to suffer professional disgrace for addressing matters of public policy during a federal election campaign.

This doesn't apply just to teachers. I recently had to represent a pharmacist in Alberta who was attacked by those who wanted to exclude her from practising because of her religious beliefs. Too often in our society today we talk about pluralism, but when it comes down to the practicality of it, we are not prepared to allow for differences of opinion.

The second recommendation that I would like to leave with this committee is that the committee consider amending Bill C-38 to include a provision that would make it a criminal offence for a provincial, municipal, or school board authority to interfere with the freedom of expression of a citizen of Canada. This is a model that was followed in the United States in the 1960s, when individuals in the south were persecuted by public officials because of their race.

The Minister of Justice in Canada has attempted through persuasion to convince many of the provinces in this country to respect the religious freedom of individuals within their provinces. Those governments have refused the power of persuasion; therefore, this Parliament should use the strongest weapon at its disposal to defend the religious freedom of Canadians, and that is the Criminal Code. If you use the Criminal Code, you can in fact make it a crime to interfere with the freedom of expression of individuals in this country.

Thank you very much, ladies and gentlemen.

The Chair: Thank you.

We will now proceed with the representative of the Home School Legal Defence Association, Mr. Faris. You have 10 minutes, sir.

Mr. Paul Faris (Executive Director and Senior Legal Counsel, Home School Legal Defence Association): Thank you very much. I feel privileged to be here today and I want to thank you for inviting me.

I'm the executive director and senior counsel for the Home School Legal Defence Association. We represent home educators across the country from a faith-based position.

There has been much debate on this issue across the country, and I believe this is a vital issue. I want to thank you for looking into it. I know it's been very hotly debated and of a lot of concern, but as a citizen of Canada I appreciate the fact that you're all here tonight and willing to listen to our submissions and consider them.

I am here to oppose the passage of Bill C-38. I believe the bill will be harmful, and I request that the definition of marriage remain the voluntary union for life of one man and one woman, to the exclusion of all others.

I'm going to restrict my comments this evening to the issue of religious freedom, particularly to how Bill C-38 may impact upon freedom of religion in education and in our very homes. There are three points I would like to make.

First, the government is not required to change the definition of marriage.

Second, the passage of Bill C-38 will violate freedom of religion.

Third, it will have a negative impact on education and freedom of religion in our homes, not simply in the public sphere.

I'd first like to note that the Supreme Court of Canada marriage reference was an advisory opinion only and not binding, and that the court did not deal with the issue of whether the opposite-sex requirement under the current definition is in violation of the charter. I'll quote from the brief of the Christian Legal Fellowship, which I should note has 450 member lawyers across the country, so they're

very well placed to speak on this issue. They say, "It is our respectful submission that such a definition of marriage, based on the historical and societal definition of marriage, will withstand a Charter challenge."

On the issue of freedom of religion, I doubt that anyone would question the position that all people should be free to conduct their lives as they think best, but the difficulty arises when two people's beliefs are mutually exclusive. Most would agree that the state has no business in the bedrooms of the nation, as the Honourable Pierre Trudeau stated, but this issue becomes more complex when gay couples seek societal recognition and approval of their choices. This takes us to the heart of the issue, which is not whether people should be able to live the lives they choose, rather, whether they should be able to force society to approve and celebrate those lifestyle choices. This is where most groups of faith come in—the actual celebration and approval.

I note that Dickson J., the former Chief Justice of the Supreme Court of Canada, stated in *Big M Drugmart* that the essence of the concept of freedom of religion is the right to entertain such religious beliefs as the person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination. This interpretation was confirmed by the Supreme Court of Canada in the more recent *Amselem* case.

I ask how as a society, if we consider ourselves free, we can force people of religion to give approval to a lifestyle choice that their faith does not permit. It raises a danger for any government. Practically speaking, one of the most compelling reasons for a government to allow freedom of religion is that religious practices and beliefs cannot be stopped. Most faith groups consider that obedience to their faith takes precedence over their obedience to government. It is only at its own peril that a government considers forcing people to choose between the two loyalties.

As Mr. Justice Gonthier said in *Chamberlain v. Surrey School District No. 36*, "it is a feeble notion of pluralism that transforms 'tolerance' into 'mandated approval or acceptance'".

I'd like to turn to the impact I foresee this having on education in the home, and in fact it has already occurred. I make reference to an article by Professor Bruce MacDougall in the *Ottawa Law Review*. He's a professor out east. It's entitled, "The Celebration of Same-Sex Marriage". While I disagree with his conclusions, his analysis is very instructive. He sees four stages in a society's view towards gay marriage: condemnation as the first, compassion as the second, condonation as the third, and celebration as the fourth.

● (1825)

Condemnation is obvious. Compassion involves the members of the group asking for protection from society. Condonation entails a greater level of acceptance and involves not just protection but the conferment of actual benefits. The professor stated—and I agree—that we have hit this point in Canada.

But the final stage, and what we're looking at now, is celebration. That's what we're talking about today: the celebration of a lifestyle choice. I quote from page 256 of his article:

For the state to be involved in celebration means that what is celebrated is not just acceptable but in fact is good. In the context of a group like gays and lesbians, celebration means that society not only accepts or condones this group, but approves of it.

This is the essence of the problem before us here. To redefine marriage is to force society to celebrate a relationship that is contrary to the beliefs of people of faith, or to some people of faith.

The problem is further illustrated in the context of education. Education is inherently value-laden. It's one of the main reasons many families choose to home-school their children and why that has been so popular over the last several decades. People seek to pass on their values to their children, and this is especially the case for people of faith who disagree with some of the principles of in the public school system, for example, the practice of sexual education.

The status of gay marriage is a major concern for many parents of faith. While the Bible, for example, preaches love and acceptance of all people, it does state that certain lifestyle choices should not be practised. The gay lifestyle is among those proscribed. Parents of faith, consequently, have a legitimate religious objection to their children being taught that the gay lifestyle is acceptable.

I fear that if this legislation is passed, religious freedom, and especially the right of parents of faith to pass their faith on to their children, will be lost. This is the very position that was advocated by Professor MacDougall in his article, and I quote from page 248:

Even children being raised in a particular religious tradition should not be exposed to ideology that excludes and refuses to accommodate homosexuality in their education. The state has an interest in all education of the young and the state ideal should prevail.

We see under this theory that the decisions made on Bill C-38 will be entering into our very homes and violating religious freedom not only in the public sphere, but in our homes.

I therefore ask this committee that they recommend that Bill C-38 not be passed into law and that the definition remain "the voluntary union for life of one man and one woman to the exclusion of all others".

Thank you very much.

• (1830)

The Chair: Thank you, Mr. Faris.

We now go to Mr. Johnstone.

Mr. Bill Johnstone (As an Individual): Good evening, honourable members of Parliament. I thank you for the opportunity to speak today.

I'm speaking from a personal point of view. I'm a believer in the Lord Jesus Christ and hold the holy scriptures to be the inspired word of God. I'm a father of five and grandfather of seven children and a citizen of this country. I would like to present to this committee my deeply held convictions about the attempt to legalize same-sex marriage through Bill C-38.

I'm a marriage officer in the province of Ontario, having had this privilege since 1982. My testimony here tonight is given from that

perspective. Marriage, the sacred union of one man and one woman to the exclusion of all others, is one of the tenets of my faith. I am neither intolerant nor hateful; I am merely holding to a moral code of conduct, as taught in the Bible, that is still widely held in the general population of Canada.

The men and women on this committee may not agree with the way I practise my faith. I don't demand that you agree. Each of us will be judged in a day not far away in a court of truth and justice not framed by any parliament of men. To not believe this does not make it untrue.

What I do ask is that this panel consider the consequences of its actions, first on our nation, then on our families and society, and finally on our religious communities. This nation embraced the Charter of Rights and Freedoms some decades ago. Its preamble opens with an acknowledgement of the supremacy of God. History has proved that nations that deny this are headed for disintegration: witness the sudden threat to European unity because of a refusal to ratify a new constitution from which all reference to God has been excluded. That's not a coincidence.

Bill C-38 legislates the supremacy of man by denying the creatorial supremacy of God. This is dangerous ground. Bill C-38 also denies the right of children to have both a father and a mother. Documented studies have shown that children growing up with a father and mother are statistically proven to become better functioning adults than those without that God-given right.

We are not addressing single-parent families or other situations today. We are showing that a child, even an adopted child, with no say in the matter, is in danger in this country of being legislated into a same-sex parented family. We all know that parenting is complemented by melding the perspectives of a father and a mother. Also well documented is the relative transiency of same-sex unions, and children with less stability in their family structure fare less well. Formation in this atmosphere inhibits future life choices as the child has not witnessed and practised normal interaction between the two sexes.

We hear of rights a lot these days. Marriage is not a right; marriage is an institution. Those who enter into it must qualify. One qualification at present is rightly that the participants are one man and one woman. This premise has stood the test of centuries and has built our country. Pioneering persons discovered this land, but settlers and their children populated it and made it productive. A union is not a marriage if the qualifications are not met. It may be called something else, but it's not marriage.

Persons in unions already receive the same benefits as married persons and can live their lives without interference because of existing laws against hate and discrimination, but they cannot change God's laws in nature. An apple is simply not an orange, and we should not be legislated into having to agree that it is.

As I said, we hear of the rights of adults to enter into these relationships. When it impacts children, we hear, oh, they'll adapt. Well, these adapting children are suffering in study after study, and society is suffering in turn. My concern is that the future is jeopardized by this and similar legislation. We teach our children vision by having them take a little thing to its exaggerated end result. A little theft plus the wrong friends may lead to a life behind bars. So too with this scenario. Sterile unions will certainly change society as we know it.

Now, I mentioned religious freedom, which is espoused as the first fundamental right in the charter and is the great principle by which religious communities have survived and flourished in Canada. This freedom is at risk if same-sex marriage becomes the law of the land. By legislating same-sex marriage, Parliament will have disregarded the profound convictions of many diverse and historically respected religious communities. It will expose all children in the education system to the teaching that biblical values should be spurned and that there is no right or wrong lifestyle.

● (1835)

Indeed, the very passage of Bill C-38 will be an act of religious discrimination, setting the stage for legal action that will threaten the existence of some religious communities and the rights of marriage officers such as me. I will be obligated, under law, to sanction another's new lawful right, and my rights will be legally swept aside. My freedom of conscience will be an empty shell.

This federal Parliament cannot assure me of protection. It does not have the legal jurisdiction to do so. Marriage is in the provincial domain. I feel obligated, putting myself aside, to present God's rights over the marriage institution, which will be offended under Bill C-38.

I have two further points to make.

The country has not had much time to evaluate this enormously ground-breaking change in the foundation of Canada's Constitution. After having this legislation offered to Parliament, ready-made, just four months ago, it was read twice, sent to committee, and here we are. Yes, public forums were held across the country in town halls and in similar places by members of Parliament, but what about the many adults who can't attend distant hearings, the many who think and feel but cannot, for some reason, present their views, or just can't shout loud enough to be heard? What about the input that was disregarded?

What about those with no legal voice: the children? Think about it. The children. They have no legal voice, and in the end they bear the implications of this change. Who's thinking of the coming generations?

I saw a letter published in the newspaper last weekend in which the writer perceives that the process of implementing Bill C-38 is slow. For legislation of this magnitude, it is haste. Could this haste be unseemly? Could it be purposeful, as the thin edge of the wedge, for making shaky ground unassailable so that other proposed laws, even less palatable to the vast majority of Canadians, can be swept into actuality more easily?

A careful listener can hear whisperings of future legislation. What would be the reaction to Bill C-38 if the hidden agenda and the

ulterior motives were fully shown? Of course, outrage. Could it be that this current government, even this committee, is at least partly responsible to search out what is driving the upset of one of the cornerstones of this country and of society itself? One does not have to be a legal scholar to know that once an institution has received legal status, all the power of the state is behind it.

As another has so succinctly stated, nothing is more intolerant than the politics of tolerance. The maintenance of traditional marriage is not hate, but legally protected, anti-religious hate will be unleashed in this land if Bill C-38 becomes law.

Ladies and gentlemen, consider the consequences of your actions. Is it your intent that hundreds or thousands of upright, God-fearing, good citizens take their families out of this country to escape persecution, to seek religious freedom? Is this your vision for Canada? Is this fulfilling your responsibilities toward your nation, its families, and its communities? Is this the fulfilling of your solemn responsibility before God?

Some of your colleagues have shown disrespect to honest, concerned citizens spending time and energy to bring their deep needs to the government of their country. If this is a real democracy, then let the elected officials listen to the voice of the citizens and defend their rights. Above all, however, listen to your conscience, which is the voice of your never-dying soul. Governments may fail and parties may pass on, but God abides for eternity.

Thank you for allowing me to speak today.

Please don't allow Bill C-38 to pass.

● (1840)

The Chair: Thank you.

We will now move to the first round of questions, comments, and answers. We will start with the Conservative Party.

Mr. Toews, please, seven minutes.

Mr. Vic Toews (Provencher, CPC): Thank you very much, Mr. Chair.

And thanks to the witnesses here today.

I want to address my comments to Mr. Chipeur, first of all, and your comment that there should be some kind of criminal offence to protect freedom of expression, so that there would be an offence, I assume, if government and its agencies sought somehow to restrict freedom of expression in terms of religious expression.

The charter itself protects, or should protect, citizens against the incursions of the state or inappropriate interference with a citizen's rights. There doesn't seem to be much of a mechanism; in fact, we see the actual agencies that are supposed to be protecting human rights in the country prosecuting individuals for expressing these freedoms. I refer specifically to a long line of human rights commissions that have specifically seen it as their mandate to prosecute people who have various religious views.

I don't know whether we have any precedent in Canadian law in that respect. You mentioned the pharmacist in Alberta; I assume he was being prosecuted by a regulatory college, or the like, just the way Kemppling was prosecuted by the college of teachers in British Columbia. I'm thinking that there are school board, provincial, and municipal authorities, or all kinds of state authorities.

What if we simply used the same kind of language the charter does and just say that any government authority that restricts freedom of religion and religious expressions in this way should be liable to a criminal prosecution? Would that be where you're heading toward, Mr. Chipeur?

Mr. Gerald Chipeur: Absolutely.

There's no doubt that in the case of the pharmacist in Alberta, a lady, she was able to work out an accommodation with the college of pharmacists. They said there was room for people to make different choices with respect to their religious beliefs in dispensing drugs, because if an individual cannot get a particular drug from her, they can get that drug from someone else. So within our society, there is room for pluralism.

One would have thought that the home of human rights, Saskatchewan, where we first had human rights legislation passed, would be the first to recognize this kind of accommodation or solution, but the attorney general of Saskatchewan instead issued an opinion saying, no, we are going to fire anyone who does not follow the party line, the politically correct perspective.

This legislation would do the same thing as the 1964 civil rights laws did in the south, where southern states defied the United States Constitution and said, we are not going to integrate, we are not going to treat individuals of the black race with equal dignity, and we are going to exclude them from certain public services, and furthermore, we are going to actually put them in jail and kill them in some cases. The law allowed federal authorities, in this case the Federal Bureau of Investigation, to arrest those state, municipal, and school board officials who were actively going out and taking away the rights of individuals based upon their race.

In the case of Saskatchewan with the commissioners, let's say, or the Ontario College of Pharmacists or any other authority that would say, we are going to go after you because of your religious difference and take away your licence, as Mr. Duplessis did with the Jehovah's Witnesses back in the fifties, those kinds of things would not only be torts and violations of the charter, but they would also be crimes, so that the police, the RCMP for example, could be tasked by the Attorney General with arresting public officials who have been going out intentionally, as the Saskatchewan attorney general has, to try to arrest people.

● (1845)

Mr. Vic Toews: It's a little ironic, though, that if we actually provide for prosecution against provincial officials in this country, it's the provincial attorney general who does the prosecutions. So you have the problem of the Saskatchewan attorney general, who has in fact breached the law, then determining whether he or she should be charged under the law. So there would have to obviously be some kind of provision to ensure that the attorney general is not put into that conflict. But that's an interesting concept. I think we're going to have to explore that.

Mr. Faris, with respect to the issue of home-schooling, I know that many constituents in my own riding have opted into independent schools because of concerns about what is happening in our public schools. They feel there's an interference with the values their children are being taught at home. And not only are they going to independent schools, but many of them are now going to home-schooling, and I have many home-schoolers in my riding.

How does the impact, then, of the provincial school authorities affect home-schoolers? Do they set the curriculum in terms of sex education classes and the like, or is there some provision to opt out of that?

Mr. Paul Faris: Thank you for the question. It's different in every province, obviously. Some have very few requirements; some have quite a few requirements. It's always been our position that parents have the right to dictate the religious position that's taught to their children. Our concern in this regard is that if marriage is redefined legally, it may become a factor that parents will be forced to teach their children, much like math or English, or they will have to have that perspective presented in their education materials.

Mr. Vic Toews: Mr. Johnstone, I don't have much time. You're still a marriage officer. You have not submitted your resignation.

Mr. Bill Johnstone: No, I have not.

Mr. Vic Toews: All right. Are you pursuing a human rights complaint?

Mr. Bill Johnstone: I have not pursued a human rights complaint.

Mr. Vic Toews: Have you considered pursuing a human rights complaint?

Mr. Bill Johnstone: I have thought about it, but Ontario has maintained that they've made allowances.

Mr. Vic Toews: All right. So they're saying there is reasonable accommodation inside the Ontario context, through legislation or otherwise.

Mr. Bill Johnstone: That's what's being presented. I would just like to see it so I can fully understand it, and doubtless I'd have to get counsel on it.

Mr. Vic Toews: Is this passed in legislation or is this some type of policy that has been sent out by the Ontario attorney general?

Mr. Bill Johnstone: It has been sent out by the Ontario attorney general. It came up in the provincial legislature. They called it, technically, "housekeeping", and it has proceeded from there.

Mr. Vic Toews: One of my colleagues indicates that it's legislation. We'll have to take a look at that legislation.

I think those are all my comments at this time. Thank you.

[Translation]

The Chair: Merci. we will now go to the Bloc québécois.

Mr. Ménard, you have seven minutes.

Mr. Réal Ménard (Hochelaga, BQ): If you think about it, Mr. Chair, seven minutes are an eternity.

Thank you very much for being here tonight. I must admit I am a bit surprised by the direction the debate has taken, especially by the merit of some arguments. All religious denominations, without any exception, have the right not to be forced to solemnize marriages which would be against their beliefs. This, I think, is clearly mentioned in the bill. I can't really understand how you can talk about oppression, marginalization, infringement of freedoms, especially in education, which has nothing to do with the federal government, if I may mention that in passing.

In your arguments, you do not take into account the fact that the bill before us is dictated by a legal rule derived from the charter. The Charter is not a document you can pick and choose from. You can't apply it fully when dealing with the freedom of religion and then take liberties with history when dealing with equality rights. I am a bit worried. It seems like we go back fifty years and let citizens dictate their will, because of their religious beliefs, to Parliament. Catholics, protestants or christians tell us their worldview- which they are perfectly entitled to- doesn't include marriage between same-sex spouses. It is quite possible your faith doesn't see the world that way, but according to the view Parliament must have, because of the charter and of a legal rule, your religious view has no bearing on the law; of course, it is different for individuals.

I am trying to understand how the Reformed Church or any other denomination could force us to negate the right to equality. This is very dangerous. Suppose other denominations come and tell us women should not sit in Parliament because of a literal interpretation of the Holy Scriptures. I am sorry Mrs. Boivin, I do not wish to awaken the feminist streak that you expressed in front of indiscreet cameras. But that is another story.

It is a dangerous argument, because, as we must fight to protect religious freedom, we cannot take into consideration your world view if it does not respect equality rights. That's what we are talking about here. I remind you that we are dealing with civil marriages that have nothing to do with religious marriages. It is as if you denied the right to recognize civil marriages because of your religious view of the world. I find that really troubling. We have heard that type of argument all day. I accept that as legislator but I find that quite troubling.

Here is my question: can you recognize the existence of civil marriages, admit that the rule of law should dictate what we do and that courts of justice have stated that refusing marriage to same-sex couple was discriminatory? That's what the bill says, no more, no less.

Let's start with the Reformed Church and we can start a discussion after that.

• (1850)

[English]

Mr. Mike Hogeterp: Thank you, Mr. Ménard.

Our understanding of marriage is not what I'd call a fundamental religious position. We're not saying the state needs to affirm our particular confessional world view concerning marriage. Essentially, we believe marriage itself is an independent social institution that is not derived either from a church definition or even a state definition. We come from a tradition of pluralist philosophy, essentially, that

says civil society institutions are independent and dynamic and need to develop according to their own structures. That structure in this case, from our point of view, has been one of mutuality and complementarity between the sexes in the definition of marriage.

The controversy around this issue, certainly at this table and certainly in 2003, as many of you would have experienced, indicates that those norms concerning marriage are certainly not a matter of public consensus or what I'd call a matter of social consensus at this point.

[Translation]

Mr. Réal Ménard: Did you have the same position on divorce, for example, when Parliament passed a public law on divorce? Did you think then Parliament should not have passed that law? Did you use the same arguments when the divorce Act was passed in 1968?

• (1855)

[English]

Mr. Mike Hogeterp: I'm afraid 1968 was before I was alive, but I would assume that it's legitimate for the state to be concerned about vulnerability in the context of marriage and any other set of interdependent relationships. Vulnerability often occurs in the context of breakdown, and breakdown is of course an unfortunate part of life in the world. For the state to deal justly with breakdown in marriage through divorce is an important thing for it to do. That, I would argue, is a responsive function of the state, not a way for the state to actually say it defines marriage as such. It is responding; it is not constructing marriage in that respect.

I'd like to return to your questions on the charter, if I might. Again, we come at this issue from what I'd call a foundational perspective. The minister himself talked about the foundations of this bill as equality and religious freedom. Those are important things to us. Equality is something that, I think, in this bill is the product of some assumptions about what equality is, and I think it assumes in this context, in the context of marriage and interdependent relationships, that equality equals sameness. In other words, the state needs to create a uniform definition in order to create each one of us equal, to recognize our rights equally.

I don't agree with that. I think we can have parallel institutions in which vulnerabilities are responded to appropriately without actually constructing a state-defined version of marriage. The social institution of marriage needs to be independent of the state or church definition.

Mr. Gerald Chipeur: Sir, I think it is possible in a free society for people to take reasonable positions that are not in agreement with each other. I happen to agree with the President of France and the Prime Minister of France when they say it is possible to protect from discrimination on the basis of sexual orientation without changing the definition of marriage. In other words, the change in the definition of marriage has nothing to do with bringing equality to those who request it on the basis of sexual orientation.

This last summer I was standing on the steps of the Lincoln Memorial with civil rights leaders from across the United States, and they had an interesting message. They said when the United States government brought in welfare legislation in the 1960s, it brought in legislation that said you don't get welfare if there's a man in the house, and the men left the homes of some of the ghettos in East L. A. Now, 80% of the young people from those homes wound up in prison. It just happens to be a fact that 80% of those homes did not have a man in the house.

It is possible to say, based on the social science evidence before us, that it is important for there to be both a father and a mother in a home and that it's important for children, without thereby saying, because I believe mothers and fathers are important to all children, I therefore am discriminating or want to discriminate against those who want to have same-sex relationships with each other.

So my vote would be with the President of France and the Prime Minister of France, who say let's protect from discrimination on the basis of sexual orientation, but let's also protect marriage as it is known in every society in the world today.

[*Translation*]

The Chair: Mr. Ménard...

Mr. Réal Ménard: My time is up? I have been so generous and so busy doing active listening that I only asked one question. It is in my nature to do that.

The Chair: I have the impression you will compensate for that later.

Mr. Réal Ménard: That is what I hope, Mr. Chair.

The Chair: Thank you.

[*English*]

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

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

Mr. Johnstone, I'm a little confused about your circumstances, and I'm wondering maybe if you can clarify that for me. You're a marriage commissioner in Ontario?

Mr. Bill Johnstone: I am.

Mr. Bill Siksay: And you haven't been fired from your position or you haven't resigned from your position?

Mr. Bill Johnstone: No, I have not.

Mr. Bill Siksay: And are you still performing marriages?

Mr. Bill Johnstone: I can. I am able to.

Mr. Bill Siksay: When was the last time you performed one?

Mr. Bill Johnstone: Probably two years ago.

Mr. Bill Siksay: Why did you stop two years ago?

Mr. Bill Johnstone: I perform when I'm requested.

Mr. Bill Siksay: Is there a reason why you haven't been requested in the last two years, that you know of?

Mr. Bill Johnstone: No, I don't think so.

Mr. Bill Siksay: So there's nothing, in terms of the change in the law or the court decision that has affected your ability to marry, at this point?

Mr. Bill Johnstone: No, there isn't. I just thought it was only fair that I come here bringing a personal approach, but also revealing that I'm a marriage officer. That was just a fact for you to know.

● (1900)

Mr. Bill Siksay: So you haven't been discriminated against in your ability to do this job by the court decision in Ontario or by the change in the law in Ontario?

Mr. Bill Johnstone: I really can't comment on that because I haven't read the new law, the new legislation, and I'm sorry I'm behind on that, .

Mr. Bill Siksay: Although you thought you might have to retain counsel to check that out.

Mr. Bill Johnstone: I may have to. I'm sorry, this came up very quickly—

Mr. Bill Siksay: Sure.

Mr. Bill Johnstone: —and I came here with that in mind.

Mr. Bill Siksay: No, I understand.

Mr. Bill Johnstone: I'm trying to give you full disclosure.

Mr. Bill Siksay: No, I appreciate your doing that.

But there isn't anything that indicates that you feel a legal threat is imminent or anything like that, whereby you'd need to consult a lawyer? There's nothing changed in the way you're operating as a marriage commissioner in Ontario at this point, as far as you know?

Mr. Bill Johnstone: I can just say as far as I know. I did say I would look into it, as I told Mr. Toews, and I think I should do that, and then I could answer more intelligently.

Mr. Bill Siksay: But you also said you think that the Ontario legislation that was recently passed does make an allowance so that you wouldn't have to resign your position and you will be able to continue as a marriage commissioner and maintain your personal belief?

Mr. Bill Johnstone: That's what the intent of the legislation was, I believe.

Mr. Bill Siksay: Mr. Faris, a number of times in your presentation you talked about lifestyle choices. I'm wondering if you understand my sexuality, as a gay man, to be a choice that I made.

Mr. Paul Faris: The wording I used on that was not intended to actually speak to that issue, it was simply intended to refer to a way of living. I'm not commenting today on whether that is a choice or not, I'm simply here concerned with religious freedom and the protection of religious expression.

Mr. Bill Siksay: So even if it was something that was fundamental to my humanity, that wouldn't affect your view, your religious view, of human sexuality?

Mr. Paul Faris: I have really two answers. There's my personal view, and there's also my belief that people of faith should be protected in their personal views. We see many faiths that believe that the gay lifestyle should not be practised. That's simply the position of many faiths, and I believe they should be protected in those beliefs.

Mr. Bill Siksay: Do you see something in this bill that will prevent them from holding that belief implicitly?

Mr. Paul Faris: We see a general shift in the country, but specifically in this bill is the redefinition of marriage, which will state that it has now changed. Once it's in the law like that, then we see many different changes. For example, child and family services, education acts—all of them will begin to change. My concern in regard to home education is that there may be education requirements that would be enforced within homes, in terms of that, in violation of parents' religious beliefs.

Mr. Bill Siksay: Have you seen that in home education before?

Mr. Paul Faris: We have seen in home education, in some limited circumstances, the desire to, for example, put in certain things on sexual orientation or certain views, certain languages—not extensively, but it is a concern we watch very closely.

Mr. Bill Siksay: So when you say “not extensively”, I'm trying to understand what's happened that would cause you the concern.

Mr. Paul Faris: Provinces are generally very aware of religious freedom and the desire of parents to pass on their religious beliefs to their children, and they typically respect those. However, we do see proposals differently. It's an ongoing issue, and this is one of the reasons we exist as an organization, to keep an eye on that sort of thing.

Mr. Bill Siksay: Has your association ever been forced by legal action to introduce something into curricula that you weren't comfortable with?

Mr. Paul Faris: We've had to deal with something in several circumstances. There was, I believe it was, the Smith case in Alberta, in 1985, where that specifically came up. It wasn't in reference to gay marriage, but it was regarding religious beliefs. There are many other examples that didn't go as high—that was a Supreme Court of Canada decision—but it is something that does come up on a fairly regular basis.

Mr. Bill Siksay: I wondered if the folks from the Christian Reformed churches can respond. I'm interested in your argument around cultural uniformity, and the suggestion that somehow this bill will lead to cultural uniformity and enforcement of sameness, whereas in my way of thinking, I would understand that this is what we have now. I would put that the other way around, that somehow allowing for a same-sex marriage was promoting diversity in our society.

Where am I not understanding your argument?

• (1905)

Mr. Mike Hogeterp: This is related to our understanding of pluralism and marriage as a social institution. Marriage itself, as currently identified by the state, is a uniform institution. It is between a man and a woman. We're concerned that this bill creates a definition that does not recognize your concerns as a gay man or my concerns as a married heterosexual person. It lumps our lifestyles

into one comprehensive set of legislation that says marriage is one thing and one thing only.

From our perspective, marriage is deeper than, say, love and commitment. It's deeper than mutual satisfaction. I'm sure this is true for you, too. But when the state gets into the business of saying, we define marriage as this, this, and this, it is imposing its own definition on a fundamentally socially derived institution.

Mr. Bill Siksay: Does the state not currently have an effective definition that would recognize a lesser understanding of marriage? I don't agree with that characterization, but that's how you described it. According to this definition, marriage is not necessarily about procreation and religious values. Don't we recognize this already in civil marriage in Canada?

Mr. Mike Hogeterp: Indeed we do, in the common law. It would be equitable and appropriate to allow those in committed same-sex relationships to opt for a set of rights and obligations that addresses vulnerabilities and their potentials within a legal framework. This would be better than creating a single definition that, from our perspective, doesn't appropriately identify the diversity in relationships.

Mr. Bill Siksay: What would be the difference between a gay or lesbian couple and, say, an elderly heterosexual couple coming to seek a civil union? What's the difference in the relationship that merits different treatment?

Mr. Mike Hogeterp: From our perspective, it's a social institution in which male and female are united together in a form of complementarity, which creates a stable environment for the nurturing of children.

Mr. Bill Siksay: Yes, but an elderly couple is not likely to procreate.

Mr. Mike Hogeterp: I'm talking in general and in terms of potentials.

Mr. Bill Siksay: But I asked about elderly couples. Your church wouldn't deny an elderly couple marriage?

Mr. Mike Hogeterp: Certainly not.

Mr. Bill Siksay: But—

Mr. Mike Hogeterp: The difference is not confined to the procreative element. It is a union of sex difference.

Mr. Bill Siksay: Should other religious denominations that believe in same-sex marriage have the ability to offer marriage to their members in the same way as those that don't?

Mr. Mike Hogeterp: I respect the views of my ecumenical brothers and sisters at the United Church, who would say that they need to bless the unions of same-sex couples. That is their right as a religious institution. Our understanding of marriage is not rooted in an assumption that the church needs to define marriage. It's rooted in an assumption that as a social institution it develops and defines itself. It's not the business of the state or the church to make that definition.

In the case of the United Church, they're free to celebrate same-sex unions as they see fit. But I don't believe it's the business of the state to say that marriage is this or that. The state is in the business of recognizing that there are vulnerabilities in a whole set of interdependent relationships, some of which have different characteristics that are profound. That profound difference is evident in the continuous, loud, spirited debate that you folks have witnessed at this table, and that we've witnessed in the media. It was witnessed around the tables in 2003. I'm sorry that report never got to the floor of the House of Commons. It was an important exercise of conciliation that we considered critical.

•(1910)

The Chair: Thank you, Mr. Siksay.

We now move to the Liberal side, to Mr. Macklin, the parliamentary secretary.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Chair, and thank you, witnesses, for being with us and sharing your views.

I think it's very important that we do have an open debate, a civilized and thoughtful debate. I think this is part of that ongoing process that started about three years ago. For some of us, I know we are reacquainting ourselves with you as we come around for the second time, having now heard, I guess, in excess of 500 witnesses on this topic.

We still come back to trying to deal with this tough issue that you bring to us and with the tough issues that we have to try to reconcile with the legislation before us. As you know, at this point we have a bill that has been approved in principle and we are, in the most technical of ways, trying to seek advice from you on how we may improve the bill.

I realize that "technical" obviously has a very broad interpretation as we go forward, but that's not to take away from the debate, and I think we should continue with the debate itself.

Let me first start with the Christian Reformed churches. I'd like to pursue your line of reasoning, where you say that civil union and marriage, in your opinion, would meet your definition of either social pluralism or just pluralism, in this particular case. Can you give me any other examples in our society in terms of legislation that would meet the same test, where in fact you believe that doing things slightly differently for different groups would meet your concept of social pluralism?

Mr. Mike Hogeterp: In the brief we cite the example of multiculturalism in which communities and cultures are respected in federal legislation, provincial legislation, and what have you. They are encouraged to flourish and develop as they are, as cultures in their own right, not by saying they need to correspond to a particular

liberal vision of what it means to be a Canadian. They need to be rich in their own texture and self-identification. For us to fail and demand that they adopt a uniform Canadian kind of culture, whatever that may be, would be doing a disservice to them. That, in my limited experience, is where I'd point you.

Hon. Paul Harold Macklin: I don't see that as an area where we have necessarily legislated on the same basis as you propose here.

In particular, I guess, the Quebec court has indicated that civil unions do not in fact have equality with the definition of marriage, because in fact it is argued there and accepted that civil unions fall within the purview of the provinces, and they are within provincial jurisdiction, not within a national jurisdiction. And therefore, if one were to argue your case, how do you think you'd ever have international recognition of something that wasn't national and that could be in fact different, by way of definition, in each province? Isn't one of the reasons that marriage is in a national context and particularly set out in our Constitution for definitional purposes so that in an international context we can have something common that is recognized?

Mr. Mike Hogeterp: That's one of the reasons we've mentioned again and again the importance of a broad conciliation process. I would argue that the provinces and citizens need to respond to what I would say is a court part of what the minister himself called a dialogue and debate that all together in that process of conciliation. This is the essence of the rule of law, where everyone sits at the table, debates, and understands together, and then you respected members of Parliament have an incredible conundrum on your hands. You need to make the decision.

However, it's important that all voices in all jurisdictions have input into such a significant decision as this on Bill C-38. This again is a significant social institution, and no one really understands what the alteration of that really means, or the consequences.

So for us to be concerned about international applicability and so forth is fine. I think we need to dialogue very extensively about these things with provinces, which are certainly the ones responsible for something like a civil union arrangement.

•(1915)

Hon. Paul Harold Macklin: So your concept of equality, then, would require all provinces to have the same legislation. Is that your concept?

Mr. Mike Hogeterp: I would hope so.

Hon. Paul Harold Macklin: Do you think that civil unions are the only way you can reconcile your biblical ideas and beliefs with equality on this issue?

Mr. Mike Hogeterp: Yes.

Hon. Paul Harold Macklin: Then I guess, in looking at the question of equality as being the key issue here, and noting that we do have a civil definition, as I said before, what we don't have, quite frankly, is equality within the religious definition of marriage. Isn't it really very important that we have something that is the standard—in connection with my previous thought—for a national recognition, and internationally, on a civil basis? I don't think we can ever collectively get all of our churches, synagogues, and other bodies to agree on a commonality of that definition, and looking at our history of constitutional reform, I think it would be extraordinarily difficult to get the provinces to all agree on one way of dealing with this issue.

So in the interests of providing a solid basis for acceptance of who we are in those relationships, is there any other way you can see that it could happen, beyond achieving a national consensus? As I say, constitutionality is likely to be difficult to achieve—in other words, redoing the Constitution. Is there any other way in which you could see it? I can't see that the churches themselves are ever going to come up with this. As a matter of fact, someone suggested the other night that we should get out of the marriage business as a government and leave it to the churches, but I see that as absolute folly for us, because I just see that as not having any way of establishing this international respect for that institution.

Mr. Mike Hogeterp: I think it will certainly be a significant challenge to create a uniform instrument that recognizes equality in a full set of relationships. Again, this is not something for which I think the churches need to agree on a specific definition. Again, I've said that this is a social institution, a social matter, in which I would say marriage and other interdependent relationships are self-identified. It's incumbent upon governments to, in those circumstances, address the needs that arise in any given relationship—within certain appropriate limits, of course.

Hon. Paul Harold Macklin: You, I believe, said that the state oversteps its bounds when it legislates marriage, but having looked at the fact that civilly we do seem to have legislation within our common law—it hasn't formed a portion of our codified law but in fact has been adopted by this country in the normal course of common law—why do you think we overstep our bounds in legislating a definition of marriage?

Mr. Mike Hogeterp: Our assumption is that, again, a social institution such as marriage or any other civil society institution is in the business of self-identification. For the state, in a plural framework, to assume that it may impose a definition on a civil institution violates the integrity of that social institution by creating a definition from outside of it.

There's no way that parliamentarians, as intelligent as they are, can understand the full depth of the spirit of a culture within a social institution. For the state to adopt a particular definition would, we believe, lead to the assertion of a particular world view.

• (1920)

Hon. Paul Harold Macklin: I could understand your position if in fact we were going to legislate, in effect, a state religion and therefore adopt a standardized definition of marriage that all religions must adhere to, but I think what we're really trying to do here is just establish the extension of an existing civil institution,

which has certain rights that accrue as a result of falling into that status.

The Chair: We're running out of time, sir.

Hon. Paul Harold Macklin: May I finish?

The Chair: Yes, briefly, please.

Hon. Paul Harold Macklin: This whole argument being advanced is clearly of some concern to me because all we're really doing from a civil perspective is broadening the category. We're not lessening in any way those who already have access to that category of civil marriage, but rather just adding more people to it for the state recognition and the rights that accrue to that state called the state of marriage, civil marriage.

Mr. Mike Hogeterp: If I may respond briefly, please—

The Chair: Yes.

Mr. Mike Hogeterp:—again, this is a situation, in our view, in which the state is no longer recognizing needs. It is constructing a definition that violates the internal integrity of a socially defined institution. That's not to say that the state should not be in the business of finding a way to respond justly to the needs that exist in other forms of interdependent relationships. We've been saying since 2003 that this is a critical thing this state should do without constructing a definition of even those social institutions.

The Chair: Thank you.

We are now moving into the other round of questions and comments, which are of five minutes. We're moving to the Conservative Party.

Mr. Moore, please.

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

I was just listening to the line of questioning from my colleague, and I guess I'm a little perplexed now that it's somehow up to the churches to come up with a definition of marriage or to find some national consensus. We certainly already had a national consensus on what a marriage was, and in fact I'd like your comments on this, Mr. Chipeur. Is there not also an international consensus as to what the word "marriage" means and also how this issue has been dealt with in many other jurisdictions?

I didn't take any comments that people made as being unduly alarmist about the effects of this legislation, and anyone who would suggest that Canadians' human rights could not be impacted is not only beyond naïve, but wilfully blind to even the current situation. We know how fast things can change. Five years ago in this debate we had members basically on all sides strongly endorsing the definition of marriage that we're talking about now and voting overwhelmingly for that. A few years later, we have some of those same members who are prepared to vote to change the definition of marriage. I take issue with the idea that somehow we're expanding what marriage means. In fact, what Bill C-38 does—and I'd like your comments on this also, Mr. Chipeur—is change in law what the word "marriage" means, which I would think is an overextension of our jurisdiction.

Could you comment on the international context and also on other courts' treatments of this issue? We know that our Supreme Court of Canada, our highest court, has not said that the definition of marriage in the traditional sense is unconstitutional. We know that. Also, there is a case in New Zealand that went to the United Nations Human Rights Commission, which specifically has sexual orientation in their rights code, and they found that it's not necessary under human rights to change what the word "marriage" means.

I'd like your comments on the international context and also on the treatment of whether there is already a consensus on what marriage means internationally.

• (1925)

Mr. Gerald Chipeur: You've certainly asked a big set of questions, so let me try to address them quickly.

First, you're absolutely right. As far as I know, there's only one other national legislature that has indeed addressed this issue and decided to adopt this kind of legislation. All other nations that have gone down this road have done so through judicial direction, and only two or three have done that. So Canada would be acting alone, first, and without precedent.

What concerns me is that we are here talking about technical amendments, when in fact we don't have any social science reason for making a change. A legislature should really be asking itself whether there is a need to make a change because there is a problem in our society to fix. The Supreme Court has not said there's an equality problem here that needs fixing. In fact, the international courts have gone the other way and have said there is no equality issue here.

So if there is not a problem, are we going to open up our society to the grave problem of putting future generations at risk—and that's our children—without really knowing where we're going? As a libertarian, my view is government shouldn't be going anywhere unless it has good reason to go somewhere.

The reason government goes into the marriage field is because it needs to protect vulnerable children. If it doesn't have that reason for legislating on the subject of marriage, it really should be staying out of the romantic relationships between individuals. Leave that to the private sphere, and don't get involved. The only reason Parliament can in any way justify getting involved in the marriage business is to protect younger children.

Now, if you want to ask, what about the fact that children may be adopted by same-sex couples, my answer is that if the state sanctions same-sex marriage, by definition they will be excluding either the mother or the father from that family. It should be a free choice within our society to exclude the mother or the father, but the state should not do that unless it's satisfied that the consequences of that decision will not be negative for children. All of the social science evidence I have read actually tells us the opposite: that there will be a negative consequence from excluding the mother or the father from the home.

Mr. Rob Moore: I noted with interest your resignation from the Canadian Bar Association. If I had the option of doing that—and in New Brunswick I don't—I would absolutely exercise that option because of their submission. I don't know if you've had a chance to

read it, but they flatly said there was no conflict between the rights of same-sex couples and other Canadians' religious freedoms. I think they're incorrect, just based on what's already happened.

I'd like Mr. Johnstone and also Mr. Hogeterp to comment on this. Let's say this change takes place and your home-school association is required—and this is very conceivable—to teach your children a definition of marriage that is inconsistent with your religious beliefs, in order to finish grade 12 and graduate. They would have to be indoctrinated with that particular philosophy. If that superceded your religious philosophy, can you see Canadians in your organizations—and I ask this also of Mr. Johnstone, for a quick answer—exercising the option of actually leaving Canada?

Mr. Mike Hogeterp: Since the question was about home-schooling, I'll defer to Mr. Faris.

Mr. Rob Moore: Either one of you.

Mr. Paul Faris: I would say absolutely. I think we would see two things: people leaving the country, and people refusing to abide by it and suffering the consequences. Some would abide by it, but there are a lot of people in this country with very strongly held religious views. They would consider those religious views to supercede the laws of Canada and would act accordingly.

• (1930)

Mr. Rob Moore: Thank you.

Mr. Bill Johnstone: Scripture tells us that God must be obeyed rather than man, and I can speak for myself and my family that I would have to leave Canada if it were forced on us to take that kind of education.

Mr. Rob Moore: The interesting thing is that it's not the first time I've heard that. I was driving with a gentleman, a first-generation Canadian from Lebanon, who told me the exact same thing, that if this were to take place, even though he loves Canada for its health care and for its opportunity, and he has a job here and loves this country, this is creating a conflict. He was not of the Christian faith, but this was creating a conflict between his values and the government's new values, and it seems clearly a conflict other jurisdictions have been able to avoid.

Mr. Chipeur, you spoke about France. Can you comment a bit on how they've dealt with the issue of same-sex couples' rights under the law compared to married spouses?

Mr. Gerald Chipeur: Are you talking about the nation of France?

Mr. Rob Moore: France.

Mr. Gerald Chipeur: The nation of France dealt with this issue. The government addressed it square on. They had a debate on the subject. And they decided it was not necessary in order to address both the issue of homophobia and the issue of discrimination. It's possible to address both of those problems without changing definitions. That's because marriage is about children. It's about putting children's rights ahead of adults' needs. Adults in France have decided to put future generations first and adults' rights and needs second. That's not an unusual request. It's not an unusual conclusion. Any society that does not put its children first will soon, in fact, disintegrate.

The Chair: Thank you.

We will go to the Liberal side now.

[Translation]

Mrs. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): Thank you for having come tonight to present us your point of view on Bill C-38. I always have some reservations when people say they will leave Canada because of the situation. This reminds me of Martin Sheen and Alec Baldwin, two American actors who threatened to leave the United States if President Bush was reelected. As far as I know, they are still there.

That said, the education issue is of particular interest to me. I do not know your association well. I understand your members are parents who educate their children at home. Is that correct?

[English]

Mr. Paul Faris: Yes, that's correct.

[Translation]

Ms. Françoise Boivin: The textbooks and the material you use come from the province where the parents live?

[English]

Mr. Paul Faris: It's different in every province. Typically what is required is that children receive a satisfactory education of some sort, so they use either provincial materials or a different curriculum that satisfies the basic requirements of an education.

Ms. Françoise Boivin: Where do you get your material?

Mr. Paul Faris: Across the country every year there are provincial home-school fairs. I guarantee that a public school teacher would be overwhelmed, because there are, quite simply, hundreds of suppliers out there. You can get everything from classical Rome education material right up to pretty much anything that's been provided in the schools. There's a huge amount out there.

Ms. Françoise Boivin: My question is more about where your fear really lies. Is it the fact that you're afraid you would have to teach homosexual marriage at home? Is that what I'm hearing tonight? Is that the point you're trying to address with us? I'm not too sure.

Mr. Paul Faris: Yes, that is correct. What we see in education, especially in home education and private schools, is that education is not simply about math, spelling, or reading; it's also about different social aspects of our country—health education, aspects like these.

Certain things are just true. Two plus two always equals four. There's really no room for interpretation. But when it comes to religious beliefs, beliefs of certain individuals in society about what's right and what's wrong, there is considerable divergence. Even within our membership we have members of many different faiths.

•(1935)

Ms. Françoise Boivin: I just don't see it, but if I were teaching my kids at home, I would be the master of what I'm teaching them. You might have some curriculum to achieve...through the exams, and so on and so forth. Is that the part you're afraid of? I would think you'd pretty much be in control of what you're going to teach your kids.

Mr. Paul Faris: I can only say that I hope you get to write the laws on this issue for all the provinces.

Ms. Françoise Boivin: Which province are you in?

Mr. Paul Faris: We represent all provinces. I am called to the bars of the provinces of Alberta and Ontario, but we have members across the country.

[Translation]

Ms. Françoise Boivin: The next question is more for Mr. Chipeur.

[English]

I understand you're a lawyer. Is that correct?

Mr. Gerald Chipeur: Yes.

Ms. Françoise Boivin: You are.

I read your text, but I wonder whether you analyzed the impact of Bill C-38, let's say, in the province of Quebec and the province of Ontario, considering all the jurisprudence in those two provinces, just as examples. And do you feel that your answer to question (b) in the second part of your brief, on religious freedom, would change your opinion, or would you still have the same opinion for Quebec and Ontario, based on their law on civil celebration or the celebration itself?

I don't know if I'm being clear.

Mr. Gerald Chipeur: Yes, you are. I think you're asking whether from province to province, in light of the fact that in Ontario and Quebec there is recognition of the fact that there is diversity in religious belief...and it's great that there is that recognition in those provinces. But in the letter, I was addressing solely the issue of whether or not the federal government could do anything within Bill C-38. In other words, was the preamble or any of the clauses in this proposed legislation effective in protecting individuals from discrimination on the basis of religion? In my opinion, it is not. If you were to bring in Criminal Code amendments, then, yes, they would be there.

But to answer specifically the question you just asked about curriculum, there are human rights complaints currently in British Columbia—

Ms. Françoise Boivin: No, I'm just asking, lawyer to lawyer, in Quebec and Ontario, if I look at question (b),

[*Translation*]

it says:

If Bill C-38 was passed, could the religious groups and people who refuse to celebrate a marriage be charged?

[*English*]

What would be your answer, as a lawyer?

Mr. Gerald Chipeur: The answer is that they could if in fact....

Let's say you had an individual in Quebec who did the same thing as the individuals in British Columbia did, and let's say they went to court and said this was wrong. In fact, there was a group from Quebec who went to the Supreme Court of Canada in the marriage reference and said it was unconstitutional for the Supreme Court of Canada, or for this Parliament, to make an exception to allow for diversity with respect to this issue. They said everyone must perform same-sex marriages, or else they have to get out of the marriage business. They said that if you make an exception, you're actually establishing religion. And so you could in fact find that people would make that argument.

Ms. Françoise Boivin: You're smart, but—

The Chair: Excuse me.

Ms. Françoise Boivin: Is it already over?

The Chair: I'm afraid so.

Ms. Françoise Boivin: That's too fast.

[*Translation*]

The Chair: We shall now go to the Bloc Québécois.

Mr. Ménard.

Mr. Réal Ménard: I will try to follow on what Mrs. Boivin was saying.

Mr. Chair, we have had at least a dozen meetings since the House sent us this bill. I wish to call your attention to the fact that not one instance of somebody being forced to celebrate a marriage against its beliefs or of some public servant having been fired has been mentioned to us. Some people have resigned, which is different.

This debate is taking a strange twist. We are members of Parliament and we follow the rule of law. I repeat, and it doesn't seem excessive for me to say that, that I am a religious person. It is not important to mention which is my religion. I believe that there is such a thing in life as a religious feeling as there is a loving feeling.

Seven courts have asked the definition of marriage be modified. Are they right or no? There are recourses in law and this issue went to the Supreme Court. I know of course that this is a reference, that this a privilege of the executive and that this doesn't bind the government. Nevertheless, excluding the reference, that's still several jurisdictions, several judges and courts.

You ask us to put aside the rule of law in the name of a religious ideal. Since I have started working with the committee, I have never heard of a concrete instance that could convince me that individual freedoms have been denied, so that we would be justified in defending them, at the civil level. I repeat, it seems dangerous to ask us not to apply or to adopt a bill based on a religious view of the world.

I come from Quebec a province where, for years— long before I was born because I am in my early roaring forties— the clergy has had an important role. But I could not imagine that in our society, there are groups as yours that see an attack on their freedom in an ideal of equality that courts ask us to respect. Moreover, your only argument is your religious ideal.

If we went along with your view of a religious ideal, this would be very imperialist, very authoritarian and very unfair. We have met with people from the Reformed Church of Canada and they don't have this religious ideal. In the same vein, if certain groups do not accept women in politics because of their religious ideal, will Parliament bow to their wishes because of that religious ideal? This is a very troubling part of this evening's testimonies but you still have the right to present them.

You invoke the freedom of religion and beliefs but you are ready to make a very questionable compromise in the name of an ideal of equality. This still troubles me. I never imagined anybody could present arguments not excessive but as sharp as those we have heard.

I call for a little more generosity in an ideal of equality. I tell you very frankly that I wish bill C-38 will pass and your appeal not be heeded. And if some people want to leave Canada because we give rights to some people without depriving you of any right, let me tell you I find that very sad and I regret it.

That was a comment. If some of you want to react to that, we will hear them.

• (1940)

The Chair: Thank you.

Let's go to the Liberal Party. Mr. Boudria.

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

[*English*]

I think it was Mr. Chipeur who talked about the need to further define freedoms within clauses. Of course, we cannot incorporate in this bill reference to the Criminal Code; that's beyond the scope of the bill. I think you, sir, being a lawyer, perhaps would be familiar with some of the processes of legislative drafting. You cannot, by way of amendment, incorporate; you can narrow a bill but certainly can't widen it. In any case, even if you could, you certainly can't amend a law that's not before us, and the Criminal Code is not in the bill, as you know, so that wouldn't do it.

Other witnesses have talked about something like this. I won't word this correctly, but it's the thought behind it. It's something to say—

• (1945)

Mr. Vic Toews: Mr. Chair, I have a point of order here. The member is suggesting to the witness something that is incorrect. The committee has the power to put a criminal offence in this bill, exercising Parliament's criminal powers, so to suggest they cannot create an offence is wrong.

Hon. Don Boudria: Well, anyway, I'll argue that point, Mr. Chair, if there's ever an amendment, but I'm convinced Parliament has the authority.... This committee has a bill, and to incorporate something in the bill that is not there...I could give you the actual references for why I don't think it can be done.

But anyway, the point I'm making with our witness is that someone else suggested a greater clarity clause that would say something like this—and they may not be the right words—that the traditional definition of marriage, or something like that, is also affirmed or equally affirmed. And of course it is, because as someone has said—and I think it was my colleague Mr. Macklin—this actually widens the definition. So obviously the narrower one is still inside it because it's been widened.

But some witnesses have said this would make a symbolic statement. Do you think it is the kind of amendment that, if added, would not satisfy you, perhaps, but would maybe provide greater comfort? In other words, is it helpful?

Mr. Gerald Chipeur: I wish it could be, but unfortunately there are many local authorities—provincial attorneys general, school board chairs, and school board members—who, like Premier Duplessis did, believe they have the authority to abuse their offices and abuse the charter rights of individual citizens.

My concern is that if you act here in Parliament before the provinces have debated this issue and come around to the way of thinking of the current Minister of Justice, you will in fact put at risk individuals who are teachers in our school system who may have a difference of opinion on the subject of marriage. You put individuals, maybe even lawyers, judges, and marriage commissioners, at risk as well, certainly in Saskatchewan and Manitoba.

My concern is that in reality today, right now in British Columbia, somebody is suspended; their family is not being paid an income. Their reputation in their profession is being harmed simply because of a belief expressed in public. Unless you use the strongest weapon at your disposal, the biggest hammer to smash that kind of official abuse of power, then you are going to in fact be creating more problems than you solve by passing Bill C-38.

Hon. Don Boudria: I just want to get back to a point I raised earlier, in the short time I have left, to buttress my argument. It's that Erskine May on page 343, Marleau and Montpetit on page 453, and Beauchesne's paragraph 579 all say we cannot provide an amendment to a bill that's not referred to in the bill that's before us. I just thought I'd add that.

Mr. Vic Toews: On the same point of order, I'm not suggesting—

Hon. Don Boudria: It's not a point of order.

Mr. Vic Toews: On that point—and I'll be very brief—I'm not suggesting we make an amendment to the Criminal Code, but we can use the criminal law power of Parliament to create an offence in the act, and that's what my learned friend is—

Hon. Don Boudria: In a different act, yes, not in this one. I agree.

Mr. Vic Toews: No, in this act.

The Chair: I'm glad you both agree. Thank you.

Some hon. members: Oh, oh!

The Chair: I'd hate for something drastic to happen 10 minutes before the end of this committee.

Please, Mr. Boudria, resume.

Hon. Don Boudria: No, it's okay.

The Chair: We're back to the NDP. Mr. Siksay, please, five minutes.

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

I have a question for Mr. Hogeterp or Ms. Pleizier. Have any clergy in the Christian Reformed churches of Canada ever been forced by the courts to provide religious service to someone they may have denied that to in the past, for reasons of their own belief or the doctrine or theology of the church?

Mr. Mike Hogeterp: No.

• (1950)

Mr. Bill Siksay: Has any congregation ever been forced to, say, rent their sanctuary to a group for whom they had concern about or anything like that?

Mr. Mike Hogeterp: No.

Mr. Bill Siksay: So there have been no incidents in the past in terms of access to ordination or access to burial or access to communion, the Eucharist, that kind of thing, where someone has been forced to do that?

Mr. Mike Hogeterp: No.

Mr. Bill Siksay: So we don't have a history of the state's power being used to force a provision of those kinds of services.

Mr. Mike Hogeterp: I must say we have great respect for and appreciation of the traditions of religious freedom in this country and certainly hope they continue in as robust a way as possible. We certainly believe some amendments that had been proposed to you by other presenters are extremely helpful in this respect—the Evangelical Fellowship of Canada, for instance, and Mr. Brown a few days ago—all of whom have presented some things I believe are certainly worth your consideration as a committee.

Mr. Bill Siksay: But on that issue, the actual provision of religious service, there's been nothing that would cause you concern about how the courts or even people in society understand your ability to make those decisions as a church.

Mr. Mike Hogeterp: I think, certainly, the evidence suggests that we haven't had significant troubles to this point, but the spectre of litigation does hang in certain contexts, and that's disconcerting.

Mr. Bill Siksay: What context are you—

Mr. Mike Hogeterp: I'm thinking of Bishop Henry and others, of marriage commissioners and so forth who have resigned and brought human rights complaints forward. That suggests there's a concern about religious freedom; legitimate or not, the concern is there. I think this committee would do religious communities a great service by providing some robust protection of religious freedom. From our perspective, that probably means a further round of conciliation, going back to the political theory thing.

There are clear indications from the Supreme Court and others that religious freedom in this context is a provincial matter, solemnization particularly, so for effective, across-the-board national protection of religious freedom to happen, there needs to be a clear recognition of that need at the provincial level.

Mr. Bill Siksay: But wouldn't the idea that this has never happened before suggest that there are robust protections there?

Mr. Mike Hogeterp: I think there are, but codification would certainly be an important thing, for good or for ill, in a bit of a litigious society. Comfort in words, as you might see from our brief, is something we hold very dear.

Mr. Bill Siksay: I'll maybe ask the other panellists if they know of any situation where a minister, priest, or rabbi has been forced to provide a religious service they had originally denied. Does anyone know of any of those from their experience?

Mr. Gerald Chipeur: Certainly, the Roman Catholic Church school and Roman Catholic Church—

Mr. Bill Siksay: I'm not talking about school. I'm talking about churches, priests, ministers, and rabbis, that kind of thing.

Mr. Gerald Chipeur: I think it's a mistake to distinguish between a church school and a church as an organization. They are one and the same to the Roman Catholic Church.

Mr. Bill Siksay: I think in this bill, though, we're talking about a religious service of marriage, where the concern is that churches may be forced to provide a service against their will. I'm just trying to establish whether or not that's ever cropped up in other areas of direct religious services churches offer.

I understand your point about schooling, and you got slightly removed. I also think it's in provincial jurisdiction. I'm just trying to establish if, even in provincial jurisdiction, there has ever been a situation, to your knowledge, where a priest or minister or rabbi has been forced to provide that kind of religious service.

Mr. Gerald Chipeur: Well, I'm certainly not aware of it.

One of the things I would recommend is that this committee include a provision that prevents the courts from using their injunctive powers to, within hours of a particular ceremony, or in this case it was a dance at a school.... Can you imagine if, just hours before a church service, the courts issued an injunction against a priest, requiring them to act?

Mr. Bill Siksay: Do you have a remark, Mr. Chipeur?

Mr. Gerald Chipeur: Yes. What I'm suggesting—

Mr. Bill Siksay: Do you consider a high school prom a religious occasion?

Mr. Gerald Chipeur: I believe that everything that happens within a Roman Catholic school system has a religious element. To deny that is to not understand the Roman Catholic faith.

• (1955)

The Chair: Thank you, Mr. Siksay.

We're now back to the Liberals, Maître Boivin.

Ms. Françoise Boivin: Me again. To continue a tiny bit, I was enjoying this tremendously. I've been elected for barely a year, so, I still have my bad reflex as a lawyer.

Are you familiar with the concept of reasonable accommodation that the Supreme Court of Canada has decreed in a lot of cases?

Mr. Gerald Chipeur: Yes, I've argued in probably three or four of the precedent-setting cases on that subject.

Ms. Françoise Boivin: You did. Excellent.

So aren't you satisfied with *le renvoi*, the decision that was rendered on December 9, particularly when we read paragraphs 53, 54, 55, and 56, all concerning religious protection? That's where I fail to understand sometimes. I understand there's a scare, but I tend to agree with the Supreme Court of Canada that it's not an objective fear; it's more a subjective fear. I wonder if your colleagues who are here tonight are familiar with these paragraphs.

In paragraph 53, the court says: The protection of freedom of religion afforded by s. 2(a) of the Charter is broad and jealously guarded in our Charter jurisprudence. We note that should impermissible conflicts occur, the provision at issue will by definition fail the justification test under s. 1 of the Charter and will be of no force or effect under s. 52 of the Constitution Act, 1982. In this case the conflict will cease to exist.

In summary, the potential for collision of rights raised by s. 1 of the Proposed Act has not been shown on this reference to violate the Charter. It has not been shown that impermissible conflicts - conflicts incapable of resolution under s. 2(a) - will arise.

Then on question three, they went so far as to conclude:

Against this background, we return to the question. The concern here is that if the Proposed Act were adopted, religious officials could be required to perform same-sex marriages contrary to their religious beliefs. Absent state compulsion on religious officials

—and this might answer your fear, Mr. Johstone—

this conjecture does not engage the Charter. If a promulgated statute were to enact compulsion, we conclude that such compulsion would almost certainly run afoul of the Charter guarantee of freedom of religion, given the expansive protection afforded to religion by s. 2(a) of the Charter.

That's where all these arguments don't convince me, in a sense. I am here and I want to protect religious beliefs, and I fail to see that it is not with Bill C-38. I go back to the provinces of Quebec and Ontario—if you have time to answer after my big speech—and I think it's the ultimate protection, because they already do in those two provinces, at least.

The Chair: Should I say you're out of time?

Ms. Françoise Boivin: No.

The Chair: No, you're not.

You have two minutes, Mr. Chipeur.

Mr. Gerald Chipeur: Let me just say this. In the area of human rights legislation and the issue of reasonable accommodation—I wish after eight years of litigation for one of the clients that it would be clear to everyone—there have been three separate Supreme Court decisions, all repeating over and over again that employers must make reasonable accommodation. Today, I have dozens of cases where I am going to employers and going to the Human Rights Commission and reminding them all over again that they must comply with the law. They aren't.

My concern is that only two provinces, Ontario and Quebec, which you've mentioned—maybe there are others—have in fact legislated to reflect statutorily what has been said in the Supreme Court, in the marriage reference. I'd be a lot more comfortable if this legislation were to wait for the provinces to put this kind of legislation in place and for a consensus to develop.

In British Columbia today, there are individuals who are currently litigating to prevent that kind of accommodation from being the law. They're trying to force churches...I don't know, maybe through some perverse theological enjoyment in forcing people to act against their faith. I don't know what drives individuals to do those kinds of things, but it's happening, and it's happening right now, and you need to act to stop it.

Ms. Françoise Boivin: I think you just put your finger on it. The problem is not Bill C-38; it's what certain people might do with it.

Mr. Gerald Chipeur: Exactly.

Ms. Françoise Boivin: Are we not to do something that is right on equality just because...? So we'll deny rights to people who deserve it, in case some people—I won't qualify their type of lawsuit—might decide to file a lawsuit that we both know would not be correct in law. We'll deprive a group of people of their fundamental right because we're scared that some people might do something. So Bill C-38 is not the problem; it's what certain people might do with it.

• (2000)

Mr. Gerald Chipeur: That's not my position. I would disagree with the premise.

Ms. Françoise Boivin: You disagree with that premise?

Mr. Gerald Chipeur: If we accept your premise, you have the alternative to protect those rights while you're achieving your objective. You as Parliament have a duty to provide the maximum protection for citizens, particularly when you know it's a problem right now in our society.

Ms. Françoise Boivin: I agree with that.

The Chair: Thank you.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair, and witnesses.

Are you suggesting I have the last word?

The Chair: We'll see about that.

Mr. Mark Warawa: It's been said that over 500 witnesses have been heard regarding Bill C-38. In actuality, it was the previous Parliament, and Bill C-38 was not part of that Parliament. A subcommittee of the justice committee listened to 467 witnesses, not over 500. In this Parliament, this committee, there were 62 who were permitted to speak to this.

Ms. Françoise Boivin: A point of order, Mr. Chair.

The Chair: Ms. Boivin, on a point of order.

Ms. Françoise Boivin: I think all these documents have been filed in this process. Maybe you haven't read them, but I've had access to all of them.

The Chair: Okay.

Ms. Françoise Boivin: It's quite enlightening.

Mr. Mark Warawa: Thank you for the interruption.

Ms. Françoise Boivin: Not a problem.

The Chair: That's not a point of order, but continue.

Mr. Mark Warawa: I just wanted to clarify the facts.

Also, the right to marriage is not a fundamental international right.

We had a very interesting presentation last week from Mr. Brown. I asked him where this was going to take us.

My question is for Mr. Chipeur. Where do you see this taking us? You've been involved with a number of cases. As has been the habit around the table, witnesses are asked for specific examples of ministers or rabbis or pastors who would give specific examples. Professor Brown reminded us that Bill C-38 has not passed yet, so a question like that is premature. We have to wait. But already there is thunder on the horizon of things that may be coming.

Where do you see this taking Canada? Some have said they were not sure. Do you think there has been adequate opportunity for public input? I have real concerns about how this has been rushed through this House, limiting the time and the number of witnesses. What is your perspective?

Mr. Gerald Chipeur: First, there is no doubt that the previous Minister of Justice, Martin Cauchon, violated the rule of law when he invited all of the provinces to disregard the current state of the law in allowing same-sex marriages. This led to the problems in Saskatchewan. There is an example right now in Saskatchewan where a fellow by the name of Bruce Goertzen was fired because of his religious convictions. He has a complaint before the Human Rights Commission. So we have real examples of situations that happened because the previous Minister of Justice did not obey the rule of law in this nation.

Second, what's going to happen? I believe there will be an explosion of litigation across the country. Activist websites say they are going to litigate. They are going to be bringing actions in all of the human rights commissions across the country. Unless this Parliament puts a lid on it, there is going to be an explosion of litigation across the land. Lawyers are going to love it, but it's going to create an undue burden upon the exercise of religion in this nation.

• (2005)

Mr. Mark Warawa: Has there been inadequate input?

Mr. Gerald Chipeur: I'd love to come back after I hear what some of the amendments proposed by either the government or the opposition might be. I would love to be able to comment on that set of amendments. I think it would be necessary for this committee to hear again from any of the 62 who have been heard from, if you have any amendments that are of a substantive nature to what's currently before this committee.

Mr. Mark Warawa: Thank you.

Does Mr. Jean have an opportunity to ask a quick question?

The Chair: Mr. Jean wants a point of order. Are you done with your questions?

Mr. Mark Warawa: Yes, thank you very much.

The Chair: Mr. Jean, go ahead, please, on a point of order.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): On June 8 of this year, we had two witnesses who provided evidence to us. One was Joanne Cohen of the Coalition of Canadian Liberal Rabbis and the other was Katherine Young, a professor at McGill University, and in both cases they submitted documents in their presentation.

Joanne Cohen, of course, was a “pro” person for this legislation, and she submitted her document on June 3.

Actually, sir, I'm going to remove my point of order until tomorrow. I'm going to withdraw it. Thanks.

The Chair: Tomorrow we don't have a meeting, Mr. Jean.

Yes, Mr. Toews.

Mr. Vic Toews: While Mr. Jean is looking at things, I have a question on the issue of these amendments. I know that because this is a legislative committee there's a certain different scope that this committee has to look at amendments, and I would like the clerk to approach the law officer of the House to get a ruling on the issue of whether or not an offence can actually be proposed as an amendment to the bill along the lines that Mr. Shapiro had suggested. I just want to know if that is out of order or not. I don't want to spend much time preparing that if I'm going to get shut down.

The Chair: Okay, fine. We'll check on that and get back.

Yes, Mr. Jean, to your point of order.

Mr. Brian Jean: Yes, I'm sorry, sir, but specifically in relation to those two briefs, I'd like to know why the one brief was prepared before the other. They were of opposing views, and my understanding was that one was submitted with much fewer words than the other and still it appeared to me, quite frankly, sir... My understanding is that Public Works has to do with what happens in regard to this translation. One was received much later—well, we haven't received it yet. My concern is with the delay on the one, which was shorter and delivered first, when the other one was delivered afterwards. It just doesn't make sense, sir, and I'd like to know why.

The Chair: I understand your question. For your information, the one you're talking about that you haven't had yet has been distributed. The one from Mrs. Young—

Mr. Brian Jean: Yes.

The Chair: —has been distributed to your offices this evening around 6 o'clock. We finally received it from translation.

In regard to why one was ready and the other one wasn't ready, I'm not going to assume anything, except to say that the one from Mrs. Young... If you recall, at yesterday's meeting I quoted the number of words—

Mr. Brian Jean: It was 8,610.

The Chair: Exactly. Presumably—and I'm saying presumably—one of the reasons is that when they give in a document for

translation they don't split it up. My understanding is that they give it to one translator and they let that translator work on it.

But we will go to the source and find out what the problem has been.

Mr. Brian Jean: Thank you, Mr. Chair, and sorry for the confusion.

The Chair: No problem.

Yes, Mr. Moore, on a point of order?

Mr. Rob Moore: It's just a quick one. I know we've talked about this, and oftentimes it's the end of the night before we get to visit it, and everyone wants to go home, and so do I, so I'll make it quick.

There's a problem with the way we question, because—

The Chair: With the way we what?

Mr. Rob Moore: The question, the way it's formatted. We have members who have had two questions and others—

Hon. Paul Harold Macklin: That's not a point of order.

The Chair: I'm sorry, Mr. Moore. This is not a point of order.

Mr. Rob Moore: Well, when do I raise it?

Ms. Françoise Boivin: It was already discussed.

The Chair: We've discussed this—

Mr. Rob Moore: It's a point of order if I—

The Chair: It started at the first meeting of the committee, where we established some rules.

Mr. Rob Moore: But we have members who have not had questions, Mr. Chair. We have members who have had two and others who have had none.

The Chair: Mr. Moore, you'll have to agree with me that I've tried, as chair, to accommodate as many people as possible, whether it be in the time, whether it be—

Mr. Rob Moore: He had a 10-minute question; he had none.

Ms. Françoise Boivin: There are times we did go over.

Mr. Rob Moore: Mine might have gone over too, but Mr. Macklin had 10 minutes; Mr. Jean had zero. They both sit on the committee.

The Chair: If you want, we can look at the time, because we keep the time. You had nine minutes and 40 seconds, but we're not going to start comparing because in the long run, I think we're doing everything in good faith and we're trying to accommodate everybody.

Mr. Rob Moore: I don't doubt that. I just think we need a different system.

Mr. Vic Toews: Can I speak to that point of order?

● (2010)

The Chair: Not really, but I'll listen to you.

Mr. Mark Warawa: The agreement in the minutes of the proceedings was that after the first session, five minutes would be allocated to each subsequent questioner, alternating between the opposition parties and the government. It did not say that the Bloc or the NDP would get equal time. It just said that we would alternate back and forth between the opposition and the Liberals. So we're providing an unfair proportion.

The Chair: Excuse me. To start with, this is not a point of order. But secondly, my understanding is that the NDP and the Bloc are also opposition parties. We'll look at the rules, if you want, out of

this meeting. We can discuss it together and see if there's anything at all we can do to help you.

Let me thank the witnesses for appearing in front of this committee this evening. We appreciate your patience. We appreciate the input you've given to this committee. I know some of you have travelled from far, so have a safe return. Thank you ever so much for participating in the Legislative Committee on Bill C-38.

Mr. Mike Hogeterp: Thank you.

The Chair: This meeting is now adjourned.

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