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Mr. Marcel Proulx

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•(1530)

[Translation]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Good afternoon, Ladies and Gentlemen.

[English]

Good afternoon, ladies and gentlemen.

[Translation]

Welcome to the Legislative Committee on Bill C-38.

[English]

We have three different groups of witnesses this afternoon. First we have representatives from Crossroads Christian Communications. Then we have a representative from the Centre for Cultural Renewal, and, on an individual basis, we have Mr. Hartt. Welcome to the witnesses.

I'm sure you've been informed about it, but we will confirm it. The way this committee works with witnesses is that each witness or group of witnesses will have a 10-minute opening presentation. Then we will go to rounds of questions, comments, and answers, the first round being of seven minutes each and subsequent rounds being of five minutes each.

We will start the presentations in the order that we have here around the table, with Mr. Hartt, then Mr. Benson, and then we'll go to the representatives from Crossroads Christian Communications.

Mr. Hartt, welcome. You have 10 minutes, sir.

Mr. Stanley Hartt (As an Individual): Thank you, Mr. Chairman, members of the committee. Thank you very much for this opportunity to appear here and to address this very important issue as you examine the provisions of this proposed enactment on a clause-by-clause basis.

I'm appearing as an individual, and I assume this is because of an essay I wrote in the April 12 edition of *Maclean's* magazine, which for some reason the headline writer decided to call *Grits and red herrings*, but when I submitted it to *Maclean's* magazine, it was called *Paul Martin, the boy who cried notwithstanding*. That will tell you where I come to this issue from; it is because I believe this issue has provoked deep divisions in Canadian society, but I believe it could have been organized to establish a significant national consensus instead.

The reason I believe the bill has provoked divisiveness is that it is based on an unsustainable claim that the government is acting out of a constitutional imperative to alter the traditional definition of

marriage to include same-sex couples, because this is the only way to accommodate their equality rights under the Canadian Charter of Rights and Freedoms. I see this claim as unsustainable, because I don't believe it's true that altering the definition of marriage to contemplate couples of the same gender is required in order to accommodate the equality issues arising under the charter.

We got here because when litigants—a same-sex couple who wish to marry and the laws in the province in which they live do not permit them to marry—appear in court, they seek redress under the equality provisions of the charter. The court has a binary option. The court can either say that the existing rules are constitutional and that it is not necessary to extend equality to same-sex couples or it can offer them marriage. It doesn't have the ability to draw third options, to be creative, to explain how in fact, without altering the definition of marriage, the requirements of the charter could be satisfied.

But when the Supreme Court was expressly asked, in question 4 in the reference re same-sex marriage, “is the opposite sex requirement for marriage for civil purposes...consistent with the Canadian Charter of Rights and Freedoms?”, the court declined to answer the question.

The court said:

...an answer to Question 4 has the potential to undermine the government's stated goal of achieving uniformity in respect of civil marriage across Canada. While uniformity would be achieved if the answer were “no”, a “yes” answer would, by contrast, throw the law into confusion. The lower courts' decisions in the matters giving rise to this reference are binding in their respective provinces. They would be cast into doubt by an advisory opinion which expressed a contrary view, even though it could not overturn them.

That sounds to me like the court was not trying to give a resounding “no” as an answer to that question. This is the second reason I view this debate as unnecessarily divisive in Canadian society. It poses as a debate over constitutional rights, but it is in fact a political debate over a word. I would much prefer to see it couched in those terms, sparing us all the histrionics that accompany false allusions to the specter of the invocation of the notwithstanding clause.

If a regime of civil union, from which flowed each and every one of the civil consequences of marriage, were to be adopted, an institution equivalent in absolutely every aspect, but name, to marriage, the question would then arise as to whether the word “marriage” itself was part and parcel of the status, so that denial of the word would amount to denial of equal access and violate the human dignity of same-sex couples—as the preamble to the bill now claims—or whether the very concept of same-sex marriage was to be viewed as terminologically oxymoronic, requiring another word to be found to describe same-sex unions, but with no impact on their equality rights.

Large segments of the population, Mr. Chairman, consider the traditional definition of marriage as a fundamental cornerstone of society. They see the term as representing a specific social status around which they have built their lives, often in the context of a belief system. They resent being depicted as rednecks or ideologues or opposed to social progress for these views, and they reject the suggestion that such progress needs to be achieved at their expense.

• (1535)

While not denying society's interest in stable, loving, exclusive, and permanent relationships among homosexuals, opponents of the proposed enactment do not see why their own buy-in to communal norms should be diminished by the generalization of the meaning of the word “marriage” to include other groups heretofore not contemplated by the generally understood meaning of that word.

So I say to you, simply, in short, why does enlightened social progress have to be made on the backs of citizens whose only offence is to believe strongly in inherited social standards and institutions? What would be wrong with the regime of civil union that I've just described? We could move forward with a very large consensus in favour of a charter-compliant regime, instead of leaving one group in society pitted against another. So in the battle for the word, why not make the call in favour of the traditional definition? Both regimes are equally constitutional, but only one will calm social tensions.

Now, I'm fully aware, Mr. Chairman and members of the committee, of the Supreme Court's view that because the jurisdiction of the federal government is limited under section 92.26 of the Constitution Act to marriage and divorce, the establishment of a regime setting forth the civil consequences of a union between persons of the same sex would be a matter of provincial jurisdiction under section 92.13, property and civil rights in the province. I do not share the concern that this would constitute an insurmountable obstacle to achieving the goal of a uniform social regime of civil union throughout Canada. The constitutional principle would be simple: equivalence in each province, in all respects, bar none, with the consequences under the law as respectively of that province with what prevails in the case of marriage.

Why must only the federal government resolve constitutional lacunae? The provinces should be expected to act in this regard if at some future time a different reference is submitted to the Supreme Court on this subject by a government that has a very different policy and legislative intention and the Supreme Court finds, as I fully expect it would, that the traditional definition of marriage is consistent with the Canadian Charter of Rights and Freedoms.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Hartt.

We will now proceed with the representative for the Centre for Cultural Renewal, Mr. Benson. You have 10 minutes, sir.

Mr. Iain Benson (Executive Director, Centre for Cultural Renewal): I would like to thank the committee for providing this opportunity for me to address a few words to you today.

[*Translation*]

You only have the recommendation. I was not able to provide to you the translation of my presentation because I was invited at the last minute. My apologies, but I will get it to you as soon as possible.

[*English*]

The issues before you must not be rushed for the sake of a political timetable when the effect of your work will influence generations of Canadians. Now is a good time to slow down and provide some sober thought, before matters go to a higher chamber. Things have moved at a rather breathless pace over the last few years. The conditions for a more just and inclusive society cannot be obtained by unjust and exclusive means. The difficult task of balancing competing interests and beliefs must be carefully attended to.

Those who have, as the saying goes, “left the closet” and now demand public acceptance and social recognition are perceived by many as now seeking to drive those who will not accept their conduct into the closet that they have relatively recently left.

The views of both groups are simply irreconcilable and both are legally valid. The law allows both the advocacy for and the criticism of same-sex conduct, but there are clear signs of attacks upon religious people and religious groups in Canadian society today. You've had many of those submissions before you. I've read some of them.

Giving one side of this debate about the nature of marriage a trump right is not a recipe for civic peace or multicultural harmony or even acceptance or social recognition. The very thing that's being claimed as the *raison d'être* of the entire project cannot be achieved by the means being sought because it is so divisive. If we are to have multicultural harmony in a pluralistic society, the kind of society Canada envisions itself as being, we have to get beyond the kind of analysis that has been employed in Canada to date.

The central problem, as I've said, about this marriage debate is that there are two irreconcilable views at its core. The first is that marriage is a natural fact. The second is that it's a social construct. These two ships pass in the night and they do not find a common meeting ground.

However, I think we can find some help in looking at how the state historically dealt with other problems. How did this society deal with historic debates about religion, for example, when people didn't agree on what religious dogma was? We need to re-examine how those fundamental issues in other contexts were dealt with in Canadian society in order to see how to appropriately deal with this one on marriage.

We need to compare religious dogma and indoctrination with sexual dogma and indoctrination, because at the root of this differing conception of marriage is a different understanding about sexuality for male and female, male and male, and female and female. The root of the marriage debate is on sexual conduct, and that creates the heat and the disputes in Canadian society. How ironic that the debate is so seldom discussed.

Here is a quick parenthetical remark. I was counsel for the Interfaith Coalition in British Columbia and in Ontario, so I've had some experience in the courts on this matter. I saw that the courts did not deal with due respect to these deeper questions. They tended to be blown this way and that by the winds of the zeitgeist. I think we must get beyond that if we are to build a stable and truly open society.

I'd like to suggest that we move to examine the proper respect for diversity in Canada by not giving a trump right to one side. We need to start asking questions about whether the approach we're currently taking isn't missing a wholly obvious answer. It may be that we need to consider getting the state out of the marriage business.

That has never really been properly analyzed by the Law Reform Commission. It wasn't analyzed by the Prime Minister in his remarks introducing this bill before you. It hasn't been analyzed by any sector of Canadian society, and we're virtually at the third reading stage of a bill that doesn't look at the question either.

Quickly, to my recommendations, which you have in French and English, and it's therefore the only thing in front of you.

We need to have a provision in this bill stating that no person will be deprived of any benefit under federal law by reason that they define marriage as being between a man and a woman, and no person will be subject to any burdens under federal law by reason that they define marriage as being between a man and a woman.

• (1540)

Secondly, we need to protect members of religious groups as well as officials. Please note that in the preamble and section 3 you have an inconsistency. The preamble speaks about members of religious institutions and officials, but when we get to the substantive section, clause 3, only officials are mentioned. That's not a sufficient protection for members of religious bodies as individuals.

The next recommendation is that we need to protect conscience as well as religious beliefs. Why? Because that's the language of the charter, section 2. The phrase is conjunctive: "conscience and religion". For some reason, this bill focuses only on religion.

Recommendation four: We need to protect the charitable status of groups in society—not just religious groups but other groups that want to take a position on marriage and are afraid that doing so

might lead them into just the kind of litigation we're seeing proceeding endlessly in Canada today.

Recommendation five: We need to consider why sexual relationships are the marker for federal legal recognition. It doesn't have to be that way. Federal benefits and duties and obligations can turn on things other than sex. They can turn on interdependency, care relationships. We can look at other jurisdictions, such as Hawaii, where they've looked at reciprocal beneficiaries. We can look at Scandinavia, where they have registered domestic partnerships, and so on. We can be more creative than getting into the king-of-the-castle, trump rights approach that apparently dominates in Canada.

By the way, to do that, to look at the federal legal recognition of something other than sex, you're going to have to delete the erroneous "whereas" clauses, numbers 4 and 5, in your bill because those are based on the assumption that all the alternatives have been considered, and they have not.

In the alternative, this committee should recommend before and as an alternative to passage of this bill that consideration be given to instituting a regime that examines federal and provincial cooperation with respect to relationships, property dissolution, civil rights, etc., not based upon a sexualized marker but on one open to any two persons, whether or not they're in a sexual relationship. This would involve, obviously, deleting the bill you have in front of you with its many references to marriage.

I believe my time is at a conclusion. I thank you for your focus and look forward to further exchange.

• (1545)

The Chair: Thank you, Mr. Benson.

We will now go to the representative of the Crossroads Christian Communications group, Mr. Mainse or Mr. Purvis. You have ten minutes.

Mr. David Mainse (Founder, Crossroads Christian Communications): Thank you very much, Monsieur Président.

I want to introduce my friend, Ian Purvis, QC, Woodstock, New Brunswick. He's a Liberal Party activist. Don't hold that against him. He's a good man and we just travelled together for two weeks in Turkey and Greece, and we ended up here together. I thought I would like Ian to take a minute or two at the beginning of my 10 minutes, if possible.

Mr. Ian Purvis (Lawyer, Crossroads Christian Communications): Thank you, Mr. Chair, and thank you, David.

I welcome the opportunity to address this committee. David will make a far longer presentation than I will; he's had three or four decades of experience in this regard all over the world. I think he has some words the committee should pay heed to.

However, I would like to briefly address a couple of pieces of legislation that somewhat lie at the root of why we're all here, one would have to say. In looking at the actual Constitution Act of 1982, I am always intrigued by the beginning 12 or 13 words that read, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law". I don't think it's inconsequential that they're in that sequence in the Constitution itself.

That then leads me to Bill C-38 and its preamble, which is also intriguing because it's somewhat longer than the act. The last provision of this is why I think people who act on behalf of Christian organizations, religious organizations, are really making presentations to this committee. It reads:

WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the Canadian Charter of Rights and Freedoms, access to marriage for civil purposes should be extended to couples of the same sex;

The reason I refer to that is the issue of tolerance and equality, whereby I think most Christian organizations are prepared to recognize the legal status that is wanted to be given to same-sex unions. However, they are asking for the same thing same-sex couples are asking for: tolerance and equality with respect to their rights. I think that is a compatible thing that can be done with properly worded legislation, and that is really not the format we have here.

Mr. Mainse will be making comments from a far more Christian perspective than I will, but that's the basis for his remarks. They emanate from those particular phrases of the legislation we are dealing with.

I will close with a quote, and I will give you the source of the quote at the end. I will tell you it's from a book written by Mr. Mainse, so I guess I have a good master here.

It is good for Canadians to celebrate the grandeur of our country's history and spiritual heritage. It's good to pause occasionally and give thanks for the privilege of living here together in this free and bountiful land. I, therefore, congratulate the Reverend David Mainse and the organizers of this "Salute to Canada" for inviting all of us to think about the debt to owe to the faith of our fathers and to the spiritual heritage which finds expression in countless ways in our daily lives....

The source of that quote is the Right Honourable Pierre Trudeau, former Prime Minister of Canada.

On that remark I'll close. Thank you, Mr. Chair.

• (1550)

Mr. David Mainse: Thank you very much, Ian.

I hold up a seniors newspaper here. The headline speaks volumes: "A Clash of Values". Svend and I are divided by these words in here, which say, "Faced with dizzying societal changes, Canadian seniors often feel left out of today's mainstream. Now comes same-sex marriage."

I want to say something positive about the former member of Parliament. Svend was a man with the courage of his convictions in the House. His convictions were absolutely a clash of values with mine, with initiatives such as leading Canada in the direction of the Dutch on euthanasia, same-sex marriage, and other initiatives that would deconstruct thousands of years of societal norms.

In Ian's hometown newspaper, Woodstock, New Brunswick's *The Bugle*—and I've seen articles like this in many newspapers—this headline appeared: "One Step Too Far". I had followed Svend's visit to a Woodstock high school one week later. In his column, the reporter wrote, "While [Mainse's] and Robinson's views are polar opposites, both share a common trait. Each displayed a tremendous ability to express strong views on an emotional and contentious issue while maintaining a respectful view of others."

Now back to the front page story. The other words here in the headline on the front page of Woodstock's *The Bugle* are "From 100 Huntley Street to Woodstock's Main Street—Christian TV host fears same-sex debate will further diminish society's respect for marriage".

May I say at this time that I believe Svend was very consistent when he put forward a private member's bill in the House to remove God from the preamble to the Constitution? Many of those who have, in effect, taken the words of Moses, Jesus, and Paul and trashed them, in recent times, the words they spoke about marriage being between one man and one woman—they all did—words they spoke about certain things that are very plainly, in all the biblical terms, in everything to do with God, sin—and we're all sinners. I'm not setting myself apart. If we say we have no sin, St. John wrote, we're liars and the truth is not in us. So we're all sinners, and we accept that. But we're not talking about respecting a person as an individual—that is a given—we're talking about something that is an institution from the very earliest of recorded human history.

My fears, by the way, which I expressed in the Woodstock newspaper, have been confirmed. I've taken two trips to Europe to study countries where governments have allowed the courts to lead them, the three Scandinavian countries, and the two countries, Holland and Belgium, where the government has in fact redefined marriage. I've sent all MPs a report from five Dutch professors of sociology who reported a dramatic increase in children born outside of marriage since same-sex legislation passed Parliament or was instituted in 1987, 1989, and 1991 in the three Scandinavian countries.

The cost of maintaining the social safety net is absolutely scary. It is scary. When we don't have the norm, if you would, of a father and a mother—and it still is the norm—they put these huge statistics out and they're always misleading. If you say 40-some percent of marriages end in divorce, that's simply in the one year. If 1,000 were married and 400-and-some are divorced, that's only one year. You've got to take the divorce statistics over 50 or 60 years. It's the old thing Mark Twain said about statistics being lies.

• (1555)

But you have to look at it in the right way. Yes, there are problems with marriage. Yes, we are committed to doing something about that in a positive way in our land, and on this I can speak on behalf of the churches. In fact, I do think I speak on behalf of the churches.

I was asked to host the event for 2000 years of Christianity at Nathan Phillips Square where the Roman Catholic cardinal was participating, as well as the archbishops and the bishops of various churches. I said to the organizer after, "Why on earth would you ask me, of all people, to chair this event?" The chairman of the committee said, "That's easy. You're the one who, because of what you've done on television through these years, represents us all."

The Chair: One minute, sir.

Mr. David Mainse: All right. I have to move along here.

I have a package here that quotes an imam and a Jewish rabbi. Let me read what Dr. Mohan Ragbeer, a physician and professor in the Faculty of Health at McMaster University, wrote of his Hindu religion. He wrote, "By its very nature this sacrament can only be a heterosexual union."

Dr. Ragbeer is an example of the extreme distress many immigrants feel about Bill C-38, and I want to say that immigrants are hurting deeply. I've heard from so many of them. They feel it is a betrayal of what they believed Canada to be when they came.

So I ask all MPs, don't millions of Canadians deserve the right to a word that means one man and one woman united? Will this Parliament rob us of the only word we have that describes our one man, one woman union? We have no other word. Don't we have rights, too?

So please, please, I beg you, do not pass Bill C-38.

Thank you.

The Chair: Thank you.

We will now move to the first round of questions. We will start with the Conservative Party.

Mr. Moore, seven minutes, sir.

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

And thank you to all of the witnesses for being here today.

Mr. Hartt, you mentioned two things that struck a chord with me, because I certainly agree with two of the things you said. One is that this has been divisive, that perhaps the approach taken by the government to change what the word "marriage" means has been probably the most divisive approach possible of dealing with this issue.

The other thing you said is that in spite of that, sometimes we are, as elected people, forced to make tough choices, but this was probably the most divisive way to proceed when you consider the fact that two-thirds of Canadians are not in favour of changing what the word "marriage" means, and that it does have a strong historical basis, and we believe it does potentially impact on different freedoms—freedom of expression and freedom of religion.

In spite of all that, it being so divisive, you're saying that altering this definition of marriage is not required, and I agree. The Supreme Court declined to answer that question. This decision was never appealed to the Supreme Court, as we would expect when we have a court of appeal decision that presumably the government was fighting on one side, purporting to do its best to uphold Canadian law, and then it loses and absolutely gives up, and then starts fighting

on the other side to fight against those who are trying to uphold the definition of marriage.

So I'd like you to comment a bit on what the Supreme Court said in answering the fourth question, on whether the traditional definition of marriage was unconstitutional.

You also mention that it's not required, and this is where, Mr. Benson, you can perhaps comment a bit. What have other jurisdictions done to deal with equality concerns? My understanding is that we're basically in uncharted waters. There have been a couple of jurisdictions out of so many countries that have chosen to go this route, and everyone else seems to be dealing with it differently, so perhaps both of you could comment on that aspect.

• (1600)

Mr. Stanley Hartt: Thanks very much.

It is interesting. It is my essential view that this debate is unnecessarily divisive, that this tough choice was not required, but the facts were put on the ground in order to put the court in a position where it had to decide—the Supreme Court in the reference case—either to show deference to the government and its policy or to take the onus of dealing after the fact with a number of people who had, in reliance on the final judgments in the various provinces and territories, availed themselves of the right to marry.

In other words, had somebody just started off looking for the right answer here, instead of putting facts on the ground by deciding not to appeal, by sending the reference to the court with question 4 in it, which has a trick buried inside it.... If you're a judge of the Supreme Court, you want very much to show deference to Parliament. You've heard over and over again that the courts should not make law; the courts should allow parliamentarians to make law; the courts should interpret law. The government has made a policy declaration, has sent up a bill up as a reference, and here the only way the court could have answered question 4 would have been to start postulating hypothetical facts.

For example, they could have said, "Yes, the answer to question 4 could be 'yes', but only if in each province there was a regime of civil union adopted that mirrored the regime in that province for what flowed from marriage, without exception", because as soon as you have one exception, you can't have equality. They could have built that sort of hypothetical house. But here they were with final judgments, with a question that required them to go way beyond showing deference, to start inventing laws that no one had asked them to comment on. So it seems to me that the question has never been placed, in a legal context, on a straight-up basis.

As for popular opinion, you're right that two-thirds of Canadians are against what Parliament is now proposing to do. But it's very interesting—the poll I'm referring to is a COMPAS poll, and *Maclean's* made me furnish it to them before they published my essay—that those who oppose changing the definition of marriage turn right around and form a big majority when you use a regime of civil union. As soon as you go to “civil union” and keep the word for those people for whom it means something fundamental, based on their lifestyle, their inherited values, their traditions, and, as I say, often a belief system, then people aren't saying they still don't want gays and lesbians to have equal access to charter rights. So in the face of that much goodwill from the Canadian population, it seems to me that what Parliament should do is say, “Thank you for that goodwill; we'll act in accordance with what you're suggesting to us”.

Mr. Rob Moore: Thank you, Mr. Hartt.

Mr. Benson, if you could, comment a bit on that, on achieving what some people are saying, that we need to have this equality of rights, benefits, obligations, and so on. Do you agree that there's another way to do that without changing the definition of marriage? What have other jurisdictions done?

Mr. Iain Benson: It's not in my brief. It wasn't one of the subjects I chose for comment, but it's well-known that different jurisdictions have taken different approaches. New Zealand, for example, does not follow the approach that's being proposed here. Scandinavia hasn't, France hasn't, the United States evidently hasn't—and it's in the process of a massive and typically American effervescence to determine the question state by state.

There are many ways to approach this, but I'd like to suggest that a country will approach it on the basis of its intellectual and historical maturity, and I don't think Canada is approaching it in a very mature way.

Why do I say that? In a nutshell, to answer your question point-blank, marriage, male-female marriage, is so much a part of our civic glue that we don't even see it. It's shared by every single ethnic community, every major religion, right across all the different communities in Canada. The claim is that the inclusion of same-sex relationships is just an addition. Well, it isn't an addition, because it's not shared by that civic glue. It's a civic solvent; it dissolves that inchoate, shared conception of what marriage is. Ironically, a tyranny of the minority is driving a majoritarian view to the margins in area after area after area. And the latest thing, reported in the *Ottawa Citizen* on June 12, relates to the challenge to charitable status for religious organizations that many people have foreseen coming. Is this the kind of place we want to go in Canada, where every charity now has to fear for its continued existence? I can't see that as fair or just.

• (1605)

Mr. Rob Moore: Thank you.

[*Translation*]

The Chair: Thank you, Mr. Moore.

It is now the Bloc Québécois' turn. Mr. Marceau, you have seven minutes.

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

much to the witnesses for having come here to present to us their most interesting views. I have a few comments to make, and then I will have some questions.

Here goes with my first comment. I have the impression, and I have said this to other organizations that have appeared before you, that the religious groups that come to see us feel attacked, virtually persecuted by society as a whole. In their view, these attacks are attributable to a certain meanness or a certain intolerance of society as a whole.

In a democracy, when there is a debate of ideas on the role of religion or religions in our society, there will be people who will not necessarily share the same opinions as you. Earlier, Mr. Mainse alluded to the discussion he had with Svend Robinson. I do not sense that you are persecuted, I sense that you are active in a debate of ideas and I do not see you as being disadvantaged. You have credible, eloquent spokespersons who present themselves well, and you have organizations in the field. When you participate in debates on ideas, there will necessarily be attacks. You will launch some and you will be the target of some. That is part of democratic debate.

My second point will be a statement and a question at one and the same time. Mr. Hartt mentioned that civil unions are not a matter of federal jurisdiction. In paragraph 33 of its decision, the Supreme Court of Canada does state the following:

Civil unions are a relationship short of marriage and are, therefore, provincially regulated.

For us, the issue is whether or not same sex couples should have access to an institution that is regulated by the federal Parliament. We can be as creative as we wish, but there is no other solution that falls within the jurisdiction of the federal Parliament.

Let us put that aside for now and let us say that it is possible. The courts have stated clearly that there is a problem of jurisdiction, but let us suppose that this problem does not exist in order for us, you and I, to have the pleasure of a respectful discussion. Mr. Hartt, if the civil union as you describe it tastes the same as marriage, smells the same and is the mirror image of marriage, then explain to me why we would not call a spade a spade. If it is exactly the same thing, then why would we not use the same term?

Mr. Hartt, I would like to hear your response, because I am having difficulty understanding the reason for this specific hang-up.

Mr. Stanley Hartt: For me, the hang-up is social peace. The majority of society is strongly opposed to having the word that describes their relationship adopted, manipulated, changed, amended by Parliament in order to signify something different than before.

Given that it is possible to establish a civil union system—with difficulty, I admit—I am wondering why we are not doing so. As I stated in my remarks, why must it be up to the federal government alone to find a solution to each constitutional problem?

• (1610)

Mr. Richard Marceau: I will have to move on to another question, because I have many.

It is somewhat odd to hear say that the rights of a minority or the rights of someone must be in correlation with the number of persons belonging to the group. You are asking us why a definition should be changed when the majority... I am not sure that it would be two thirds of the population, especially not in Quebec, but I fail to see how the number of people involved should play a role in the definition of the term.

I will now move on to Mr. Mainse. I am sorry, but we have very little time. First of all, I am very happy to meet you. It seems to me that you have a rather static perception of marriage. Are you not of the view that marriage is an institution that has evolved?

You stated the following:

[*English*]

it's an institution recorded from the earliest memories of human history.

[*Translation*]

In my view, marriage is an institution that has changed, and I would like to hear your comments in this regard. For example, in your Holy Scriptures, in the Bible, I have found 27 passages stating that marriage is the union of a man and a woman or several women. I also found seven passages where it is said that nothing prevents a man from having concubines as well as the woman or women he already has. In the civil domain, which is what we are dealing with here, 50 years ago, in Quebec and elsewhere, a woman who married lost her legal status as an adult person and became the responsibility of her husband, just as she had previously been the responsibility of her father. Is it not a dangerous thing to have a static concept of marriage, since marriage meant something 3,000 years ago, something else 300 years ago, still something else 50 years ago and could very well be yet again something else today?

[*English*]

Mr. David Mainse: In pursuing the question of marital customs, you go back throughout the ancient world. Dr. Paul Maier is a professor of ancient history at Western Michigan University, a Harvard PhD in Semitic languages and so on. I asked him to comment on that very thing, about all these various modes of union, if you will. He listed all kinds of them. He said there were marginal homosexual practices in Mesopotamia, Egypt, and the lands in between, but they were never dignified with the title "marriage". Practices differed—monogamy, polygamy, matriarchal marriage, patriarchal marriage, exogamy, endogamy, marriage by capture, marriage by purchase, marriage by covenant, and so on—but man and woman were always involved.

There's Moses, for example, who first made the statement on marriage about one man, one woman. Jesus said of Moses that he allowed divorce because of the hardness of people's hearts. In other words, there was an ideal. There was an ideal there, a male and female ideal, and because of the hardness of people's hearts the ideal was not realized. The ideal of marriage has been with us forever, in every language and every culture, and why, with very limited study...?

I heard of a parliamentary committee going to Amsterdam to study legalized prostitution with a \$200,000 stipend set up for it, and there's not one indication that anybody from Parliament has ever

gone to the countries of Europe where they've endorsed this to see what the social deconstruction is, what is taking place. So it is not being processed in a rational way. It is being done in an emotional way, not a rational way. We need to study the issue.

I have an offer from a Dutch university for a graduate student, if I can find the right one, to go and do a doctorate in the whole area of the social ramifications of same-sex marriage in Europe.

What is the unseemly rush on this? It has not been studied properly. We are overturning the oldest human institution, from before government, before laws. We're overturning it on a whim, it seems, and it's just not right.

● (1615)

The Chair: Thank you.

We will now go to the New Democratic Party. Mr. Siksay, seven minutes.

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

Thank you to all the witnesses for your presentations this afternoon.

I want to apologize to Mr. Hartt for being late and coming in right in the middle of your presentation, sir; I apologize for that.

Dr. Mainse, Svend would be very appreciative. I'm his successor in Burnaby—Douglas. I know he'd be very appreciative of the tribute you paid him this afternoon and the fact that he still seems to have such influence over our debates here in the House, given your comments. I'm sure it will thrill him to no end to know you remember him fondly, by the sound of it, and also that he is still exerting an influence from afar here.

But I do have to correct one thing you said about Svend. You said he'd introduced a private member's bill to remove God from the Constitution, and that's not correct, unfortunately. All Svend did at the time was table in the House of Commons a petition signed by constituents, and by people across Canada, in fact, to request that Parliament look at that possibility.

Mr. David Mainse: And that's why his party moved him to the back row.

Mr. Bill Siksay: Apparently so, and it's not something I would have agreed with at the time—and I didn't agree with it at the time—but that's all Svend did. It's something members of Parliament do every single day in the House; we often introduce petitions we don't personally support, because that's our job as members of Parliament. I myself look forward to the day when I introduce a petition that isn't one I would necessarily support myself. I haven't had to do that yet, but I will do that because that's something we do for our constituents. It's their right to have their views put before Parliament.

That's what Svend was doing in that case. I think that to say this was some personal initiative of his misrepresents exactly what he was doing. I want to make sure people understand that he was doing his job as a member of Parliament that day in the House, despite the controversy that came later.

Dr. Mainse, I wanted to ask you this. I know that through your ministry and through Crossroads Christian Communications you've been very involved in many social issues in Canada. Have you ever had reason to believe your ability to do that was threatened by the actions of the federal government, by the courts? Is there a specific example of where that happened? Is there any deficiency you can point to in the protections for religious freedom in Canada you've come across in terms of federal jurisdiction in your many years of ministry?

Mr. David Mainse: Well, not particularly in federal jurisdiction. I recall the chap who quoted Moses in the Saskatoon newspaper and was fined by the Human Rights Commission, the printer in Toronto who said it went against his conscience to print certain materials—

Mr. Bill Siksay: No, I'm speaking about federal jurisdiction. Those are ones under provincial jurisdiction.

Mr. David Mainse: The federal government has not gotten into this issue until now, really, and no, I have not.

Mr. Bill Siksay: But there have been many other issues, social issues, the federal government has an interest in that you've probably not agreed with them on and have probably spoken about in the past, I suspect. As a broadcaster—

Mr. David Mainse: No, I have not, really.

Mr. Bill Siksay: —you have a lot to do with federal jurisdiction in communications. You haven't bumped into any problems there in terms of—

Mr. David Mainse: No, I have not.

However, I did have a letter one time that was on the federal level telling me I should avoid certain scriptures in the Bible about homosexual activities or I could be in some difficulty. I wrote back and said, hey, I'll go off the air before I will fail to quote what the Bible says. I won't make a hobby horse of it, but I will be consistent with the same emphasis that's given in the Bible itself.

Mr. Bill Siksay: Which department was that letter from?

Mr. David Mainse: I'd rather not say.

Mr. Bill Siksay: It was a federal government department?

Mr. David Mainse: Yes, it was part of the federal scene.

Mr. Bill Siksay: But there was no investigation launched? You weren't forced to change your practice or anything like that?

• (1620)

Mr. David Mainse: No. Actually, it was a cautionary thing, like the thing that came out of the Prime Minister's Office telling the minister down in Peggys Cove not to use the name of Jesus. Can you imagine that ever happening to any other religion, to not use the name of Jesus in their prayer or anything in the memorial service for the Swiss Air disaster?

Mr. Bill Siksay: Yes, I appreciate your concern about that.

Mr. David Mainse: That was in all the papers, and that kind of thing is just totally unacceptable.

Mr. Bill Siksay: But again, you don't have any personal experience, or your organization has no personal experience, of where you've come into conflict with the federal government or the courts—

Mr. David Mainse: Pierre Trudeau appeared as a guest on *100 Huntley Street*.

Mr. Bill Siksay: And he gave you a good quote, by the sound of it.

Mr. David Mainse: He did, yes, and several others did also; that's true.

But this is new. This issue now is new, and this is why I've had to take a stand. I've only taken a stand on the issue of marriage. The word “marriage” is sacred. It's a sacrament.

Mr. Bill Siksay: Do you believe there's a place for civil marriage in Canada? Not everyone—

Mr. David Mainse: Absolutely.

Mr. Bill Siksay: —has a sacramental understanding of it or a religious understanding of it.

Mr. David Mainse: That's true. The governments never even stuck their nose into marriage until a couple of hundred years ago, and that's pretty well true around the world. In some countries of the world the governments still are not involved in marriage in any way.

Mr. Bill Siksay: But here in Canada we do have civil marriage.

Mr. David Mainse: That's a recent thing. The whole business of the government being involved in marriage is a recent thing.

Mr. Bill Siksay: And is that something the government should be involved in, in your...?

Mr. David Mainse: Well, I'm beginning to think maybe not. I think these were excellent presentations I heard here. I know my intention is that if Bill C-38 passes, I will write across my certificate to perform marriage “cancelled”. I'll send it in to the Government of Ontario—it is Ontario—but the standard-bearer, the main teacher in all of this, is the federal government and the judges who were appointed by the Prime Minister's Office to the courts of appeal. I will send that in and I will perform a Christian marriage if somebody asks me to do so, but they'll have to go to city hall if they want to register it.

Mr. Bill Siksay: Do you agree with the ability of all couples who have a civil marriage to be married? Do they meet your current standards?

Mr. David Mainse: The word “married” is the word that is sacred to a man and a woman, and that's where I draw the line. That's where I stand.

Mr. Bill Siksay: Mr. Hartt, you mentioned the word “marriage” in the definition and the understanding of the word “marriage”. Do you think gay and lesbian couples who've sought the right to be married in Canada have a different understanding of the institution of marriage or the responsibilities, commitments, and values of marriage than other people?

Mr. Stanley Hartt: No, I actually think this debate owes its origins to the fact that, in their minds, the word is what it's all about. As you know, through court decisions, human rights tribunals, and various other actions taken over the years, same-sex couples have come to enjoy not strictly all, but a very large proportion of all the consequences of marriage, and I think this particular thrust that brings you all together and brings the rest of your colleagues in Parliament to consider changing the traditional definition by statute is because for them the word is important.

I acknowledge that. What I'm trying to say to you is that for others the word is important too, and that's where I come to Mr. Marceau.

It isn't because you count noses when you are deciding on how civil rights are determined by the courts, particularly under the charter, but I argue that you do that when it's not necessary to do it.

I don't think it's necessary to do it. You could give to same-sex couples all of the rights to adopt children, to seek dissolution of the union, to seek elementary support, to seek custody, to inherit, even through intestacy, to be the person who gives the consent or withholds the consent for medical treatment when the person himself or herself can't act. All the rights, bar none, that flow from matrimony could be available to them without the word, and you could have social peace, whereas you are creating social divisiveness—and my whole point is, unnecessarily.

I know, if it smells like a duck, walks like a duck, quacks like a duck, or whatever.... That's an old argument. But when I was a child, we used to throw back at people who said stuff like that, "If my grandmother had wheels, she'd be a bus." In other words, the terminologically oxymoronic nature of this concept of same-sex marriage is important to a huge number of people in this country.

Mr. Bill Siksay: Thank you.

The Chair: Thank you, Mr. Siksay.

We'll 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 today.

I'd like to pick up a bit on what Mr. Siksay was pursuing at one point—that is, the concept of civil marriage—because, needless to say, we have a very difficult task before us, and we hear a great deal about persons or groups who believe that a term belongs to them and doesn't belong to the state.

Let me refer back to the reference to the Supreme Court of Canada, paragraph 22, where they were talking about our common-law history in marriage, and they refer to the classic case of *Hyde v. Hyde* as being the common-law basis for our civil marriage.

What it goes to say is this:

Hyde spoke to a society of shared social values where marriage and religion were thought to be inseparable. This is no longer the case. Canada is a pluralistic society. Marriage, from the perspective of the state, is a civil institution. The "frozen concepts" reasoning runs contrary to one of the most fundamental principles of Canadian constitutional interpretation: that our Constitution is a living tree which, by way of progressive interpretation, accommodates and addresses the realities of modern life.

Bearing that in mind, we're caught in the process of trying to deal with a civil marriage definition that manages to meet the desires and hopes of a pluralistic society. You, for example, Mr. Mainse, come before us and say, please accept our religious definition of marriage as we see it and use that as the civil standard. Yet, on the other hand, we have the United Church of Canada that comes before us and says, we would like to, in our interpretation, broaden the definition of marriage so that it will be inclusive of all those who we believe, including same-sex couples, should share in this institution.

You see, we have a great difficulty, therefore, in trying to pick and choose, if we're going to pick from a religious perspective what type of organization this civil marriage would be. Can you help us try to understand why we should, for example, accept your definition over the definition the United Church would proffer to us for acceptance?

• (1625)

Mr. Iain Benson: Is that directed to someone in particular?

Hon. Paul Harold Macklin: Well, maybe to David Mainse, but I'll let all of you answer if you wish.

Mr. David Mainse: It's my experience that the United Church in Toronto has a group of unelected self-perpetuating office-holders who, by means of the governance documents of the church, are able to bypass grassroots. I run into United Church ministers everywhere who are absolutely distressed. I run into United Church members who are totally distressed and say this does not represent them. I spoke to an elder of the United Church this morning who is just sick at heart.

I have here, with the package I'll pass out, a letter from what I understand is the largest attended United Church in the Maritimes, St. Paul's United Church in Fredericton, New Brunswick, which is very strongly opposed to that. The head office statements of the United Church of Canada do not represent them in any way, shape, or form.

How do you determine this? People want to be loyal to their churches, and it's important to be loyal to their churches, but that's what I get everywhere: "That statement that came out of the head office of the United Church does not represent me." Maybe that's because the people with whom I'm in contact have a more traditional perspective on the issue.

Hon. Paul Harold Macklin: But I guess the question is, why should we accept your definition over theirs? Is it simply because you're saying they don't represent their parishioners?

Mr. David Mainse: From the standpoint of history, when the Protestant movement began, *sola scriptura*, here I stand, modern theological interpretation has thrown out the authority of scripture. Also, of course, the Protestants basically threw out the authority of tradition. So the foundation of our faith has totally been messed with by some. I don't believe that diminishing congregations represent the church. I believe they represent a segment within their own particular church, and that's all.

In terms of post-modernism, I suppose it's "if it feels good do it". I don't know whether you read the article in *Ideals*. I recommend you all get that article by the former editor of a major gay magazine. It's very interesting.

I think there are standards that a majority in all the religions hold. The great atheist societies on the planet have never messed with marriage. Here we are, running down that road and robbing millions of us of the one term we have to describe the most important relationship in our lives: one man, one woman.

• (1630)

The Chair: Mr. Benson.

Mr. Iain Benson: I'll try to tie your question to a point made by Bill Siksay.

What is the marriage debate about? It's about social recognition. It's "recognize me". I've said in my earlier comments that, for the first time, the "recognize me" in the same-sex claim has taken on a primary sexual-conduct recognition claim. It's very important to recognize that's buried within the claim for marriage and it's the lightning rod for the debate.

It is now wrapped up, according to the court, with the very essence of human dignity. In other words, if you don't respect my same-sex claim to marriage, you are rejecting my dignity as a person. Do you have that point? The claim before the court is that you have to accept my same-sex conduct to accept my dignity. That is wrong. Why is it wrong? Can another person say that you have to accept my religious beliefs in order for me to have dignity as a citizen? No. We wouldn't accept that claim because we recognize a distinction between certain beliefs and human dignity. The denial of a belief is not the denial of dignity.

The essence of the same-sex marital claim is fundamentally erroneous. It conflates conduct with belief and with dignity. You need to see through that error in order to properly understand why this is so fundamentally threatening to religious communities. It's threatening to them because they are being told that the new constitutional norm is now going to be sexual-conduct specific.

To go back to the origin of your question, *Hyde v. Hyde* and *Woodmansee* was the common-law recognition from time immemorial, etc. Marriage has been understood within Christendom to be a recognition by law, not a creation by law.

In my brief, when you eventually get it translated into French, you'll see that I've tried to set up the two huge differences between a recognition of something emerging out of nature, prior to the state and prior to law, and using the law to drive a changed definition backwards to the culture.

The reason the religious groups are aware this is a threat to them is because they do not accept the conduct that's at the core of marriage. That's precisely what the same-sex community wants to be publicly reified. There's a fundamental claim that you have to accept sexual conduct within same-sex marriage claims, and that is deeply offensive to a huge number of people.

The error isn't the numbers. It isn't the majoritarian aspect of such a concern. It's that a group of people are attempting to force their beliefs on others. If you substitute the term "religious belief" for

same-sex marriage, and then run this whole debate through your thinking, you'll come out in a very different place, I'd submit to you.

The Chair: We go back to the Conservative Party. We're now into the subsequent rounds of five minutes.

Mr. Jean, please.

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

Thank you to the presenters today.

I think it's clear, at least to me, that there can be identical charter rights with the use of two different terms.

I want to carry on the conversation a little more. There has been a reference by some of the witnesses who have appeared before us to the terms "symbolistic rights" and "legitimization".

Mr. Benson, I'd like to hear your comments on that. My understanding of those witnesses is that even though they can have identical charter rights or rights that flow from those two words, in essence, they cannot receive the same symbolistic rights that married couples currently have.

I'd like to hear from you, Mr. Benson, as well as from Mr. Hartt, if that's possible.

Mr. Iain Benson: Absolutely. When the claim is that something I think about myself has to be socially advanced by other people as well, in other words, when I have to be recognized by you in a certain way, I'm making a very aggressive claim to you.

Normally in civil society, we allow a certain *cordon sanitaire* around the question of what you have to affirm about me. That's called the freedom of being able to disagree.

In civil society, we allow people to disagree about things, with respect. That's the key. What's happening in this case is that the claim is extending beyond respect to affirmation. We don't just want acceptance; we want to be welcome. That phrase is often seen in the literature.

This is a serious problem. It comes well-dressed and well-packaged, but when you work it through the matrix of all the interlocking legal claims within a civil society, it creates immense problems. I'd suggest that in terms of a theory of understanding, it cannot work in a free and democratic society. Part of it turns on the distinction of what should be properly private, and sexual conduct was always understood to be private. Now the private claim has become a public claim.

The Massey Lecturer in 1994, Jean Bethke Elshtain, in a book subsequently published as *Democracy on Trial*, has an entire short chapter called "Public and Private" that beautifully details the problem that gay marriage claims make in terms of the public and the private.

• (1635)

Mr. Brian Jean: Thank you.

Mr. Stanley Hartt: You've asked me to comment on this too. It has not escaped your notice that I am the only witness today who is not founding his argument on religious principles. For me this is a matter of law.

I'm offended by the preamble and its assertions, based on the facts put on the ground. I believe people are entitled, however, to respect for their religious beliefs. It has always struck me that politicians will appear for photo opportunities with the family Bible under their arms upon leaving church and shake hands with the minister and hope to be photographed, because that shows they're good people. But really we don't really want them or expect them to believe that stuff.

My view is that the people whose views are founded on fundamental religious beliefs are entitled to respect not only by society, but by their Parliament, and to the extent that it is unnecessary—this is the whole foundation of my argument—to pass this law, then I think Parliament should forbear. Deference is not only due by the Supreme Court for Parliament. Deference is due by Parliament to society.

A voice: That's a good point.

Mr. Brian Jean: Do you have anything to add, Mr. Benson?

Mr. Iain Benson: I think that last one is a very fine point in that it's very important for the state to recognize its own jurisdiction. We don't want law and politics to control all aspects of human beings. One of the problems we're seeing in the contemporary age is that associations are being squeezed. The more you govern, the less you self-govern. There's a lot of truth in that.

Mr. Brian Jean: My final question actually is somewhat unique. Speaking of jurisdiction, I'm wondering if you have put any thought, Mr. Benson, with your background in law, towards the federal government's utilizing the Divorce Act to, in essence, be a mechanism to control marriage?

Mr. Iain Benson: Could you explain how that would work?

Mr. Brian Jean: The Divorce Act obviously is under federal jurisdiction. We wouldn't presuppose that people get married to get divorced, but that seems to be a reality today. Certainly through the Divorce Act the federal government can legislate who can actually get divorced, which is sort of a back-door approach. But I'm wondering if it can be utilized to encourage the Supreme Court to allow the federal government to have jurisdiction under the Constitution.

Mr. Iain Benson: The immediate problem it raises for me legally is that the claims are claims of access because they're related to recognition, so you wouldn't cover that claim off, and the question of social recognition would still be unsorted in what you're proposing.

There is a poem by G.K. Chesterton that contains the line, and those "who are not married, Demand to be divorced". You may find that relevant to your consideration.

Mr. Brian Jean: Thank you, sir.

[*Translation*]

The Chair: Thank you.

We now move on to the Bloc Québécois. Mr. Marceau, you have five minutes.

Mr. Richard Marceau: Thank you very much, Mr. Chairman.

The Chair: Forgive me, Mr. Marceau, but I must go to the Liberal side. It will soon be your turn.

● (1640)

Mr. Richard Marceau: In a spirit of universal brotherhood, it is with pleasure that I will share.

The Chair: Yes, but there must be consistency here after the day we have had today, if you follow me? My apologies.

Mr. Richard Marceau: No problem, Mr. Chairman.

[*English*]

The Chair: I apologize. We're going back to the Liberal side.

Mr. Savage, go ahead, please. You have five minutes.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Thank you, Chair. And, Monsieur Marceau, thank you for your cooperation. I'm sure it will extend to the votes tonight. We look forward to that.

Some hon. members: Oh, oh!

Mr. Michael Savage: My question is for Dr. Mainse.

One of the great opportunities of being on this committee is the opportunity to meet people who are leaders of faith groups. I find that a real treat. I enjoy any opportunity I have to talk to people who are prepared to talk about their faith, and I'm very open to that.

Getting ready to come back to Ottawa on Sunday night, I was putting my kids to bed. My wife was doing more of that than I was. But the doorbell rang and it was the Church of Jesus Christ of Latter-day Saints, and they wanted to talk. Most people don't really give them that much time, but I enjoy that. I really enjoy sharing views with people of faith.

We've had a lot of people come to this committee, leaders and their faith groups, some opposed, some in favour. You mentioned the United Church, the Unitarian Church. We've had rabbis. We've had representatives of the Sikh religion and other faith groups. You mentioned the division in the United Church. Where I am, the United Church is more solidly in favour of this legislation, but some are opposed. A great many people from my own faith group, a great many Catholics, are concerned about the Catholic opposition. In other words, a great many Catholics support Bill C-38 and are concerned about their church's position. But we live in a society where we have the opportunity to discuss those positions and to discuss them civilly, in the same way that you and Svend have been able to do, I suspect.

My question is about a comment you made referencing the further erosion of marriage. It does seem to me that marriage has perhaps eroded over the years. We certainly have high divorce rates. We have abuse of children, violence in the home, abandoned children—obviously most of those with heterosexual couples.

When you see a group of people—gays and lesbians—who are fighting for the opportunity to be married and to call themselves married, in loving, committed relationships, many of whom are deeply spiritual, church-going people, who believe that they should have the same right to call themselves married as heterosexuals, why wouldn't that be a good thing?

Mr. David Mainse: I think this is the point I made in going to Europe twice to study, that the breakdown in the respect for marriage, particularly by heterosexual men, is literally epidemic.

After former Prime Minister Jean Chrétien announced on national television that the government was now ready to change the definition of the word “marriage”, I did some very unscientific focus groups in local garages. With the permission of the owners and the workers, I had coffee break or lunchtime, and I began to ask them about this. First of all, they talked about their own marriages and so on. These are mechanics. Their first language isn't necessarily English or French. These are guys in the shop. Invariably, one of them would then pipe up and say, in one way or another, “I guess marriage doesn't mean anything any more”. These are men who are working hard to keep their own marriages together, and they see this as a denigration of what they made a commitment to at the altar in their particular church.

The social ramifications of this, apart from anything the scriptures say, are huge—absolutely huge. Twenty to thirty years from now, I predict we will have a horrendous thing. As the Old Testament prophet said, “When they sow the wind, they shall reap the whirlwind”.

There has not been any study. The committee was cut off at the knees, as I said. No study; hardly at all; never heard the report from the parliamentary committee on it. I mean, what is it coming to? What is this unseemly rush? Is it going to hurt people to wait another year or two while somebody studies something?

Mr. Michael Savage: I've talked to a lot of people on this issue; I think all of us have, and we've tried to be very open-minded in discussing this with people.

The one thing I've never understood is this. The only person who can denigrate my marriage is either my wife or me. It's not somebody else. And if murderers and rapists and child abusers can get married and it doesn't affect my marriage, why would it affect my marriage that a gay or lesbian couple, who are deeply committed to each other, would want to share a marriage as well? I don't understand that, and maybe you can—

• (1645)

Mr. David Mainse: I'm looking at the long-term view, and the long-term view is an increasing disrespect. When my kids were in high school, the word was “gross”. Do you know what word they use now to mean “gross”? It's “gay”. That's what they're saying in the high schools, at least where I live—Toronto, Burlington, and so on.

There's a whole group of homosexuals who believe this is one step too far and that this will invite a backlash 20 to 30 years down the road, which no one wants to see. We don't want to return to the old days.

I have never opposed any other step. I have never spoken against any other step that's been taken—that this Parliament has accomplished—in recognizing legal rights and so on. The word “marriage”, that's the crux. It's the disrespect that this will produce down the road, and I believe that.

Mr. Michael Savage: I appreciate your point of view, but I think the denigration of marriage is more due to the heterosexual couples who have done it than the potential homosexual marriages.

Thank you, Mr. Chair.

[Translation]

The Chair: Thank you.

Mr. Marceau, good news: it really is your turn. You have five minutes.

Mr. Richard Marceau: Mr. Chairman, you mean to say that it is good news for the people who are listening to us, correct?

The Chair: I was speaking to you, Mr. Marceau.

Mr. Richard Marceau: Thank you, Mr. Chairman.

I greatly hesitated before deciding to ask you the question I am about to put to you, but I believe I have no choice. Mr. Benson stated earlier that those who support C-38 *semblent vouloir imposer leurs croyances aux autres*. That is what I heard.

Mr. Purvis and Mr. Mainse began their presentation by asking for tolerance towards Christians. In an answer to my colleague Mr. Macklin, Mr. Mainse, with these superb communication talents you have, you quite severely criticized the leaders of an established Church in Canada, which is the most important protestant denomination in this country.

My religious convictions allow me to accept and even to embrace the idea of same-sex marriage. The man I consider to be my spiritual advisor, when I am dealing with spiritual matters, appeared before the Justice Committee two years ago in support of same-sex marriage.

The impression I have is that you are asking us to not have views that are different from yours. You are asking that as an elected representative I impose upon myself your concept of marriage. I presume that this is one of the main reasons why the government decided that the bill would deal only with civil marriage. How is it that a distinction between civil marriage and religious marriage constitutes an imposition upon you? If we allow divorce in civil society, then how is it that we would be imposing something upon the Catholic Church which does not allow divorce? If we allow marriage between a Jew and a non-Jew in society generally speaking, how would we be imposing something upon Jewish religious groups that do not accept exogamous marriage? Explain to me in precise terms how it is that the fact that there might be a distinction between the State's concept of marriage and yours, which I respect but which I do not want to see imposed upon my religious community, my family and my friends, is in your view a threat?

Mr. Benson, I would invite you to respond first, and then I would ask Mr. Mainse to do the same.

Mr. Iain Benson: You have asked a good question.

• (1650)

[English]

But you have to understand the nature of the secular society. The secular society is not a society split off from religion. We are all in the secular society. We are all in the civil realm.

In your question you presupposed a distinction between, as you put it, your conception and the state's conception. This is not the understanding of the nature of the state that is the best understanding in Canada. We don't have a split that dramatic, that fundamental, between different belief communities and the state. The state is the instrumentarium that governs all of us through law and politics. It's made up of religious people as much as it's made up of believers who are atheists and agnostics. Every single citizen is a believer. The question is, in what?

In your presupposition of that question, you assume that the instrumentarium of power is to be controlled by the believers who are atheists and agnostics. That was completely rejected by the Supreme Court of Canada in their decision of 2002, *Chamberlain v. Surrey District School Board*, in which they determined that the secular must include religious believers, because if it doesn't, the secular and secular principles are dominated by atheism and agnosticism.

So that's how I would answer your question.

[Translation]

Mr. Richard Marceau: Doctor Mainse.

[English]

Mr. David Mainse: Specifically referring to the United Church of Canada, I felt I had to be a voice—along with this one letter I will give out, and I could get many such letters—for those people within the United Church of Canada who feel very disenfranchised when the head office makes a given statement. I'm not denigrating the United Church of Canada; I'm simply saying I haven't heard anybody else speaking up for thousands and thousands of United Church members who very much want to maintain marriage as it has been.

Ian, do you have something to say?

Mr. Ian Purvis: Actually, I did.

I was enjoying the anonymity of not being asked anything, and then my name came up in your question because I did mention the issue of tolerance.

I appreciate something that Mr. Hartt said. Really, if we cut to the quick of this matter, I have proposed to several people that the resolution to deal with the equality issues is a little bit different from playing with the word “marriage”.

Marriage is a process of the parties coming together. The result of that is two people who are spouses of one another. If you look at all the legislation we have, all of the rights and privileges that attach to a marriage arise out of the person becoming a spouse.

Interestingly enough, even the enabling legislation of Bill C-38 goes through, in a painful way, and attempts to change the definition of the result. The word “conjugal” is changed, and the word “person” is changed, if you look through the other sections of that. It has always been my proposition that if you change the definition of the word “spouse”, as an example, as part of a solution, to include parties who had gone through a marriage ceremony called a marriage or a civil union, the rights issue then vanishes, because they have all the same rights, as do the parties who have their relationship called a

marriage. Therefore, it's no longer a rights issue, an equality issue; it's a semantics issue over the word “marriage”.

So we're asking that people be tolerant of our respect for the word “marriage”. We are tolerant of the fact that they should have rights in their relationship. What we are saying is that we are prepared to let them have all of those rights.

[Translation]

Mr. Richard Marceau: There is never enough time.

[English]

The Chair: Merci, monsieur Marceau.

We're now going back to the Liberals.

Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Mr. Chair.

I have a couple of minutes of comments and then a question.

With respect to your presentation, Mr. Hartt, it was cogent and persuasive, to a point.

Correct me if I'm wrong, but Mr. Justice McMurtry, in the Ontario Court of Appeal decision, specifically rejected the notion of calling a same-sex relationship a civil union and specifically said separate but not equal is not the order of the day in Canada. I'll ask you at some point if you have any comment on that, but that, to me, in a nutshell, removes from us the option of calling a same-sex relationship a civil union. It did not pass muster with the Ontario Court of Appeal.

I have difficulty with Mr. Benson's presentation—again, otherwise quietly passionate, and so on. Based on the number of same-sex couples who have married to this point, in a community of 115,000 people, only 11 same-sex couples will have married. How the presence of 11 same-sex couples in a community of 115,000 in any way dilutes or denigrates the rights of the heterosexual married couples escapes me, especially when heterosexual couples, except for some congregations, have reserved for themselves the exclusive right of entering into holy matrimony. So if we're talking about semantics, this legislation talks about civil marriage, and the churches deal with holy matrimony, which is entirely separate.

That said, my question for all of you is this. Hypothetically, you are the parents of however many children—let's say, two children, two daughters, one of whom is lesbian, one of whom is heterosexual. Both of them are loving, decent daughters of whom you are inordinately proud. Both of them are in long-term, caring, supportive, terrific relationships. One daughter is lesbian as a matter of genetics, as a matter of chromosomes. The other daughter is heterosexual. How comfortable would you be as a tolerant, decent Canadian, as you all are, saying to your 21-year-old lesbian daughter, “You know, you have rights in your relationship, we respect your relationship, but you will never be accorded the status in your relationship as will your heterosexual sister; you will be denied a status that was provided to Karla Homolka and Paul Bernardo, for instance”? How comfortable would you as parents be to distinguish between your two daughters simply because of their preordained sexual preference?

•(1655)

Mr. Stanley Hartt: I have great respect for Mr. Justice McMurtry, but I would point out two things. First, he did not have before him for consideration a regime of civil union that was designed to meet the constitutional task. He had a vacuum before him. He had a phrase that somebody threw at him: if two people seek marriage and the law creates obstacles to marriage, those laws aren't consistent with the Constitution. When Mr. Chief Justice McMurtry has before him some day in the future a fully thought-through regime of civil union, I do not believe he will say the same thing. He couldn't invent one, and none was before him. At very best, his remark is an extreme example of *obiter dictum*.

Second, he's not the Supreme Court. Looking at question 4, it screams out at you why the court would not answer it. They would have been forced, which is my whole point, to say, "Well, just the words 'civil union' wouldn't do it. Tell me, what are the conditions to this civil union? How would it work? Would it be the same in all provinces, or would the regime be identical to the rules governing marriage in each province?" When you have that, then you can answer the questions.

As far as being a parent is concerned, I think I'd defer to Mr. Benson's point. You've already put labels on my two daughters in your hypothetical: one is a lesbian, one is a heterosexual. Marriage is a label. You very much want to take the context out of the label "marriage". But you don't try to take the context out of the label "lesbian" or "heterosexual". Those are words and they have meaning. What I would say, echoing Mr. Benson, to both my daughters, is this: "I love you and I'm very happy that you have these loving, stable, supportive, permanent, exclusive relationships. They just are called different things, and that shouldn't bother you." But if society and Parliament tell them it should bother them, maybe it would. I'm asking you not to make that bother them.

•(1700)

Mr. Iain Benson: There are two things I'd like to say in response to your questions. First, the idea that it only affects a few people and doesn't affect the whole community is I think wrong, and there are several reasons for this. The claim is right—you're correct that this is the claim, that we're just adding a few drops of water to a bucket of oil. Those drops of water will sit there and won't change anything.

But the better metaphor for what's actually happening is adding food colouring to a bucket of water. The reason for that is in the nature of how we live together. It would be naive in the extreme not to see that the claim for same-sex recognition is going to apply to every aspect of society. Just to give you one example, take the public education curriculum, which, sure as shooting, will affect you and your children, and all the children in your community. It's access to the constitutional norm that is sought with the express object of changing society's way of thinking, and if you don't understand that yet in the context of the debate in Canada, you haven't been listening.

The goal of this whole project is to change the way Canadian society perceives gays and lesbians fundamentally, and at the core of that is an attack, very clearly, on what is called heteronormativity, heterosexism, which is the continual maintenance of the idea that heterosexuality is somehow normative. And the term "attack" I

choose very carefully. I substantiate my choice of the term in my brief, which you'll get, by quoting an article from 2004 by a leading academic, who says, we have to attack—that's the term he chooses—marriage and the family because those are the bastions of heteronormativity. What we're seeing—and we don't like this terminology up here, north of the 49th parallel—in a sense is a culture war, an attack between different ideological, different epistemological, frameworks. We don't like to admit it, but that's what's going on.

Concerning your next question, on the issue of "separate but equal", please, please, please—the distinction between "separate but equal" and the same-sex debates is as obvious as the nose on my face. The "separate but equal" doctrine in *Brown v. Board of Education* related to racism. Racism is the rejection of a person totally. The rejection of same-sex sexual conduct with respect for same-sex couples is not racism. It's a very different thing, which is why I made that first point, and I'll make it again. It's extremely important that you understand this.

At the core of the claim for same-sex marriage is the claim for same-sex sexual recognition—acceptability. That's the claim. And it's not racism, because you can respect a gay person and say, "Look, I don't have to accept your sexual conduct, and I still respect you as a friend". I've got gay friends—I've got more personal relations than that with gay people, which I don't want to discuss publicly—but I'll tell you this; there isn't a person who's got a wide circle of friends in this country who doesn't have contact with gays and lesbians. And if a person can't respect gays and lesbians, even love them, without necessarily accepting what they practice, then that person is not very mature as an adult.

To turn it around, if I know a gay or a lesbian who can't respect me for being a Roman Catholic, then he or she isn't very mature. That's the kind of maturity we have to rise to, not these rhetorical flourishes of "separate but equal", which don't apply in the circumstances.

The Chair: Mr. St. Amand, I'm afraid we've doubled your time, so we've run out of time.

We're back to the New Democratic Party with Mr. Siksay, please, for five minutes.

Mr. Bill Siksay: Thank you, Mr. Chair, and good work, Lloyd, doubling your time. I don't think anybody has accomplished that yet.

Mr. Mainse, I wanted to give you another example. You talked about your informal survey of mechanics. Let me give you an anecdotal example of another kind of incident. You've got me reminiscing about my time working for Svend. This is an example from last year when there were demonstrations organized outside of the offices of members of Parliament who might support equal marriage. There was a demonstration organized outside of Svend's office in Burnaby. Your organization might have been part of it. There were quite a few people who showed up, too many for the sidewalk in front of Svend's office, so they went to the supermarket across the street and held their rally there. Svend, being Svend, decided to go over and talk to them, and they invited Svend to speak. There were probably 200 people at the rally. In the course of his talk, Svend asked those present, all of whom were highly motivated in opposition to same-sex marriage, if anyone thought that his marriage, his relationship to his partner Max, would call into question their commitment to their own partner. He asked anyone in this group who felt this way to put their hand up. Not a single person did so. No one in that group of people who were highly motivated against same-sex marriage felt that Svend's being able to marry his partner would in any way affect their relationship or their respect for the institution of marriage.

I think that's a very instructive moment from Burnaby—Douglas, and I wanted to share that story with you. In fact, Svend went back to his office afterwards, and a couple who had attended the rally because they opposed same-sex marriage came by with coffee and doughnuts. They wanted to let Svend know that he'd actually changed their minds, and that they now wanted to allow gay and lesbian couples to marry in Canada.

That's just another anecdotal story. There's a million of them out there, and it's one that's a little different from your experience.

I wanted to come back to an example you used. I think you said it was your children who at school reported that the expression "so gay" was—

• (1705)

Mr. David Mainse: I've heard several of them using it. It used to be "gross" when my kids were in school. Now the high school kids are using the term "gay".

Mr. Bill Siksay: How do you understand that expression? What advice would you give to people who've heard that being used?

Mr. David Mainse: I think they should take the kids to task. However, we know from history that this is a recurring thing. It happens every three or four generations or so. That's why I maintain that this is a step too far.

Mr. Bill Siksay: So you think that expression has only come to the fore because of the advances being made in equal rights for gay and lesbian people?

Mr. David Mainse: Yes, that's a part of it. When Pierre Trudeau said the state had no place in the bedrooms of the nation, I agreed. But I said at the time that I was afraid the bedrooms wouldn't stay in the bedrooms, and that's exactly what has happened.

Mr. Bill Siksay: So you don't think there were attacks or homophobic slurs used before the time of decriminalization of homosexuality?

Mr. David Mainse: Of course, there were. But hey, if you want to take a group, look at the headlines on the front cover of *Maclean's* magazine about Stockwell Day: "How Scary Is He?" Talk about attacks. He's under attack because of his Pentecostal religion and his faith. Totally un-Canadian. Totally anti-pluralistic. Certainly, that has happened to many groups through the years.

Mr. Bill Siksay: But that's a little different from name-calling.

Mr. David Mainse: Oh, believe me, he was called all kinds of names because he was a Pentecostal.

Mr. Bill Siksay: I don't think anybody said, "You, Pentecostal," in the same way they might say, "That's so gay". I don't think the expression, "That's so Pentecostal" has come into the Canadian Parliament, has it? In the same way?

Mr. David Mainse: People have been persecuted for all kinds of things. I have something here that I'd like to read from the Honourable William Henderson. His legs were cut off in the battle in Italy. He ended up as a major in the Canadian army putting in the legal structure in Holland when the Germans left. Here's what he wrote:

The charter never mentions dignity and equality rights. Never. So how can that be used to expand the application of the charter? Actually the Charter of Rights and Freedoms protects every Canadian equally. When homosexuals cry for equality under the charter, they're asking for special rights just for themselves.

Now put your brain around that if you can.

Mr. Bill Siksay: How is that? You'll have to explain that to me.

Mr. David Mainse: His point is that the charter protects the rights of everyone. I'll give you a copy of his letter.

Mr. Bill Siksay: I'll appreciate trying to figure that out later, Dr. Mainse.

Mr. Benson, I wanted to ask you a question. When you were talking about the issue of a lack of equality being an affront to the dignity of gay and lesbian people, I wanted to understand what your understanding of homosexuality is in terms of human sexuality. Is it solely an issue of conduct? Is it an issue where it's okay to be gay, but just don't practice it? You seem to be making that kind of dualistic separation of things. For me, that's a very difficult thing. I think it's different, too, to say that persecuting someone for their beliefs is different from persecuting someone on the basis of our understanding of their being and their worth as a human being, and something that is fundamental and intrinsic to who they are as a person, like race. I would see sexual orientation as fundamental to my being as a person.

• (1710)

Mr. Iain Benson: And you wouldn't see beliefs the same way?

Mr. Bill Siksay: I think beliefs change over time, and they can change over time, but I don't think they're in the same category as race, as gender, as sex, as sexual orientation, necessarily. That's not saying that I don't think they merit the strongest possible protections in our society, but I do see sexuality as something intrinsic and fundamental to our being as persons, and that's how I would see it as different in that circumstance. I'm wondering if you can tell me what your understanding of homosexuality is in that context.

Mr. Iain Benson: This is an important point. The term “homosexuality” has to be very carefully handled for this reason. Homosexuality is a state of being that admits a distinction between practices and desire, orientation, in the same way that we recognize a distinction between desire and practice in all kinds of areas of human life.

Mr. Bill Siksay: Have you made that distinction in heterosexuality? Explain it to me in terms of heterosexuality.

The Chair: Mr. Siksay—

Mr. Iain Benson: There's a good example. This may get a bit esoteric, but basically in any kind of moral treatment of human sexual behaviour, there's a distinction between desire and conduct. With respect to heterosexuality, it's done all the time with respect to adultery. We understand that because a person may have a particular longing, they don't have a moral right to carry it out. There's your distinction.

Mr. Bill Siksay: You are saying that overall with respect to homosexuality, but very specifically in regard to heterosexuality. That's the difference.

Mr. Iain Benson: I'm not making that. It's the moral manuals that make that distinction.

The Chair: Thank you.

Coming back to the Liberal side, Monsieur Boudria.

[*Translation*]

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): My first question is for Mr. Hartt.

I believe you spoke in your presentation of the social disruption—which would be *dérangement social*, in French—that would come about if the definition of marriage in law were changed. Is that correct?

Mr. Stanley Hartt: Yes.

Hon. Don Boudria: Very well.

As you know, in seven provinces and one territory, among them Ontario, Quebec and British Columbia, homosexuals are already getting married. What social disruption has occurred since these people began getting married?

Mr. Stanley Hartt: I believe you have the results of the public opinion polls that come out every week. For more than two years now, the numbers have remained stable: two thirds of the population are opposed to gay marriage. I was not talking about a revolution or demonstrations in the streets. After all, we are Canadian. Canadians do not demonstrate very much, but they have very solid and strongly held views that they express in poll after poll.

Hon. Don Boudria: Yes, but will all due respect, that was not my question. You were saying that there would be social disruption if we were to change the law. Since 90 % of them already have access to marriage, according to your theory, there has most probably already been social disruption. You are telling me that social disruption resides in the fact that opposition to this has remained constant. If it is constant, there has been no disruption. I do not accept this measure of social disruption, but even if I did accept it, my conclusion would be that there has been no such disruption. This is what you were saying, is it not? No?

Mr. Stanley Hartt: Mr. Boudria, all I am saying is that there have been no demonstrations. However, there has been and continues to be an impact on people's emotions. I am telling you squarely that in the case of most Canadians who are opposed to gay marriage, the question has not yet been resolved. They consider that this debate in the Parliament of Canada is not yet over. They consider that the question has not been resolved, even if Parliament passes this.

In my remarks, I mentioned what might happen with some future government and a different policy. That government might put a much more precise and direct question to the Supreme Court of Canada, and the Supreme Court's response might be different. If all of us here and other witnesses have come here to discuss this, it is because the issue has not yet been resolved.

I am not threatening you with street demonstrations. After all, we are Canadians, and that is not our style nor our habit. I do however believe that any sudden move on the part of this Parliament would have consequences, if only in the ballot box at the next election.

• (1715)

Hon. Don Boudria: I do not believe we can defend the rights of minorities based upon polls, if that is your position.

[*English*]

Dr. Mainse, I think you were saying that the institution of marriage would be lowered, debased—I'm sorry, I don't want to put words in your mouth—reduced in some way, I believe were your words, by the fact that homosexual people can marry. Given that they've been marrying now for almost two years, to what extent are you of the opinion that the institution has been debased since, following the theory that you're espousing?

Mr. David Mainse: Only the comments I have referred to, which are not scientifically done. That's why I would love to have the time for this PhD thesis in Holland, to which I've been invited to send a graduate student. I think we have to go to those countries in Europe to see the social ramifications. Here we won't see them for years to come.

They are the very comments I heard from these heterosexual men that their obvious judgment—albeit very quickly making a judgment—would diminish their respect for the institution of marriage. And some of them are really trying hard to keep their own marriages going. They're not like the great marriages we presume everyone around this table has. They're trying to keep them going, they're working at it. But this is kind of like a blow to them, simply because of their predisposition concerning their sexuality and homosexuals.

I would also like to just add in response, if I could, that I'm just adding into my paper a DVD that I think speaks very strongly to the issue. So if you get time to listen to it in your car or something, I'm going to add it in.

[*Translation*]

The Chair: Thank you, Mr. Boudria.

[*English*]

We'll now go back to the Conservatives, Mr. Warawa, for five minutes, sir.

Mr. Mark Warawa (Langley): Thank you, Mr. Chairman and thank you to each of the witnesses for being here. I found your comments helpful, insightful, and also respectful.

My questions are focusing on two areas, one being the resistance to accept civil unions as an option, and the second would be where this takes us over the next 10 or 20 years.

I come from a community in Langley, British Columbia. I polled my community and asked for responses: 96% said exactly what you've shared today, that we should provide retention of the definition of marriage being between a man and a woman; that we should provide civil unions as the option for same-sex unions; that we should provide exactly the same benefits and rights; and that religious freedoms should be protected.

I've asked, in a number of cases, what people find inferior about a civil union, and I've yet to hear a response. What is inferior about a civil union if exactly the same rights and benefits are given in that definition? What is the resistance to that? We've also seen examples of marriage commissioners losing their jobs, people like Bishop Fred Henry and a school teacher in Quesnel, British Columbia, losing their jobs.

If Bill C-38 passes—and there is a movement to see this pass as quickly as possible—without any amendments, where do you see Canada over the next 10 or 20 years? Will churches lose their charitable status? Are private faith-based schools going to be able to continue teaching?

Maybe we could have each of you share your perspective on the resistance and then where you see it going. Thank you.

• (1720)

Mr. Iain Benson: Mr. Hartt has kindly deferred to me on this one.

In 1994, I had the privilege of being with Peter Jarvis before the Supreme Court of Canada as intervener in the Egan case. We were retained by a group of religious groups, including the Evangelical Fellowship of Canada, Canadian bishops, and others, and they were there because of the definition of spouse in the Old Age Security Act, 1994—not really a long time ago in the history of a country.

How much has changed since then? It's quite extraordinary in 11 years. At that time, one of the arguments we were briefed to put forward was that the change of the definition of spouse, because it was a marital term, would put pressure on marriage.

Counsel for Egale said in her materials—I believe it was for Egale at the time—there's no suggestion for the court that homosexuals and lesbians want marriage at all. It isn't about marriage; it's about benefits.

Roll the clock ahead. In the judgment of Egan, the court went out of its way to say—some of the judges—that this isn't about marriage, it's about benefits. In that case, they didn't grant the benefits—five judges to four—but in the next cases they started to grant benefits. In each case, *M. v. H.*, being an example, they went out of their way to say this isn't about marriage.

So first of all, it's benefits, not marriage. The religious groups are there all the time saying it's going to be about marriage. This

legislation accepts it. This is about civil marriage; it's not about marriage at large.

I say nonsense. The reason it's about marriage at large is that the claim is social recognition all the way down. The answer the people you asked the question about civil unions should have given you—and I'll answer it the way they would answer it—is the reason we want marriage and not civil union status is that civil unions do not give us the public recognition we seek as being married, just the same as heterosexuals. That's the answer they should give; that's what they gave in court. That's it. That's what this whole debate is about.

Will it affect religions? You bet it'll affect religions. Why? Because they are hugely involved in social recognition, and if they don't give social recognition, you can bet they'll be under attack—systematic and relentless attack funded by federal government money through the court challenges program, which is only available if you happen to be a claimant. If you're a defendant, tough.

Mr. Ian Purvis: I'd like to comment on that as well.

It does raise an interesting proposition, one I've looked at quite seriously, that if we make the changes we're talking about, it then becomes an issue that if there are rules and laws, there has to be the issue of enforcement, and how does the government enforce some of these things? If an organization just refuses to comply with what are seen to be statutory orders and regulations of the government, if they happen to be the recipient of the benefit of charitable status for their institution and they're using that benefit for donations to the church, is the obvious way of doing that, if you refuse to follow certain laws, to lose your charitable status for not doing that?

I think that's a concern a lot of us have, that because there has to be some corresponding sanctions for the idea of not doing what the law suggests you have to do.... And suggesting in the charter that you will not be compelled to perform marriages...I don't think it's going to be far down the road when a certain institution...if there's a gay marriage, they're going to want to use church property for certain gay rites.

• (1725)

The Chair: Mr. Warawa, I'm sorry, we're running out of time.

We'll have one last question. We're going to the Liberal side.

Do you have a question, Mr. Macklin?

Hon. Paul Harold Macklin: Thank you, Mr. Chair.

I just wanted to pursue one issue with Mr. Hartt. If I heard you right, what you wanted to pursue was a concept of civil unions across this country at the provincial level so everyone would be “civil unionized”, if I can use that terminology. If you could do that, at least it would set a universal standard for everyone to deal with, but marriage still has an international terminology to it, an international meaning. How would you see us, as keepers of the definition of marriage federally, dealing with your concept of provincial “civil unionization” in relation to the international concept so you would have an internationally recognized marriage certificate?

Mr. Stanley Hartt: This is not what you're here to talk about, but if the slate were wiped clean, I would put a reference to the Supreme Court that outlined the regime of civil union that I and many others have been arguing for and ask them if that's consistent with the charter. If they said it was, then I would have a federal law passed that reaffirmed the traditional definition of marriage. The constitutional monkey would pass to the backs of the provinces, which would then have to—they would have to—pass these regimes. The test would be simple: if you have rules affecting marriage in your province, all those rules—except the word—go for this regime of civil union.

I think it would be a matter of time before people were able, travelling with these certificates, to establish that they had the status of people who were civilly united in a country that recognized civil union. That would not be worse than what they have now; that would be better than what they have now. It's hardly the international norm for the bill that is before this Parliament to be adopted, so it would seem to me that Canada wouldn't be a laggard in this respect. It would be a simple matter of explaining to foreign officials, those who may need to inquire as to what this meant, what the law of Canada was.

The Chair: Thank you.

I want to thank the witnesses for appearing in front of the committee today.

[*Translation*]

Thank you for having participated in this meeting of the Legislative Committee on Bill C-38. I know that some of you have covered great distances to be here. Have a safe trip home.

[*English*]

Have a safe trip back home.

Yes, Mr. Macklin.

Hon. Paul Harold Macklin: There's a question I would like to raise for the committee. I have circulated a copy of an amendment, which obviously did not make the deadline for submission last night. I would seek unanimous consent of the committee to allow it to be brought forward as an amendment for consideration at clause-by-clause.

The Chair: Does the honourable member have unanimous consent to table this amendment at this time?

Mr. Vic Toews (Provencher, CPC): Not at this time. I'd have to review the impact of that kind of amendment. It looks like a fairly significant amendment.

The Chair: In other words, what you're saying is that Mr. Macklin does not have unanimous consent.

Mr. Vic Toews: At this time he does not.

The Chair: Mr. Macklin, you don't have unanimous consent.

Hon. Paul Harold Macklin: Thank you.

The Chair: Thank you very much again for participating today.

This committee is adjourned.

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