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Chair

Mr. Marcel Proulx

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● (1550)

[*Translation*]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Good afternoon, ladies and gentlemen. Welcome to this committee on Bill C-38.

[*English*]

Mr. Toews, when we left off yesterday afternoon my understanding was that there had been a proposition between the Liberal Party and you, of which the committee was not advised in detail. You were supposed to discuss this with your colleagues and come back with a solution, or a potential solution.

Where are we now, Mr. Toews?

Mr. Vic Toews (Provencher, CPC): The suggestion is that there be three two-hour sessions per week. If we group each session into five witnesses, so that there are 10 minutes for each witness, there would be approximately an hour and a few minutes for the committee to ask questions. Under this recommendation, each member would have the opportunity to ask a question before any other member has a second time slot.

The Chair: Excuse me, run that again, just the last part.

Mr. Vic Toews: Each member would have an opportunity to ask questions before any member has a second time slot.

In this committee there are five Liberal members, four Conservatives, two Bloc, and one New Democrat. We're finding that the New Democrats, even though they only have one member, are getting two questions before all of our people have had their questions. So that's an issue that needs to be addressed.

The Chair: You're aware that you're asking to revisit one of the rules that was agreed upon unanimously, by all of the committee members, at the first meeting we had? You realize that?

Mr. Vic Toews: Yes.

So that is essentially the proposition. We would have the 22 or so members presented in the motion. There are a couple of additions.

I understand the chair's point of view that the Prime Minister is not a member of this committee.

The Chair: I'm glad you understood my point.

Mr. Vic Toews: The Prime Minister could sit on the committee if he wished. Other privy councillors are here. But I'm assuming that the Prime Minister probably won't come to this committee. Still, he assured Canadians that there would be a full public hearing. Those commitments were made to a Liberal member. Some suggest that there was a deal made to keep that member on side. I have no insider knowledge; I'm not even going to go there.

The Chair: You're already there, sir.

Mr. Vic Toews: That's right. But I don't want to pass judgment.

I want to make it clear that the Prime Minister had made certain undertakings publicly. With respect to undertakings the Prime Minister may have made to a member of this committee, I think it's important for the committee to hear from this member what the Prime Minister actually said. That will be a subject of a motion. It's another issue.

Those are the comments. In a committee, generally speaking, we have two two-hour sittings a week. We have agreed to increase that by 50%—to three two-hour proceedings. If we increase the usual number of witnesses from four to five, this increases the number of witnesses by 20%. So what we have is 20% more witnesses per hearing, plus 50% more hearings per week.

Looking at the list that has generally been agreed to, plus the 22 witnesses, I think this is very reasonable. The justice committee, when it went last time, heard about 467 witnesses. I think this would be a very reasonable compromise.

Ms. Neville's suggestion was a good one. But we want people to give substantive evidence that affects the technical nature of a bill.

● (1555)

The Chair: Mr. Toews, maybe you should share with us what the suggestion from Mrs. Neville was.

Mr. Vic Toews: The suggestion was that we sort of have a group hug.

Ms. Anita Neville (Winnipeg South Centre, Lib.): That's absolutely not true. Come on, don't misrepresent it.

Mr. Vic Toews: There would be a dozen witnesses and we would all sit in a sharing circle. So I don't know, maybe a group hug—

Ms. Anita Neville: Mr. Chairman, on a point of order, that's pejorative language, misrepresenting the proposal made in good faith. I object to it and I ask the member to withdraw his comment.

Mr. Vic Toews: Okay, I withdraw the term “group hug”. A “sharing circle” I think was the term she used.

Ms. Anita Neville: Again, on a point of order, Mr. Chairman, there was no such language as a sharing circle. The language I spoke of was a round table that was used very effectively in another committee, and I put it forward as a means of dealing with it here. I do not like pejorative language attributed to me.

Mr. Vic Toews: I withdraw it. I knew it was something circular.

The Chair: Mr. Toews.

Mr. Vic Toews: In any event, I withdraw those comments, but what would happen—

The Chair: We're trying to be cordial. We're trying to arrive at something, so please.

Mr. Vic Toews: So there will be a dozen witnesses sitting around exchanging ideas. The problem with that is that we wouldn't hear from a specific witness in respect of the technical evidence that is necessary. I don't mind if in some cases, on a case-by-case basis, we have that round table, but I don't think it's appropriate in this case. Certainly my colleagues didn't agree with that, so whatever my private feelings are in respect of the round table, it's simply not acceptable.

The Chair: I have two people who want to intervene:

[*Translation*]

Mr. Marceau and Mr. Boudria.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Mr. Chair, I'm not an expert on procedure, but from what I understand, Mr. Toews still hasn't officially moved a motion. The fact that you have recognized me, unless I am mistaken, gives me the right to ask for the vote on the subcommittee's report. And that is what I am asking right now.

● (1600)

[*English*]

The Chair: Let's suspend for a few minutes so we can double-check to see with the clerk where we're at on this, and we'll be right back to you.

● (1600)

(Pause)

● (1606)

[*Translation*]

The Chair: Mr. Marceau, I'm sure you remember that two meetings ago, Mr. Toews had the floor and wished to debate the subcommittee's report and propose a number of changes. In my opinion, we can say in all good faith that we are still within the framework of those discussions which commenced two or three days ago.

The question that you are asking is whether it is possible in a legislative committee to ask for a vote on the previous question. From what we understand of the current situation, the answer is no. It is our belief that Mr. Toews' discussion has not come to an end and that we should try to reach a compromise or an agreement as elegantly as possible.

Mr. Richard Marceau: Mr. Chair, I have a number of concerns about this supposedly elegant way of doing things. The Conservative Party justice critic has also told us that he wants to review the rules that we unanimously agreed to from the outset concerning the allocation of questions. As you know, I am a civil lawyer, and under the Civil Code, individuals are assumed to be of good faith. However, in this case, we are, in my opinion, witnessing an attempt to bulldoze this committee. I think that it is incumbent upon you to ensure that we reach an agreement as soon as possible.

I have already told Mr. Toews, and I'll say it again now, that I have no objection to the additional 21 witnesses appearing. I therefore suggest that we lengthen our sitting time. I am prepared to devote a full day and a number of evenings. This, in my opinion, would be a compromise in good faith. On the one hand, he would have his witnesses and, on the other hand, the government and the other parties that want to see Bill C-38 adopted would have more time. That would be reasonable. Otherwise, I would consider what he is doing as a form of blackmail.

The Chair: I should have you know, Mr. Marceau, that Mr. Toews has every right to make a suggestion about changing the way the committee is run despite the fact that we agreed on certain things during our first meeting. I'm not opposed to that. However, he's going to have to abide by the other set of rules that we all agreed on. According to these rules in the case of a motion, he must give 48 hours' written notice, unless he were to have the committee's unanimous consent.

Mr. Boudria, you wanted to speak?

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

[*English*]

I, too, am having a problem with the way these things are being presented to us. Two days ago there was a motion in front of us for one witness. By the time the speech finished, there were four or five. Later we sat again, and the list had grown. Then it grew again, and today it keeps growing. Now we have MPs, MLAs, all kinds of people who have nothing to do with the—

● (1610)

Mr. Vic Toews: I have a point of order.

The Chair: Just a minute.

Hon. Don Boudria: The list keeps getting longer and longer.

At the end of the last meeting, there was an agreement, an understanding, I should call it, that we would try to have a list. And from that list, providing it didn't delay us, providing it wasn't an exercise in futility solely with the purpose of filibustering and not arriving at a conclusion to our important work, all of us, I think, were willing to participate in that exercise.

Today we're seeing a list that, again, keeps growing...that wants to have fewer witnesses per meeting in order, presumably.... The only result, of course, would be to have more meetings and no deadline at the end, Mr. Chairman. In other words, if someone tells me that we're going to have more meetings, and if this is sincere, as it is stated to be, and if someone says, "Yes, we'll sit more hours because someone has more information, but on such and such a date we'll do the clause-by-clause", then I would say that sounds as though, perhaps, someone has something to say that could assist us in our deliberations, in our amendments, if there are any, and so on. But if someone says, "It looks like they're going to give me three speakers, so now I want six", or "It looks like you're going to give me six speakers, and now I want twelve", and so on, and it keeps lengthening exponentially.... Then there's the catcalling across the way to colleagues who wanted to have a forum that's used in several committees, and calling it all kinds of other things. I don't think that's very helpful.

I would like the member to tell us just what it is that he wants. How many witnesses...for how long, when will it end, when will we do clause-by-clause? Then I think we can have something before us. If not, I would submit, Mr. Chairman, that we're back to debating the motion that's before us—and there's only one—and that's the motion to adopt the report and the amendment that we add Bishop Henry. That's essentially the only thing before us at this point. If we don't arrive at that informal understanding that we're seeking formally.... I think the only thing that's before this committee is, and I'll read the motion: "I move that we also add Bishop Henry...". That's the only thing that's before us in the form of a formal amendment to the main motion, which was produced for us, I believe, by Mr. Siksay.

Now, maybe we could get a bit of an explanation of that; otherwise, some of us are going to ask, on a point of order, that we get back to deliberating the motion that's before us.

[*Translation*]

The Chair: Mr. Boudria, should I understand from your comments that you refuse Mr. Toews' suggestion to have three two-hour meetings weekly and five witnesses per meeting, in addition to a change to the rules which he will attempt to make by filing a 48-hour notice of motion, and the inclusion of new witnesses?

Hon. Don Boudria: Mr. Chairman, in answer to what you are asking, this is incomplete. Last time we talked about to doing a package deal with this issue. But there has been no outcome. Should Mr. Toews want to tell us what the other piece of the pulse is, in order to reach an outcome, we maybe in a position to judge. But for the time being, he has described a part of what he wants and then stops there. What is the rest? When we will finish hearing from witnesses? Are we going to be face with a *filibuster* until Christmas, if we are still here that is, which is what might all us want?

I want to know the rest, because last time we agreed on the fact that it would be a package deal. And it is certainly not a package deal without a denouement. It is difficult to say if we like the package deal given that we have only seen the front of the car. I want to see what the taillights look like.

[*English*]

The Chair: Mr. Toews.

Mr. Vic Toews: To reiterate, then, what I did say is that there would be three two-hour sessions a week, which is an increase from the normal committee of one session.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): That's not what was recommended by the steering committee. The steering committee recommended four sessions of two hours a week.

Mr. Vic Toews: Whatever the steering committee recommended, what I'm suggesting is that it be an increase of one session over the regular committee. Then I have indicated—

Hon. Paul Harold Macklin: You can't legislate the committee.

Hon. Don Boudria: The committee has no rules.

Mr. Vic Toews: Generally speaking, there are two meetings a week. These are two hours. Members have other work to do. I don't see what the push is here. If the non-confidence motion in the House fails tomorrow, we're going to be here and enjoying each other's company for a long time. So there's no rush. That's what I can't understand.

I would actually enjoy the company of Mr. Boudria. I understand he may not be running again, and quite frankly, I have not yet had the opportunity to get to know him the way I think I should as a parliamentarian. The knowledge that individual has to share with parliamentarians generally...he's not only bilingual, he's trilingual. He speaks a fine Spanish.

In any event, all right, I digress. But I'm just saying that there's no animosity here, Mr. Chair.

The other proposition we made was that there would be five witnesses—five witnesses. If we look at today's schedule, for example—and I just want to appear to be reasonable here, we have—

● (1615)

Hon. Don Boudria: I have a point of order.

[*Translation*]

The Chair: Mr. Boudria, go ahead.

[*English*]

Hon. Don Boudria: If I may, Mr. Chair, I know this gentleman wants to appear to be reasonable. I wonder if we could go beyond the appearance and be reasonable.

The question I was asking is what is the rest of the package, not a repetition of how reasonable my colleague is. We already know that. We all judge it.

What is the conclusion, the final part?

The Chair: Okay. Mr. Toews is getting to that, just about now.

Mr. Vic Toews: And I would say that the—

The Chair: Aren't you, Mr. Toews?

Mr. Vic Toews: —appearance of reasonableness—

The Chair: Aren't you just about getting there now?

Thank you.

Mr. Vic Toews: The appearance of reasonableness is the first step to reasonableness, I always say.

In any event, here we have four witnesses scheduled between 6 and 8 o'clock. What I'm suggesting is that we have not just four, but five witnesses, 20% more. That's more than reasonable as a part of this package.

The Chair: Next.

Mr. Vic Toews: The other thing is that all members here should be entitled to speak, because by increasing the number of witnesses, who all will speak 10 minutes, the opportunity for individual members to speak at any one hearing is diminished. That's why we need to be firm on the point that each member gets to raise questions before another member speaks twice. Now, that's reasonable, and part of the package.

And I understand it was unanimously agreed to that there would be this alternating thing, but when we adjust the package there are repercussions, and we have to make those kinds of adjustments.

The Chair: Your next point, please, Mr. Toews.

Mr. Vic Toews: The next point is in terms of when this will all end.

Well, we see 41 witnesses that the steering committee brought forward. We have suggested another 22 witnesses, so that is 63 witnesses by my arithmetic. Sixty-three witnesses divided by five will give us the number of sessions—three sessions a week—and we can figure out when we will conclude the witnesses.

I have no intentions of carrying on beyond the conclusion of those witnesses. Then we will go to clause-by-clause.

That's the package. How much more reasonable could I be? I leave that question with the committee.

Hon. Don Boudria: Mr. Chairman, we're right back where we started. The question was not how much time it takes to multiply witnesses. People can calculate that on their own. That's not the issue. The issue is that we had discussed at the last meeting that there would be an overall package. That overall package has to include the clause-by-clause.

If the honourable member is telling us that he will not agree to an amount of time by which, at the end of everything he says—assuming we agree to any part of it—we will then report to the House, then I suggest that he is not giving us the package we talked about last time. If he's saying he's only agreed that after these witnesses he won't ask for any more witnesses, well, that isn't what it was about.

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): I sit on the steering committee also. I know there's been a lot of wrangling over this.

The prior committee on this issue, which didn't end up reporting, heard over 400—

● (1620)

Hon. Don Boudria: [*Inaudible*]

Mr. Rob Moore: There was a prior committee on the issue.

Hon. Don Boudria: No legislative committee has ever sat on this issue in the history of Canada.

The Chair: Order, order!

[*Translation*]

Please.

[*English*]

Mr. Rob Moore: Well, all the more reason to hear from Canadians that your Prime Minister is sure it would happen.

That particular hearing heard over 400 witnesses. We were asked last week to put forward a number of witnesses, a suggestion on the hours that we meet, and we've done that. What we've proposed—

The Chair: Do you have anything new to add? What you're doing now is repeating what Mr. Toews has already said, and we've all heard it. Do you have any new elements?

Mr. Rob Moore: I haven't heard anything new on that side. They keep talking about a package, and that's the package we put forward—five witnesses three times a week.

The Chair: Thank you, Mr. Moore.

Monsieur Ménard.

[*Translation*]

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

Mr. Chairman, I would like to move a motion and I would like to have instructions from you. I believe that we have to give a 48 hours' notice.

The Chair: Yes.

Mr. Réal Ménard: I would like the record to state that I am giving the following notice of motion:

> That the Legislative committee on Bill C-38 hear the witnesses on the Conservative party's list on one single day, Wednesday June 1st, from 8:30 a.m. to 8:30 p.m, and that the clerk make all the reasonable arrangements to do so.

I will submit the written text to the clerk.

[*English*]

The Chair: Merci.

Mr. Toews, obviously I was hoping that we could arrive at a reasonable, elegant compromise so that we could get on with the committee's work. I am forced to understand from your side and from the other parties that such a compromise, such an agreement, has not been reached. Therefore we are coming back to you. You have the floor. You were talking on your first motion.

Mr. Toews. The floor is yours.

Mr. Vic Toews: On a point of order for clarification, the motion then deals with just Bishop Henry and the amendment that I'm making. Is that what I speak to?

The Chair: My understanding is that you had a motion to amend the report as such. We were discussing the report from the subcommittee.

Mr. Vic Toews: Right.

The Chair: My understanding was that you wanted Bishop Henry. But I also understand that you were also discussing further witnesses, Mr. Toews.

Mr. Vic Toews: Is the chair prepared to make a ruling, in terms of clarification, as to whether subamendments can be made appropriately and then those are all dealt with individually? I want to be correct about this.

The reason, Mr. Chair, I added those 22 motions was the allegation by Mr. Boudria that the process I had adopted was somehow inappropriate. Therefore, I formally made 22 separate motions, and having to have 48 hours' notice, we would then have to deal with them each individually.

The Chair: How many motions are there in your package, Mr. Toews?

Mr. Vic Toews: I believe there are 22.

The Chair: So we will deal with these 22 individually, and ultimately there will be a vote on each of these motions.

Mr. Vic Toews: That's right. I'm giving 48 hours for those particular motions.

I'll continue to deal with why I think the list is simply inadequate.

First of all, we have to understand in this entire process that if we look to Standing Order 113(5), it states that any legislative committee shall be empowered to send four officials from government departments and agencies and crown corporations, and four other persons whom the committee deems to be competent to appear as witnesses on technical matters—and I'm paraphrasing that to some extent.

When I was speaking last, Mr. Boudria took exception to some of the witnesses I was proposing, saying they were witnesses who didn't deal with technical matters. The committee is not restricted to an individual member's interpretation of who is competent to appear as a witness on technical matters. That's why I indicated that you in fact need to lay the evidentiary basis, the substantive evidence that needs to be considered, before you ask the witness to talk about the technicalities.

One of the important parts about this bill...and I think it's important to understand this question in the context of the bill itself. It is a rather curious bill, to say the least. What the bill says in the preamble is the following, and I'm going to state the first paragraph first:

> WHEREAS the Parliament of Canada is committed to upholding the Constitution of Canada, and section 15 of the Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination;

I have no concern about that particular paragraph. It simply talks about section 15 of the Canadian Charter of Rights and Freedoms. It does not, however, indicate what particular grounds are set out in the Canadian Charter of Rights and Freedoms. It then requires some explanation as to how we could be talking about marriage and the issue of marriage when marriage is not one of the enumerated rights set out in section 15. That requires technical evidence, and I agree that we need to hear evidence on that.

The next paragraph in the preamble says:

> WHEREAS the courts in a majority of the provinces and in one territory have recognized that the right to equality without discrimination requires that couples of the same sex and couples of the opposite sex have equal access to marriage for civil purposes;

My concern is whether this relates to the solemnization of marriage, or whether it relates to the substantive institution of marriage itself. Again it's clearly something that requires the help of an expert. We are not all lawyers here, and we don't all have the ability to discern what the courts in the majority of the provinces and in one territory have in fact recognized.

● (1625)

The third preamble states:

> WHEREAS the Supreme Court of Canada has recognized that many Canadian couples of the same sex have married in reliance on those court decisions;

It is absolutely correct that Canadian couples have in fact entered into relationships that the courts have indicated are marriages, and they have relied on those particular court decisions. What is the impact then if the Supreme Court of Canada actually renders a decision on that point, which it hasn't done yet? It has referred the matter back to Parliament for its consideration. The Supreme Court of Canada might well have recognized the fact of individuals and couples marrying in reliance on those court decisions, but has made no statement as to the fact that constitutes marriage.

● (1630)

[*Translation*]

The Chair: Mr. Ménard, do you want to raise a point of order?

Mr. Réal Ménard: Indeed. I am sorry to interrupt this colleague, but I like to get an explanation as to where we were at with this committee's business. Are we still dealing with the motion to adopt the report tabled two meetings ago? I have noticed that we are steering dangerously far from the witnesses' list under consideration in this report.

The Chair: We are still considering Mr. Toews' comments—I hesitate to say motion in this particular case. The question is whether or not the committee is going to accept any change to the list tabled in the sub-committee's report.

Mr. Réal Ménard: Perhaps it is because I am a little tired or sleep is overcoming me, but I had the impression that what we are reading dealt with the substance of the Bill.

The Chair: There is some sort of a dividing line here. Mr. Toews is in the process of discussing what defines an expert witness. We will see where his comments take him.

Mr. Réal Ménard: I defer to your manly vigilance, Mr. Chairman.

The Chair: Thank you, Mr. Ménard, for your choice of words.

[*English*]

Mr. Toews, I'm sure you've understood.

Mr. Vic Toews: Thank you very much, and I appreciate the comments of Mr. Ménard; it gave me an opportunity to reflect a little bit on my thoughts and to ensure that I continue to focus on exactly what is relevant to this particular motion.

As I indicated, what we're dealing with here is.... I tried to set out the standing order that talks about the legislative committee and what it can do in respect of various kinds of witnesses—that is, government departments, agencies, crown corporations, or other persons whom the committee deems to be competent to appear as witnesses on technical matters.

The committee—and this is perhaps to help Mr. Ménard; perhaps I was rambling a bit, but I thought I was fairly concise—is not restricted to an individual member's interpretation of who is competent to appear as a witness on technical matters. That's why this is important. I'm simply laying out the groundwork in terms of who the committee can deem to be a technical witness. When we talk about technical witnesses, we're not talking about motor mechanics. We're not talking about electricians. We're not talking about plumbers. Although those are technical matters, they are technical matters that the committee certainly has absolutely no concern about.

What I'm saying again is that it is not a matter for an individual member's interpretation—nor, might I say, with due respect to the chair, is it a decision for the chair to make, either. The question is for the committee to decide; thus, the language in Standing Order 113 says: "...persons whom the committee deems to be competent to appear as witnesses on technical matters..."

Clearly, it's a committee decision in respect of who is a person for this kind of technical matter. Otherwise, if my interpretation were not correct, the standing order would refer to persons the chair deems competent, or persons Mr. Boudria deems competent, or persons the Honourable Paul Harold Macklin deems competent. I didn't mean to drop your "honourable", either; I do recognize that, Mr. Boudria.

Anyway, it refers to persons whom the committee deems to be competent. What I'm asking the committee, in terms of laying out this entire argument, is that the committee make a decision on my proposals as to who should appear as a witness. Such decisions are debatable and amendable, and that is what is before the committee.

Now, Mr. Boudria says that kind of decision is not debatable or amendable; we can debate that. In any event, where I was—

● (1635)

Hon. Don Boudria: I have a point of order, Mr. Chair.

The Chair: Mr. Boudria.

Hon. Don Boudria: May I? You might not be able to give us the answer to this right now, but at some point some of us are going to ask the chair why, when Mr. Toews, or anybody else for that matter, says he moves that we hear Bishop Henry as a technical witness, they're the only people we're entitled to hear. I want the chair to know that we're going to ask the chair—at least I'd like to—and then the chair can ask the committee, whether we consider Bishop Henry to be a technical witness. It's not a question of whether we debate the motion, because if in fact Bishop Henry is not deemed to be a technical witness then I suggest the motion is out order and not debatable at all.

I think, perhaps with the assistance of the clerk, that information would be useful for us. And then, once we received that, some of us, if we felt that way—and I use the example of Bishop Henry because that's the only motion that's formally before us— could say, Mr. Chairman, I don't consider this to be a technical witness. What's the opinion of the committee? And the chair would then, as I see it, ask the committee, and if the committee said no, that's not a technical witness, to move the motion out of order because it did not meet the criteria of Standing Order 113(5); it's not in the Standing Orders, and it would be out of order at that point and then would not be debatable.

I don't expect an answer on that right now. I recognize that there are several concepts in it and this might not have been ruled on either by you or perhaps even by your able clerk in the past, but I do think this would be something useful for us to know, because at some point I think we'll get into that.

What Mr. Toews has just said is that whether Bishop Henry is a technical witness is in itself debatable. I don't believe that whether something is in or out of order is something that can be debated. If it's not in order under Standing Order 113, we don't get to debate whether it is or isn't; the chair decides if it's in order at that point.

I raise this to the attention of the chair, not expecting an answer right now, but I think at some point it may, shall I say, assist us in accelerating our deliberations.

[*Translation*]

The Chair: Mr. Boudria, let me explain something to you. I think that nature may have called when you left the room a moment ago and we discussed another issue.

If you refer to the blues or the minutes, you will see, that when we talk about bishop Henry, we are talking about a second motion, if you want to call them motions. Indeed, the first motion, to use M. Toews' words, suggested that we remove the Canadian Bar Association from the list and question the presence of the Barreau du Québec on the list.

Earlier, when you were out of the room, I think, I said that I believe that Mr. Toews had the floor to discuss all the changes and improvements that he wants to make to the list of witnesses, which is basically the sub-committee's report which has been submitted before the committee for consideration. Mr. Toews asked me if the new list of witnesses which has been tabled could be dealt with through individual motions. It is possible. We can indeed vote on sections of the list individually or as a whole. Mr. Toews is currently appraising us of his thoughts about potential changes, subtractions, and additions to the list, which constitutes the sub-committee's report.

● (1640)

Hon. Don Boudria: Mr. Chair, I don't know if you can help me to understand. I'm reading Mr. Toews's speech.

[*English*]

Mr. Vic Toews: Mr. Chair, are we still on the same point of order?

The Chair: Mr. Toews, he's just asking me for an explanation.

[*Translation*]

Hon. Don Boudria: To my knowledge, the first time that he used the words "*I move*" is at the following spot:

[*English*]

Therefore, the first time that there's an actual motion is "I move that we also add Bishop Henry". The others are part of a speech, but there are no motions there, unless I've not perceived correctly and perhaps some of—

The Chair: Okay, just give us one second. We were looking at it a little while ago.

[*Translation*]

One of Mr. Toews's comments included the following:

[*English*]

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

[*Translation*]

And further on, Mr. Toews said:

[*English*]

"Further on then, in respect of the Barreau du Québec, I am not aware whether there is a..." and it goes on and on and on and on.

Hon. Don Boudria: Mr. Chairman, what are we debating? Is it the amendment to remove the Canadian Bar Association? This motion doesn't say that.

The Chair: I have to interpret this, Mr. Boudria.

Hon. Don Boudria: The first time I hear the words "I move" is in reference to Bishop Henry. Now he says, "I make that motion", but then he doesn't go on to make it.

The Chair: Yes, with respect to the use of the vocabulary, I have to agree with you. He says, and I quote, "I make that motion", but—

Hon. Don Boudria: Then doesn't.

The Chair: —it stops at that.

I think the intent in all of this, Mr. Boudria...and bear with me, I'm looking at this, and I know some members will say that I am very confident in the good faith of everybody, but I am. My understanding and the way I look at this is that Mr. Toews started on the principle or on the idea of subtracting and/or adding to the list, and this is where we are at this time. I know that he has said, "I make the motion" and "I move this". But I think we all understand that what Mr. Toews is aiming at is to give us, in a way of speaking, the changes that he would like to see to the list.

On this explanation, I would take the opportunity to ask Mr. Toews to come to the point and tell us, in regard to that particular list, which is the report of the subcommittee that the committee is looking at, his actual changes—whether they be a subtraction or whether they be an addition—and that he please advise us of what he sees in the very near future.

Mr. Vic Toews: I'll give some background to this, because it was in fact Mr. Boudria's comments the other day that caused me concern. Mr. Boudria indicated that the amendments weren't being properly made. That was his concern. Now, I disagree with Mr. Boudria; experts disagree with Mr. Boudria in that respect. But what I did, then, in order to address that particular issue, was file the 22 separate motions, which will be heard 48 hours hence.

I wanted to make sure that if my motions were somehow ruled out of order, the committee does in fact have wording that would meet the exacting standards—

● (1645)

The Chair: In essence, what you're doing is wearing suspenders and a belt.

Mr. Vic Toews: That's a very good analogy.

The Chair: Thank you.

Let's assume that your suspenders are holding on. Could we move on and get to your point as rapidly as possible, please, Mr. Toews?

Mr. Vic Toews: As quickly as possible, without doing an injustice to the arguments that I need to make to this committee.

The Chair: I appreciate that.

Mr. Vic Toews: Thank you.

I don't know if one of my colleagues wanted to intervene on that point of order.

Mr. Rob Moore: I did, actually.

On the point of order that Mr. Boudria raised, specific to Bishop Henry, I know that some of the witnesses who were put forward by the parliamentary secretary as possible witnesses included stakeholders who will be impacted by this legislation. I think getting—

The Chair: Excuse me, how does this relate to your point of order, Mr. Moore?

Mr. Rob Moore: It's not my point of order. It's on Mr. Boudria's point of order.

The Chair: Yes, you're on that point of order, but this is not an occasion for a subsidiary debate.

Mr. Rob Moore: He's raised a point of order specifically on Bishop Henry. I would say there's nothing in the Standing Orders that precludes this committee from accepting Bishop Henry as a technical witness on this bill.

The Chair: Mr. Moore, I don't recognize that you are speaking to the point of order, so we will get back to Mr. Toews, please.

Mr. Vic Toews: Thank you, and I appreciate the interventions.

The preamble, then, continues. Again, I'm laying the groundwork for what technical evidence this committee should hear, and then we can look at how these particular witnesses will then provide testimony bearing on that technical discussion.

The next preamble paragraph says:

> WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the Canadian Charter of Rights and Freedoms;

There are a number of assumptions that are being made in this particular paragraph, first of all that "only equal access to marriage for civil purposes would respect the...equality without discrimination".

Now, in that respect it's clear that other countries that have legislated same-sex marriage have also made very clear distinctions. I know we heard witnesses the other day talking about the nature of marriage in those other countries, whether it was Belgium or the Netherlands, the point being—and I was surprised the witness didn't mention it—that there are substantive differences in the legislative frameworks that establish same-sex marriages and in fact opposite-sex marriages. In fact, one of the distinctions I recall is that there are, for example, specific prohibitions on same-sex couples adopting children in one of those legal jurisdictions. Now, that is a significant—-

● (1650)

The Chair: Mr. Toews, may I remind you that you're getting a little bit far away from the list of witnesses here?

Mr. Vic Toews: Yes, I know, but I—

The Chair: You realize I'm going to have to bring you back to the list of witnesses and whether you want to add, subtract, or maintain. You are now commenting on statements made by witnesses. We're trying to establish a list of potential witnesses, so please.

Mr. Vic Toews: To put this into a particular framework, Mr. Chair, the technical witnesses have to comment, then, on whether or not "only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination". That's the technical issue that needs to be dealt with.

We have heard statements. I let those statements by those witnesses go and I didn't question their technical expertise in that area, but they made certain statements about these marriages in other countries. In fact, technically they were not correct. I need to bring forward evidence that addresses that technical issue.

The Chair: Mr. Toews, would you agree with me that the principle of Bill C-38, the intent of Bill C-38, has been accepted? We are not at first reading; therefore, I don't think we have to debate or decide what constitutes a technical expert. I don't think we're here to define what constitutes an acceptable or a not acceptable witness or an acceptable or a not acceptable statement by a witness. We are here to look at whether you want to add, subtract, or maintain witnesses on the list.

Mr. Vic Toews: With due respect, Mr. Chair, what Standing Order 113(5) says is:"Any legislative committee shall be empowered to... send for officials from government departments and agencies and crown corporations and for other persons whom the committee deems to be competent to appear as witnesses on technical matters...". Again, this isn't a matter for the chair to determine or even for me to determine as an individual. The committee has the full power.

As you stated yourself, Mr. Chair, when I stated that the Prime Minister had made certain commitments to the public—I made that statement on the record, that there be a full public hearing—and you indicated, and I agree with you, that the Prime Minister is not a member of this particular committee. He's not a member of this committee.

It is therefore up to this committee to determine who is in fact a technical witness. Given that state of affairs, Mr. Chair, we determine who is the technical witness. You state there are certain principles that have been accepted. By whom, Mr. Chair? And I ask that with due respect. It's by the House, but not by the committee.

So what I'm stating is that we have in principle, using your argument, accepted this intent. Now the question is, how do we determine which witnesses are applicable in order to carry out that intent? My concern here, then, Mr. Chair—

The Chair: Excuse me, but with regard to your question, I would respectfully submit to you that one way for the committee to decide what witnesses will be heard would be to vote on the pertinence and on the acceptability of these witnesses.

Mr. Vic Toews: Absolutely.

The Chair: Therefore, I would ask you to as quickly as possible bring forward—I don't want to call them amendments—your changes, whether they be additions or subtractions, to the list that was submitted, sir.

Mr. Vic Toews: Well, as you note, Mr. Chair, I've been put in a very awkward position. I was proceeding on that basis. Mr. Boudria claimed those amendments were out of order, so I had to file 22 separate motions because of what Mr. Boudria said.

The Chair: Well, you chose to, and it's not Mr. Boudria who has the deciding word on this, may I remind you. But that's okay.

● (1655)

Mr. Vic Toews: That's correct. It's the committee.

The Chair: You chose to add the belt to the suspenders. That's okay, sir.

Mr. Vic Toews: That is the concern I have, Mr. Chair. I think it could have, but for Mr. Boudria's technical observations, perhaps proceeded in a much more expeditious manner; but given the fact that I have to protect the interests of these individuals—who I believe, and perhaps other individuals believe, have something to add—I have to proceed in this way.

In order to convince the committee, sir, that they are in fact technical witnesses who should in fact be heard by this committee, I have to lay the groundwork, and that's exactly what I'm doing at this point.

I was at the paragraph that says:

> WHEREAS only equal access to marriage for civil purposes would respect the rights of couples of the same sex to equality without discrimination..."

If we look at that particular sentence, there are at least two types of experts we need to consider.

First, we need to consider constitutional lawyers; and second, we need to consider the experts from the countries where they have accepted same-sex marriage but have made certain distinctions. We need to find out why they have made those distinctions, and presumably those distinctions have not indicated that this was in any way a violation of the equality rights in that particular jurisdiction. So we have then constitutional lawyers, experts, and others.

In any legislative document there are two things you have to look at. The first thing you have to look at is whether the provision is by itself unconstitutional, not in terms of its effect but standing on its own. The document has to be examined on its own. If it's prima facie unconstitutional. That's one matter.

However, it can also be unconstitutional if you look at the effect of a particular document. The unconstitutional effect is determined in both legal cases and, I would submit, in front of a parliamentary committee by calling people who then can give testimony on this technical application of this act, that is, on its effect in society in general.

That brings us, then, to an example like Bishop Henry. Bishop Henry has made certain statements in that regard, so I'm just outlining that.

Secondly, in that same paragraph it goes on to state that “civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the Canadian Charter of Rights and Freedoms”. Again, there's a problem here. There's an assumption that, in law, a civil union does not offer equal access and that it would violate their human dignity. I want to hear from the experts, the technical experts, that I wish to call in respect of this violation of human dignity, in breach of the Canadian Charter of Rights and Freedoms.

One of the points I made was about looking at a legal document on a prima facie basis and looking at its effect, and how what you do is look at the evidence and hear from technical witnesses. Similarly, this is the case when you look at section 1 of the Charter of Rights and Freedoms.

The Charter of Rights and Freedoms has, in section 1, a limiting clause, not in the sense that it limits rights and freedoms, but in the sense that each right and freedom has to be considered in a particular context.

● (1700)

We don't, for example, have freedom of speech in an absolute vacuum or in a situation where there are no boundaries. We all recognize, for example, that if you're boarding an airplane you can't make jokes about bombs or firearms or that kind of thing. It's an appropriate thing that the state can legislate or draw a circumference around that kind of statement in order to restrict that kind of statement.

Similarly, we've all heard the example of someone yelling “Fire!” in a crowded theatre. That simply is not an exercise of free speech. It is a crime and should not be done. Yet it is speech that is restricted. But section 1 of the Charter of Rights and Freedoms would say that nevertheless, even though it appears to be a prima facie breach of paragraph (b) of section 2's freedom of expression under the Charter of Rights and Freedoms, section 1 says this is a reasonable limit on that kind of freedom of expression.

The next paragraph states:

> WHEREAS the Supreme Court of Canada has determined that the Parliament of Canada has legislative jurisdiction over marriage but does not have the jurisdiction to establish an institution other than marriage for couples of the same sex;

Whether that's an accurate summation of the Supreme Court decision remains to be seen. This committee has not heard any evidence in that respect, certainly no evidence that I am swayed by at this point. Admittedly we've only heard two individuals.

The next paragraph again I don't think needs much more explanation, other than what we have already said:

> WHEREAS everyone has the freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms...

I dealt with section 2's paragraph (b), which deals with expression. This deals with...I think paragraph (b) of section 2 is freedom of expression; I could be wrong, but it's one of these paragraphs. Freedom of religion and conscience also fall within a paragraph of section 2.

This is, then, the nub of the problem that I see: that whereas the charter itself indicates that there is freedom of conscience and religion under section 2, it's often very difficult to determine exactly how it can be applied in any particular situation. That's why some of the technical witnesses who have been excluded from this list need to be placed back on that list.

I'm thinking particularly of the marriage commissioners. The marriage commissioners deal with solemnization of marriage in the provinces. These individuals, carrying out certain statutory obligations, have been ordered in a number of jurisdictions to hand in their commissions or resign their commissions; in effect, they're being fired. The exact direction to these individuals has been, if you refuse —

Ms. Anita Neville: Point of order.

The Chair: Excuse me. On a point of order, Ms. Neville?

Ms. Anita Neville: Were we not speaking about Bishop Henry at this point?

The Chair: Among other subjects, yes, among other subjects.

Ms. Anita Neville: My understanding is that the motion was related to Bishop Henry.

The Chair: Among other subjects. This is what I explained a little while ago: that it's not exactly clear from the vocabulary that has been used by Mr. Toews what his intentions were.

● (1705)

Ms. Anita Neville: Could we not speak to the motions that are presented?

The Chair: What we are looking at is his intention with regard to adding, subtracting, or maintaining witnesses, so....

Ms. Anita Neville: Does that mean when that time comes the point will already be made?

The Chair: The problem with that is, as you say, when the time will come, Mr. Toews is allowed to speak on this—

Ms. Anita Neville: I just want it to be relevant to the motion before us.

The Chair: Yes, and the time will come when Mr. Toews is comfortable that he has told us what he wants to tell us.

[*Translation*]

Mr. Réal Ménard: I'd like to raise a point of order, Mr. Chair.

The Chair: Yes, Mr. Ménard.

Mr. Réal Ménard: Perhaps I'm mistaken, but I get the impression that you'd get this committee's consent to move to the vote on the subcommittee's report. I think that we are ready now. We have enough information.

The Chair: Mr. Ménard, coming back to the decision that I communicated earlier, I should point out to you that what you are suggesting is tantamount to a previous question. However, the standing orders give us a very clear explanation on this subject: "the previous question cannot be moved in the committee of the whole nor in any other committee ." Those aren't my words but Marleau-Montpetit's.

Mr. Réal Ménard: I'm a kind-hearted person, but I don't share your subtlety when it comes to matters of procedure. Perhaps I will in a few years' time.

The Chair: Mr. Ménard...

Mr. Réal Ménard: We are deeply compassionate people, sir.

The Chair: You're a man of remarkable intelligence.

Mr. Réal Ménard: Indeed, I think that we would have consent on the matter.

The Chair: And such tact...

Mr. Réal Ménard: I don't claim any merit, Mr. Chair.

The Chair: Thank you, Mr. Ménard.

[*English*]

Mr. Toews.

Mr. Vic Toews: Thank you.

The Chair: Were you done, sir?

Mr. Vic Toews: No, I wasn't.

The Chair: Go ahead then, Mr. Toews.

Mr. Vic Toews: The chair has recognized me now, and I'm responding to the chair's recognition. I think I'll be fine for the next half hour. I think I have enough material. I'll try to squeeze it into those 24 minutes.

On where I am leading—and I think this is getting to the nub of the problem, and certainly follows very closely your direction, Mr. Chair—let's talk about these witnesses. What kind of technical witnesses would they be? We have the situation where these individuals, who are provincially authorized marriage commissioners, have been ordered by a province to resign their commissions if they refuse to perform same-sex marriages. That has occurred in a number of provinces, including the British Columbia jurisdiction, the Saskatchewan jurisdiction, Manitoba's jurisdiction, Ontario's jurisdiction, and Newfoundland and Labrador's jurisdiction.

In each one of those five provinces, those marriage commissioners operate under different laws that are, however, all affected by a change in the definition of marriage federally. The definition of marriage itself, of course, has been assigned to the federal Parliament under section 91 of the Constitution Act of 1867, formerly known as the British North America Act of 1867, but amended to be the Constitution Act of 1867 by virtue of the amendments to our Constitution in 1982.

So we have these five jurisdictions sending out letters from either their attorneys general, their directors of vital statistics, or equivalent administrative agencies, telling these individuals that unless they indicate that they are prepared to marry same-sex couples, they have to resign their commissions. In reviewing those directives to these commissioners, I've noted that there was no indication to these individuals that if they had religious objections or objections of conscience, they could nevertheless continue to do what they were doing, without performing same-sex marriages. There was no such direction contained or advice given to those commissioners in that particular letter.

What then do we do? Does the word of the Attorney General essentially firing these individuals in these various jurisdictions, or the director of vital statistics firing these individuals, end the case? Absolutely not. In each jurisdiction there is a human rights code, act, or a similarly named act that says that these individuals have the right to their freedom of religion, and any employer, including a public sector employer like the government, must reasonably accommodate these individuals.

The question then becomes, for the purposes of this motion, how do we determine what these five jurisdictions are doing, when we refuse to hear information from these five separate jurisdictions that have different legislative schemes—similar, I would assume, but different—different human rights codes, and different marriage acts that deal with the solemnization of marriage?

● (1710)

In its preamble, this act then says:

> WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their own religious beliefs;

What this act fails to recognize is that there are public officials who, in fact, have rights that deal with freedom of conscience and freedom of religion. So it's not simply the freedom of members of religious groups to hold and declare their religious beliefs.

And notice how this legislation is attempting to create a religious ghetto. It's much like the comments of the Minister of Foreign Affair, who said that the Roman Catholic Church had no business talking about this particular issue in public. It seemed that the Roman Catholic Church was entitled to make statements, but in the four corners of the Church. The Roman Catholic Church should not have the right to express its opinion on what it considers a fundamental matter of policy that affects this society.

So what the act says is that these members of religious groups have the right to hold and declare, but not to practise, their religious beliefs. That's what concerns me about this legislation.

We need technical evidence that demonstrates the shortcoming of this kind of preamble that the right to practise one's religion is also protected by the Constitution, not simply the right to state, “Well, I'm a Protestant, or I'm a Catholic, or I'm a Jew, or I'm a Moslem, or a Hindu”. It's much deeper than that, and quite frankly, this is a shallow expression of that religious freedom.

I want to note the second part of this preamble and then contrast it to clause 3 of the bill.

What we know is that any preamble is simply declaratory. I understand that, but what it says here—and I'm eliminating part of the paragraph—is:

> WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and...the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;Essentially that is a declaratory statement.

What did the Supreme Court of Canada say about the solemnization of marriages and any kind of legislative expression by the Parliament of Canada in the reference case? The Supreme Court of Canada clearly said that it was unconstitutional, whether it was substantive or declaratory, and yet we have in this preamble this declaratory statement. Now contrast that—in fact there's not much of a contrast—to what it says in clause 3: “It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.”

So we have exactly the same statement, the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs. We have it in the preamble, and we have it in clause 3.

Now, one could justify having this in the preamble. The question is, why do we attempt to put into the substantive portion of the act what it says at clause 3, namely, “It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs”? How can that be, given that the Supreme Court of Canada has said this clause is unconstitutional both in its declaratory form and in any substantive form?

● (1715)

As I stated earlier, in the last day's comments when the minister was here, Mr. Boudria asked the minister if he was telling us that clause 3 strengthens religious freedom in this country. The minister said yes.

The minister was absolutely wrong. Whether it's a declaratory statement or whether it's substantive, the minister knows that it is unconstitutional. I find it astounding that we have the chief law officer of Canada coming to this committee and telling this committee something that the Supreme Court of Canada has clearly contradicted.

I understand that the Minister of Justice, the Attorney General, is a very busy man. He can't read every decision and he can't formulate all these opinions by himself. I understand, Mr. Chair, that the Minister of Justice actually has thousands of lawyers working under him to provide him with legal advice.

Quite frankly, I can't see anyone who has actually read the Supreme Court of Canada decision trying to justify this particular provision. This obviously needs technical evidence in addition to the technical evidence that has not been brought here before.

The Attorney General is a man who is learned in the law. In most circumstances, had he come here to tell us that this provision does this or does that, in most cases, we would simply accept that pronouncement of law, given the fact that he has thousands of lawyers working under him. However, in this particular case, notwithstanding that he has thousands of lawyers working under him, he has come and told us that the provision that the Supreme Court of Canada specifically found unconstitutional in the reference case, whether it's declaratory or substantive, is fine and in fact strengthens religious freedom in this country, in a direct answer to Mr. Boudria's question.

I'm going to assume that everyone here has read the Supreme Court of Canada decision. I'm not going to go through the Supreme Court of Canada decision, in view of your comments, Mr. Chair, that I stick to addressing technical issues as opposed to substantive ones.

Everyone can read the decision itself. It's a well-written decision. I don't necessarily agree with the outcome in some respects; however, I agree with its very clear finding that this particular provision, whether it's declaratory or substantive, is unconstitutional.

We have the Attorney General of Canada coming here and telling us that an unconstitutional provision strengthens religious freedom in this country. I find that astounding. We need technical evidence beyond the technical evidence that the Minister of Justice apparently received.

Going back to the first part of the paragraph on “the freedom of members of religious groups to hold and declare their religious beliefs”, how does this square with the comment that this protects religious freedom, when all we are doing is protecting the simple expression of religion, but we are not actually protecting the practice of religion? In fact, in provinces in this country, we are requiring marriage commissioners to commit acts that violate their freedom of conscience.

I listened to the two witnesses from Egale and Canadians for Equal Marriage, which I think was the other group. They gave some helpful comments in that respect—not conclusive, but helpful. Basically, I understood from their testimony that reasonable accommodation is something that we all assume. They said this is a matter for the provincial jurisdictions to deal with. Quite frankly, the provincial jurisdictions have not dealt very well with that. The federal government is simply trying to pass legislation that substantively changes the definition of marriage and then foisting the problem on to the provincial jurisdictions. That's not an appropriate way for partners in the Confederation to work.

● (1720)

That then deals with the issue of provincial officials working under provincial legislation. What about federal officials? For example, I don't know, how are marriages conducted in the Northwest Territories or the Yukon? We don't have a province there, we don't have solemnization of marriages through provincial legislation. Ostensibly we have marriages conducted under some kind of a federal regulation if marriages are conducted in the Northwest Territories, Nunavut, and the Yukon.

So I'm assuming that the issue is not simply one of the provinces, as was suggested by the representatives from Egale and the representative from Canadians for Equal Marriage, but in fact this falls directly under federal jurisdiction. Where are the technical witnesses who deal with federal jurisdiction and the solemnization of marriages in the territories that doesn't deal with provincial legislation? Are we to say, let the provinces deal with the problem, but the federal Parliament refuses to deal with the problem in its own legislative and jurisdictional backyard? Quite frankly, that's not a responsible position for anyone to take in respect to this particular issue.

It's taking me a little longer than I would have expected, but I am moving quite along. As you can see, I have three more preambles to do plus a substantive, but I'm hoping I can squeeze it in during the next six minutes here.

The next paragraph states:

> WHEREAS, in light of those considerations

—that is, the considerations about which I have already stated I'm not going to go into again—

> the Parliament of Canada's commitment to uphold the right to equality without discrimination precludes the use of section 33 of the Canadian Charter of Rights and Freedoms to deny the right of couples of the same sex to equal access to marriage for civil purposes;

Section 33, as I understand it, is the so-called notwithstanding clause. What the government is saying is that Parliament is precluded from using section 33 in this context. If what the Government of Canada is saying is that this is precluded because of policy reasons that it will not do that, I accept that. Is it precluded from a constitutional point of view? I don't think so. I know that the leader of my party has indicated that it's not necessary to use the notwithstanding clause because the Supreme Court of Canada has said, in this particular situation, that the marriage definition is an issue that Parliament must determine. So when the definition squarely falls within the jurisdiction of Parliament, then there is no need to rely on section 33. This is a matter that falls squarely within the social policy jurisdiction of Parliament to determine—the definition of marriage.

It seems to me that there is a fundamental legal error, and a fundamental constitutional error, in this preamble in suggesting that there is somehow a preclusion of the use of section 33. From a policy point of view, I can understand that. From my own party's point of view that it's not necessary to rely on the notwithstanding clause, I think it's not necessary either. In that context, the Prime Minister stated that he would use the notwithstanding clause if provincial officials were required to solemnize marriages that offended their religious beliefs.

● (1725)

This is one of the grossest misstatements of the law that I have ever heard anyone state. The Prime Minister himself must realize that the Parliament of Canada cannot use the notwithstanding clause in respect of something that falls within provincial jurisdiction. Yet we have the Prime Minister of Canada stating that he would use the notwithstanding clause to ensure that provincial officials were not forced to solemnize certain types of marriages. Again, this is a commitment that the Prime Minister is constitutionally barred from making. This is an issue we need to examine closely. We wonder why the Prime Minister would have made such a statement when he knows the federal Parliament has no jurisdiction.

My own point of view on this—and I know it is not strictly relevant at this time—is that he was attempting to assure religious communities that he would do everything he could to ensure that their right to practise their religion was not interfered with. That kind of assurance, where it is based on a faulty constitutional premise, is worth absolutely nothing.

Equally without value is the premise that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs. This Parliament has absolutely no jurisdiction to make this statement. As the Supreme Court of Canada has stated, this matter falls squarely within the jurisdiction of the provinces.

We will have to deal with motions on this matter later, because marriage commissioners operate under provincial jurisdictions, yet they are being fired because of changes in federal law that the courts have ordered and that the Parliament of Canada will now confirm.

[*Translation*]

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

Mr. Réal Ménard: With all due respect to Mr. Toews, could you tell us if we are up to the second part of our business?

The Chair: Our proceedings will end at 5:30 p.m., in other words, in one or two minutes, depending on where you are seated, whether it be in front of or diagonal to the clock.

Mr. Réal Ménard: I thought that it was 5:30 p.m.

The Chair: It's not quite 5:30 p.m. I understand that you can't wait to go and vote.

Mr. Réal Ménard: I promise to listen to the repeat of Mr. Toews's speech tonight on CPAC, anyway.

The Chair: You'll be able to read it in the minutes.

Mr. Réal Ménard: That's true.

The Chair: We have about a minute left and then, we will discuss the second part of our business. Do we have your consent, Mr. Ménard?

● (1730)

Mr. Réal Ménard: Yes, thank you very much, Mr. Chair.

[*English*]

Mr. Vic Toews: Thank you.

We have what I consider to be glaring constitutional problems with this bill—first, in the paragraph that commences with, "WHEREAS nothing in this act affects the guarantee of freedom of conscience and religion...", and then in clause 3, which essentially reiterates that kind of protection. This presents a substantial constitutional problem, both in respect of the practice of religion and in the statement by Parliament that somehow we can intervene in a matter that falls purely within provincial jurisdiction.

At the same time, what we have seen here is the government's refusal to—

The Chair: Excuse me, I have bad news for you. We are running out of time for this meeting.

We will adjourn. We have the agreement of all parties that at 6 o'clock, or as soon as possible after the vote, we will come back and hear some witnesses.

I hope you can hold your thoughts. I think you can probably mark where you were at in your presentation, so that you don't get lost. When we come back, not tonight but at the next meeting, we can go at it.

We will suspend the committee.

I want to make sure that members and staff understand there will be dinner for them on the other side when we come back from the vote.

Merci.

● (1732)

(Pause)

● (1825)

[*Translation*]

The Chair: Good evening. I'd like to welcome you to this sitting of the Legislative Committee on Bill C-38. We have four groups of witnesses before us tonight.

[*English*]

Each group is allowed up to 10 minutes as an opening statement, and then we have rounds of questions from members of the committee.

The intention is to hear all of your presentations—up to 10 minutes—one after the other, and then we will proceed with questions. So members asking questions will please advise us as to which of the groups their questions or interventions are directed to.

Everybody is very happy to see you appearing as witnesses here tonight.

The order that I have—random order, I suppose—is the Christian Legal Fellowship, the Jubilee Centre for Christian Social Action, the Evangelical Fellowship of Canada, and the Canadian Conference of Catholic Bishops.

Let's get started with the Christian Legal Fellowship.

Mrs. Ross or Mrs. Parker, the floor is yours.

Ms. Ruth Ross (Executive Director, Christian Legal Fellowship): Honourable members, my name is Ruth Ross. I appear with Valerie Hazlett Parker, and while I will make the oral submissions, we are both available for questions.

Please note that the Christian Legal Fellowship was only contacted by the committee on Friday and has since submitted a written 15-page brief, which is not yet translated, but which will elaborate on our submissions and raise additional issues.

In the seminal case of Big M Drug Mart, the essence of the concept of freedom of religion was said to be the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and to right to manifest belief by worship and practise, or by teaching and dissemination.

This broad and liberal interpretation of religious freedom was restated in the recent 2004 decision of Amselem out of Quebec and in the same-sex marriage reference. However, given the developing case law, there is little doubt that, if passed, Bill C-38 will be used by provincial governments and others to override the rights of conscience and religion of ordinary Canadians.

Bill C-38 speaks of religious freedom in the preamble, but this is not legally binding. The wording of clause 3 of religious freedom is found wanting. Because the solemnization of marriage falls within the scope of provincial powers, the federal government cannot by itself create a legislative protection for religious officials who oppose same-sex marriage. Given the diversity of the provinces and the fact that each province is responsible for enacting its own legislation concerning solemnization, one only has to consider the current confusing state of affairs.

The fact that there is discrepancy in the treatment of marriage commissioners across Canada is an example of this. This is fully dealt with in our written submissions, and I am prepared to answer questions on this topic.

Protection for religious individuals and groups is eroded when there is a collision of rights and a collision of dignities with the rights of homosexuals. The marriage reference said this collision would have to be decided on a case-by-case basis. This will result in a real threat to religious freedom if the case law to date is any indication.

Consider the following cases. In Trinity Western University, the Supreme Court stated that one is entitled to hold religious beliefs, but that the freedom to hold beliefs is broader than the freedom to act on them. Trinity reinforces the notion that religious belief is a private matter only permitted within a church or the home, but not in one's public actions or expressions.

The difficulty with this view is that it imposes a form of sexual relativism as the official public morality for Canadian society. In this view, all sexual lifestyles must be publicly affirmed as equal, even if the imposition of this ideology violates the intellectual, moral, or religious convictions of others. According to this point of view, people who do not conform to this sexual relativism must now go into the closet, while those favouring this ideology should receive the support of the courts and society as a whole.

Mr. Justice Gonthier stated in Chamberlain v. Surrey School District that there is no Canadian law or constitutional provision that "speaks to a constitutionally enforced inability of Canadian citizens to morally disapprove of homosexual behaviour or relationships". He stated, "it is a feeble notion of pluralism that transforms 'tolerance' into 'mandated approval or acceptance'".

The great risk is that the emphasis on tolerance will be used as a mask for obliterating dissent on controversial questions such as the morality of certain sexual activity.

I now refer you to comments in my written brief on the Brockie case in Ontario—the Christian printer who refused to perform printing services for the gay and lesbian archives on the basis of his Christian beliefs. In essence, the court suggested a requirement that matters may be objected to "if adequately core" to a religious conviction, which supposedly can be determined objectively. However, the unacceptable implication is that the court should be the final arbiter of what is a reasonable religious belief.

Chris Kempling, a 13-year teacher and counsellor in the public school system in British Columbia, was declared guilty of conduct unbecoming a member by the British Columbia College of Teachers. The college declared that everything Kempling wrote was discriminatory, even though some information was merely quoting previously published research data. There was neither evidence of harm nor any complaint by a teacher or student. The decision of the college was upheld by the Supreme Court of British Columbia and recently appealed to the Court of Appeal. By characterizing Mr. Kempling's statements as discriminatory, the court permitted a government agency to censor his speech and effectively end his participation in public debate on a matter of deep concern and public interest.

Bishop Henry of Calgary has faced at least two official complaints to the Human Rights Commission for his public statements on the subject of same-sex marriage and the morality of homosexual behaviour. He also received a threat from the Canada Revenue Agency, suggesting that the charitable status of the Roman Catholic Church would be at risk if he continued to speak out on the matter.

In education, religious schools have been forced to accept same-sex couples. I refer you to the Ontario gay prom case in our materials.

● (1830)

There are, at the moment, human rights complaints against Christian groups for use of facilities in Manitoba and B.C., and I refer you to the cases discussed in our written submissions: Camp Arnes and the Rainbow Harmony Project; and also the B.C. lesbians who have taken the Knights of Columbus to the B.C. Human Rights Tribunal over hall rental.

In the matter of loss of charitable status and loss of property tax-exempt status, there is real concern that same-sex marriage activists are arguing that religious organizations that refuse to perform same-sex marriage ceremonies should lose their charitable status under the Income Tax Act.

There is also reason to believe that municipal governments in Canada will be pushed to follow the lead of cities like San Francisco in establishing rules that deny municipal property tax exemption to religious organizations that do not perform same-sex marriages.

There is also a concern that Canadian prosecutors may take the lead of the Government of Sweden and prosecute religious leaders who speak against same-sex marriage. I refer you to the Reverend Ake Green, in our full submission.

If, as a so-called act of inclusion, same-sex marriage is established as a norm, the vast majority of cultures and religions in this country will find themselves excluded from the social mainstream. This marginalization will be felt in social, political, educational, and legal terms. Evangelical Christians feel subject to societal marginalization, and they perceive that their religious beliefs have come under attack in recent years. There is societal indifference to their religious beliefs and increasing intolerance. The courts, through judicial activism, are attempting to force Christians to accept same-sex marriage and other controversial social concepts that we believe contravene our fundamental religious teachings.

It must be noted that the answers provided in the marriage reference were an advisory opinion only. In addition, the Supreme Court did not address the question of whether an opposite-sex definition of marriage would fail to meet charter requirements. Therefore, it is not mandatory that Parliament redefine marriage. In fact, Parliament would be entirely consistent with the reference opinion if it were to enact a statutory definition of marriage as the union of one man and one woman for life, to the exclusion of all others.

Parliament, in restricting the statutory definition, could adopt as its test, pursuant to section 1 of the charter, the foundational principle that marriage is used exclusively to serve the best interests of children and to create a public institution that makes it more likely that a child will be raised by the child's own mother and father.

The Supreme Court has previously recognized the importance of protecting the best interests of children in a variety of contexts. This opinion has been stated and submitted to all MPs by 30 constitutional lawyers on April 29. I bring that to the attention of this committee, and I also have signed copies of that submission.

Ms. Hazlett Parker and I were both signatories to that submission, and I would like to provide these to the committee tonight so that they can be handed out to committee members.

In Young v. Young, the Supreme Court stated clearly at page 64 that:

> The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being.

The court reminded us—

● (1835)

The Chair: Excuse me, you have two minutes.

Ms. Ruth Ross: The court reminded us that "courts must be directed to create or support the conditions which are most conducive to the flourishing of the child". That was stated at page 65. There is no fact better established in the literature than that, all variables considered, children are better served who are reared in a home with a married mother and father where their gender complementarity exists.

The current availability of reproductive technologies will also have disastrous effects on the family as our basic societal unit. If Parliament redefines marriage, many children will be born into homosexual families and thus be denied the basic right to know who their biological parents are. This could result in serious issues surrounding self-identity for generations to follow.

These changes to marriage pose real concern for our future. For example, a lesbian couple from London, Ontario, my hometown, has recently appealed a 2003 decision by the family court denying parentage simultaneously to the two of them—the biological mother and her partner—as well as the biological father of a young boy. Rather than turn to an anonymous sperm donor, the women in question asked a friend to father their child. The judge was quoted as saying, “I can't imagine a stronger case for seeking the order you are seeking”.

Same-sex marriage will lead to group marriage and possibly to the end of marriage as we know it. This cannot be in the best interests of our children and our country.

In conclusion, the Christian Legal Fellowship respectfully requests that this committee recommend that Bill C-38 not be passed. We strongly object to it and find it is technically flawed. Should you proceed, as a minimum, you will see our recommendations, which are in front of you in our written submissions—and I understand you have a copy of those.

The first is that a section be added under the consequential amendments to read that “officials of religious groups and marriage commissioners shall have the right to refuse to perform marriages that are not in accordance with their religious beliefs”.

Secondly—

The Chair: Thank you.

We will now proceed with Mr. Tse from the Jubilee Centre for Christian Social Action.

The Reverend Dominic Tse (President, Jubilee Centre for Christian Social Action): Mr. Chairman and honourable members of the committee, I'm appearing on behalf of the Jubilee Centre for Christian Social Action, a non-profit organization serving the Chinese community in the Greater Toronto Area. I'm honoured to be given this opportunity to present our understanding of the Chinese community's responses to Bill C-38 and make a few suggestions to the committee concerning the bill.

Since 2003, when an Ontario judge declared the current definition of marriage to be unconstitutional, the Chinese community, which includes the churches and other non-religious community groups, has been very concerned and has reacted very strongly against the redefinition of marriage.

In July 2003 some 7,000 Asian Canadians, the majority of them being Chinese, came out to a rally in Vancouver to oppose redefining marriage. In August 2003 over 3,000 Chinese Canadians participated in an Ottawa marriage rally wearing red T-shirts with the slogan “Marriage = One Man + One Woman”—this is exactly the one that we wore in 2003—and in September 2003 over 10,000 Chinese Canadians again marched in Toronto, wearing the same T-shirt and voicing their concerns over the redefinition of marriage.

In February 2004 the Chinese community printed hundreds of thousands of postcards addressed to the Prime Minister urging him not to redefine marriage. On April 9, in the March for Marriage rally in Ottawa, about 2,000 Chinese Canadians from Toronto, Montreal, and Ottawa participated. Two of our representatives spoke in the rally: Father Peter Chin and me. On the Mother's Day weekend, over 200 Chinese churches took out half-page ads in all three Chinese dailies throughout the country in support of traditional marriage.

Since the introduction of the bill, many Chinese Canadians have sent in tens of thousands of letters, e-mails, and faxes to various members of Parliament urging them to preserve the traditional definition of marriage. Now, all of these actions are highly unusual for the normally conservative Chinese community regarding issues in the Canadian society at large.

I have been in Canada for 25 years; I've never done these things before, and the same can be said for many members of our community. The only possible explanation is that Chinese Canadians regard the marriage issue as their own.

Marriage, throughout its long history in China, has always been a heterosexual institution. Marriage as the union of male and female runs so deep in the Chinese collective psyche that it is the foundation of culture and civilization. The *Tao Te Ching*, one of the most ancient Taoist texts in China, holds that it is the interaction of yin and yang, male and female, that gives rise to all things in the world. The philosophy of yin and yang lies at the very roots of Chinese medicine, natural philosophy, and social and political institutions.

While there may have been many other forms of sexual practice throughout the history of China, the Chinese culture has always maintained marriage as a heterosexual institution for the simple reason that it is through male and female relationships sanctified in marriage that children can be brought into the world and become productive members of society. This has been a key factor for survival, for the family, the clan, the country, and for the civilization.

There is little wonder that China, and India as well—two of the remaining, longest-surviving ancient civilizations of the world—both held heterosexual marriage as the norm for society. They are getting quite ready to become giants in the 21st century thanks to the sheer size of their populations.

Other oriental cultures share the same convictions on heterosexual marriage as the Chinese do. For them, marriage is not a social construct that can be deconstructed at will but something sacred and timeless.

When the government did not appeal the Ontario Superior Court decision in June 2003 and opted instead to start the process of legislating same-sex marriage, the Chinese community was very upset. For us the redefinition of marriage amounts to taking away from us a part of our being, a part of our culture.

For the majority of Chinese Canadians, Bill C-38 is not about extending marriage to include same-sex couples but about changing a fundamental institution into something else. Many feel betrayed that this significant aspect of Chinese culture is not being respected, even in a country that continues to preach multiculturalism and pluralism. Many are very frustrated because of the intergenerational conflicts precipitated as a result of discrepancies between values taught in homes and values, or non-values, taught in schools, particularly with reference to marriage. They want to stop what they perceive to be a forced colonization of their cultural life world.

● (1840)

Recently I met a friend who expressed to me his frustrations over Bill C-38. He got very serious when he said he would encourage his sons and daughters to go back to the Far East once they had graduated from university. He remarked that many of his friends were seriously considering this path as well. He's about 50 years old. “I will stay for the health care and benefits”, he said. But he forgot to mention that when most of his kids are gone there won't be anybody to pay his benefits.

The Supreme Court gave their reply to the referenced questions last December, refusing to answer the question of whether the traditional definition of marriage was constitutional or not. They clearly indicated it was within the government's mandate to redefine marriage. In other words, same-sex marriage is a political issue, not a fundamental rights issue. In fact, the two other countries that have legalized same-sex marriage did so as a political decision, not because of human rights considerations.

As a result of same-sex marriage, Canada is divided. There are many people who support it, while many are strongly against it. As to which side has the upper hand, it depends really on which poll is used. However, I want to mention the fact that most members of the ethnic communities are not reflected in most polls, simply due to language and cultural reasons. Many Chinese people just don't want to be interrupted when they're watching favourite TV shows from Asia from 7 p.m. to 10 p.m., to respond to questions they can't quite comprehend.

If the issue is a political one, it pertains to good government based on smart social policy. Being a pastor for many years in Chinese churches, I would like to offer my two cents worth of suggestions in the form of a story.

A young pastor was called to lead a traditional church with a small minority of young people. He found the church too traditional and too backward-looking. The worship was boring, outdated, and used pipe organs. Many of these young people were complaining that it was not fair to be forced to sit through boring worship for an hour and a half that belonged to a bygone age. They wanted to be included and respected, with a contemporary style of worship.

The young pastor was very tempted to bring in the drums, guitars, and a band. Overnight, he thought, he would be able to transform a backward church into a forward-looking church with life and energy. However, being fresh out of theological school he felt a need to consult a more experienced pastor for advice.

● (1845)

The Chair: Excuse me—two minutes.

Rev. Dominic Tse: The older and wiser pastor said that it would be a disaster for him to change the traditional worship, because the older folks were loyal members of his church. He would split the church, so he should go for a balancing act. It would be much more advisable for him to start a new worship with drums and bands so he could make everybody happy. The young pastor did just that and the church grew. The older folks were very happy and gave him a good pay raise.

I believe that Canada is in a very similar situation. The issue is not about human rights; it's not an either/or dilemma. It's about smart governing and good social policy. Canada needs all its citizens. We all know that Canada does not need more divisions or tensions among its various communities at this critical time, especially the ethnic communities.

Maybe the committee should consider a course of action along this line. It's smart social policy, in the eyes of most ethnic communities, to leave marriage as is and develop a comparable institution for same-sex couples. We desire true pluralism to be practised as preached in Canada—that is, have different communities holding up different sets of values in a common social space, not colonization of one by another.

Thank you very much.

The Chair: Thank you.

We will now move on to the Evangelical Fellowship of Canada, Mr. Clemenger, or Mrs. Epp Buckingham.

Mr. Bruce Clemenger (President, Evangelical Fellowship of Canada): Thank you, Mr. Chair.

Honourable members, my name is Bruce Clemenger. With me is Dr. Janet Epp Buckingham. We represent a national association of evangelical Protestant denominations, organizations, educational institutions, and individual churches.

I will begin with some general comments, and then Dr. Buckingham will address more specific concerns with the legislation.

We believe that at its core, this debate is about the nature and structure of marriage. Among Canadians of goodwill, there is deep disagreement about the meaning of marriage. We deplore the name calling and the rhetoric that have been used in this debate.

As an association, we believe that every person is made in the image of God and should be treated with dignity and respect. We also believe that marriage is a social, cultural, religious context for the conjugal relationship, which is exclusive to male and female. The structure and nature of marriage provide a stable and caring environment for the expression of the physical and psychological bond of male and female and the raising of children by a parent of each sex in a committed relationship.

The social consequences of refashioning marriage, we believe, have not been fully examined. For example, what is the natural limit of marriage? This committee would need to grapple with that.

A key element in this debate is whether Canada is indeed a religious and cultural mosaic, or a melting pot. In a plural society with different views of human relationships, we require a language to express differences, and the public space to promote and foster ways of living that different groups in Canadian society find valuable. Equality need not require uniformity; it cannot, if we are to remain a plural society.

This bill will change the public meaning of marriage. If marriage is redefined, will we as faith communities, as persons, and as citizens be able to secure a language to identify that distinctive union of husband and wife, that complex relationship replete with its symbols, rituals, and distinctive language? Will we be afforded the public space necessary to encourage and promote the enduring and exclusive union of one man and one woman? Will we be free to be faithful to our religious beliefs and practices in our professional lives, in our communities, in our institutions, and in public discourse, without being told we are intolerant or bigoted or un-Canadian?

Ms. Janet Epp Buckingham (Director, Law and Public Policy, Evangelical Fellowship of Canada): Mr. Chair, honourable members, I am going to agree with the witnesses opposed to the bill who have spoken thus far and then move on and say, in the alternative, should you recommend that this bill be passed, we have recommendations for certain amendments. I believe you have copies of our brief already, and the recommendations are at the end. I'm going to expand a little bit on them.

First, dealing with clause 3 of the bill, it indicates that clergy cannot be required to solemnize same-sex weddings. I would just remind you that in their opinion in the marriage reference, the Supreme Court affirmed religious freedom for clergy but made it quite clear that this is a matter of provincial responsibility and that any protection of religious freedom in this legislation will be struck down by the courts as ultra vires. That's at paragraph 37 of the marriage reference. It's therefore disingenuous for the federal government to assure Canadians that Bill C-38 can and will protect religious freedom, and we therefore recommend that clause 3 of this bill be removed, as the federal government does not have jurisdiction in this area.

The court also said that where there is a clash of rights, religious freedom may be limited. There are many religious freedom issues that the court's opinion does not address, including protection for civil officials and protection against discrimination for religious institutions that do not recognize same-sex marriage. Until there is legislative protection, people of faith will not be protected, and you have heard about some of those issues already this evening.

With more than 75% of marriages in Canada solemnized by clergy, it is clearly a deeply religious institution. It is naive to suggest that civil marriage can be fundamentally redefined without having an impact on religious marriage and religious institutions. Parliament has an obligation to ensure that the fundamental freedoms of conscience and religion are adequately protected before proceeding with legislating the redefinition of marriage.

We make the following specific recommendations in this regard. We recommend that a new preambular clause be added to the bill to state that it is not contrary to the public interest to hold and express diverse public views on marriage. Second, we recommend that a clause be added under the consequential amendments—that would be a proposed section added to the Income Tax Act—to make it clear that charities will not face discrimination for maintaining religious practices regarding marriage. That's clearly within federal jurisdiction.

We further recommend that a section be added under the consequential amendments to make it clear in the Canadian Human Rights Act that expressing religious and conscientiously held views on marriage will not be considered to be discriminatory speech.

We further recommend that a section be added to the Canadian Human Rights Act that protects all employees of the Canadian government from discrimination on the basis of their beliefs about marriage.

We also would recommend that this legislation not receive royal assent until provincial governments have passed legislation to protect religious freedom in relation to the solemnization of marriage, and that would include not only clergy but also civil marriage officials.

I would like to also bring to the attention of this committee the potential conflicts that could happen in law with respect to countries that do not recognize same-sex marriage. In countries such as the Netherlands and Belgium, for example, marriages between same-sex couples are only available to residents and citizens of those countries. Couples from across the U.S., Australia, Europe, and Israel have come to Canada to marry, knowing that their marriages will not be recognized in their home countries. This creates a variety of legal problems that have been brought to my attention by my international colleagues.

First, will Canadian marriages continue to be recognized globally if our definition of marriage is different from that of other countries?

Second, if couples marry here but live in countries where their marriages are not recognized, what will happen if their relationships break down? To obtain a divorce in Canada, they must domicile in Canada for a period of one year. This is not realistic for most couples. But as their marriages are not recognized in their home countries, they cannot obtain divorces there.

● (1850)

What if one partner then remarries in a valid heterosexual marriage recognized in the home country and in Canada? Will that person be a polygamist subject to criminal sanction if he or she relocates to Canada with a newly married spouse?

We therefore recommend that a clause be added to the bill to require that if the persons are not resident in Canada they be able to prove that their marriage will be recognized in their country of residence.

If marriage is to be redefined by passing Bill C-38, it is incumbent on Parliament to protect religious freedom and freedom of conscience within its jurisdiction. Clearly the federal government cannot protect religious freedom for clergy, but there are areas of federal jurisdiction where religious freedom is an issue and can be protected.

In addition, there are mechanisms whereby the federal government can strongly encourage provincial governments to pass legislation that will protect freedom of religion and conscience that are wholly within provincial jurisdiction. If the Parliament is to fundamentally alter the time-honoured definition of marriage, it must ensure that fundamental freedoms are adequately protected.

Thank you.

● (1855)

[*Translation*]

The Chair: We will move on to the representatives from the Canadian Conference of Catholic Bishops, Ms. Aubé or Archbishop Gervais.

[*English*]

The Most Reverend Marcel Gervais (Archbishop, Diocese of Ottawa, Canadian Conference of Catholic Bishops): Good evening. In this presentation I will be speaking English and Hélène Aubé will be speaking French.

The interventions of the Canadian Conference of Catholic Bishops in the debate on the possible redefinition of marriage are not based on our faith convictions alone. We are motivated as well by our responsibilities as citizens to promote and defend the fundamental rights and freedoms of all persons within the natural order.

Prior to its being a religious institution, marriage is a natural institution. The cultural, social, legal, and religious recognition it has enjoyed throughout the centuries of human history is proof that it constitutes a fundamental good for society. Its historical definition clearly reflects the unique service rendered by the men and women committed to marriage.

We would question the interpretation that is currently being given to the Canadian Charter of Rights and Freedoms and recall a fundamental principle basic to the development of legislation if it is to be just and therefore merit the support and respect of all citizens. Laws are established to respect the social order. However, a particular social order is valid only if it respects the order inscribed in nature. Once laws contradict this natural order, they become unjust. They then risk creating division and dissension and breeding social disorder.

The preamble of the charter affirms that "Canada is founded on the principles that recognize the supremacy of God and the rule of law". In referring to a superior law, the charter specifies what human beings are entitled to and protects their basic human rights. It thus does not stem from the will of individuals, judges or governments. Its source is found in the nature of human beings. It is why we refer to natural law, a law whose components are more universal and immutable than particular social and cultural realities that change with time. The right to marriage, which the Universal Declaration of Human Rights recognizes as pertaining to a man and a woman, is based on natural law and does not change with changing mentalities.

States have a responsibility to legislate in order to promote the exercise of the natural rights of their citizens; the laws and regulations established in this way form positive law. But the evolution of positive law represents progress for civilization insofar as it conforms to the natural law. Similarly, a sound interpretation of the charter requires this reference to natural law, which the Supreme Court of Canada omitted in its opinion on marriage reference.

It is clear that the primacy of the law to which the charter refers in its preamble and its mention of the supremacy of God is the primacy of the natural law over positive law.

[*Translation*]

Ms. Hélène Aubé (Lawyer, Canadian Conference of Catholic Bishops): The change proposed by Bill C-38 affects the most fundamental institution and some of the most basic values of society: marriage and the family. These are realities present in the history of humanity before any form of state or law. If Bill C-38 is adopted, it will alter the nature of marriage and the family and further contribute to their erosion.

The promoters of "same-sex marriage" have succeeded in excluding the whole question of procreation from the current debate. According to them, the sole requirement for marriage would henceforth be the love between two persons. Yet, according to its historical definition—which also reflects objective reality—marriage is a matter of the survival of humanity as well.

It is for this reason that in addition to the well-being of the spouses and the fulfilment of their love, the goal of marriage includes the procreation and education of children. Removing one of these essential elements from the definition of marriage results in another reality that is clearly no longer a marriage. The anatomical complementarity which makes the engendering of new lives possible is fundamental to the reality of marriage, not to mention the psychological and affective complimentarity, as well as the natural mutuality, of a man and woman.

It is not discriminatory to attribute different names or different treatment to two realities that are so fundamentally different: the first being the heterosexual union, which has the potential to transmit life, and the second being other forms of unions that do not have this potential.

To identify these two fundamentally different realities with the same term is contrary to justice and to common sense. It would be unjust and discriminatory toward men and women who enter marriage in order to form a stable and procreative union, as it fails to uphold their particular status and to support them in a special way.

A minority does not have specific rights simply by being a minority. It is the persons who are part of a minority who have rights, and these rights are absolute or conditional.

An example of an absolute right is the right to life; an example of a conditional right is the right to practice medicine which is conditional to having a medical diploma.

The right to marriage is also a conditional right: it is reserved for those persons who fulfill the natural conditions that are essential to this right. Sexual complementarity is an inherent condition for marriage. By including same-sex unions in the definition of marriage, the government would no longer recognize any particular public or social usefulness in heterosexual civil marriage.

Since the marriage contract would not differentiate between heterosexual and homosexual unions, the message would be loud and clear: these “marriages” are equivalent and thus have the same value. Why would young heterosexual adults continue to marry and take on collective responsibilities, if the State devalues their commitment and offers no special benefit which recognizes their essential contribution to the survival of society?

The experience of Scandinavian countries over the past ten years that have accorded same-sex partners rights equivalent to those of marriage should give Canadians cause for serious reflection. These countries have seen a significant decrease in the number of marriages and a corresponding increase in the number of children born to unmarried parents.

Children have rights and needs. Entering into this world generally as a result of the special communion of love between a man and a woman, children have a fundamental right to know their biological parents and to be educated by them.

The difficulties experienced by adopted children or those from broken families are known only too well. Research in psychology and social sciences only confirms what is perceived through common sense: children function more effectively when they grow up in the company of their father and mother, who have different and complementary roles in their lives. This educational complimentarity and interaction are crucial to the child's growth process and to the development of his or her personality.

● (1900)

[*English*]

Most Rev. Marcel Gervais: Bill C-38 purports, moreover, to protect religious freedom. What authority does the federal government have for protecting the religious freedom of those persons called upon to perform marriages, since the solemnization of marriage comes under provincial jurisdiction?

Religious freedom is not limited to the freedom to perform but...to refuse to perform marriages involving same-sex partners. Religious freedom is intrinsically linked to the freedom of conscience and the freedom of expression. It is not a concern only for religious authorities but for all citizens, who must be able to express their freedoms publicly in their daily lives.

The Chair: Excuse me. You have two minutes.

Most Rev. Marcel Gervais: Two minutes.

The reasons for opposing the redefinition of marriage and upholding the historical definition are, first and foremost, natural. What millions of Canadians are refusing to accept is that the reality of marriage profoundly inscribed in human nature should be redefined to comprise a totally different reality. The proposed redefinition does not foster the evolution of marriage, but breaks irrevocably with human history as well as with the very nature of marriage.

Two grave wrongs to our Canadian society would result from this bill: one, the elimination of the public interest in protecting and promoting the institution of marriage for the benefit of the state and of the common good; and two, the imposition of an orthodoxy that runs counter to freedom of conscience and religion. If it is to defend the common good, how can a country's legitimate authority impose on Canadian society a norm contrary to natural law?

We ask the government to abandon its plan to redefine marriage and to commit itself to promoting a culture that encourages and fosters heterosexual marriage as a fundamental institution which provides the norms for society.

Thank you.

● (1905)

The Chair: Before we go any further, Mrs. Ross, I just want to point out that your document will not be distributed tonight to the committee because you only have it in the English version. The committee will have it translated and then it will be made available to all committee members.

Thank you.

Ms. Ruth Ross: [*Inaudible*]...that relates to the signatory for 30 lawyers?

The Chair: Yes, ma'am.

Ms. Ruth Ross: That's fine. Thank you.

The Chair: We will now proceed to the first round of questions. The rules of our committee say that the first round, in order, will be the Conservatives, the Bloc Québecois, the New Democratic Party, and then the Liberals, for seven minutes, including questions and answers. Okay?

For the Conservatives, we will start with Mr. Moore, for seven minutes.

Mr. Rob Moore: Thank you, Mr. Chair, and thank you to all the witnesses here for appearing.

I'd like to direct my question to Ms. Hazlett Parker and Ms. Epp Buckingham.

On the bill itself, Bill C-38, to begin with, two of the arguments we hear over and over for those seeking to change the definition of marriage are, first, that the court has forced us to do this, that the charter demands that the definition of marriage be changed, and second, that this bill somehow protects religious freedoms.

My reading of the decision in the reference case does not line up with that, but I'd be interested in quickly hearing your comments on those two points that we hear over and over: one, that this is something Parliament has to do; and two, that this bill protects religious freedoms in clause 3.

Could you each comment on that?

Ms. Valerie Hazlett Parker (Lawyer, Christian Legal Fellowship): First of all, with respect to the protection of religious freedom, I would refer to Ms. Epp Buckingham's comment earlier that this is something wholly within the jurisdiction of the provinces and not the Parliament, and that has not been done across the country. So if the bill were passed in its current form, you would have a slightly different patchwork of inconsistency than you have now, because I believe it's Ontario and British Columbia that have taken some legislative action to protect clergy—not marriage commissioners—but the other provinces and territories haven't.

With respect to your other point, I'm going to defer to Ms. Epp Buckingham.

Ms. Janet Epp Buckingham: I was actually going to deal with the religious freedom issue.

Yes, my recommendation had been that clause 3 be removed from the bill because it is ultra vires Parliament. I know that when the justice minister spoke to this issue—I read the testimony he gave before this committee—he indicated that it was intended to be declaratory, but also indicated that it gave some comfort to Canadian clergy, which is not really possible, because the Supreme Court did say it was ultra vires.

On the point of whether Parliament must redefine marriage, I would refer you to the Eugene Meehan legal opinion on that matter, which you will get in due course. I believe it was distributed fairly broadly to parliamentarians a couple of weeks ago. You may know of Eugene Meehan; he is a well-known constitutional lawyer here in Ottawa. His reading and legal opinion on the marriage reference by the Supreme Court of Canada was that it did not require that marriage be redefined.

There's obviously been a lot of difference of opinion, some expressed by legal academics, some expressed by constitutional lawyers, as to whether this is or is not required. But I think the point is that there is sufficient ambiguity that it is possible for Parliament to legislate traditional or historic definition of marriage. Obviously it would be subject probably to constitutional challenge, but it does appear to be possible within the Supreme Court of Canada opinion to pass legislation in that regard.

Mr. Rob Moore: Thank you.

I have a follow-up question.

In my reading of the Supreme Court decision, it seemed pretty clear that provisions to protect religious officials were ultra vires, beyond the scope of Parliament. Yet, we see that clause in the bill, and we're told it's to give some comfort. I would call that giving false hope to religious officials. If it has no force and effect, the laymen reading this may think they're covered, but the Supreme Court has already rendered its judgment that it has no force and effect.

The other concern that I have is where it says: “It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.” To me, that is the very highest threshold possible.

There are other aspects of freedom of religion that are not even contemplated in this ultra vires provision. Of course, the worst-case scenario would be that someone of faith is somehow forced to marry someone who is not in accordance with his or her beliefs. To me, that seems to be a red herring.

I'd like to hear your comments on other implications for religious freedom, other than someone somehow being forced to marry someone against his or her religious beliefs. This is the highest threshold possible. What about impacts that could be below that high threshold and are not covered?

● (1910)

Ms. Ruth Ross: I'd like to speak to that point briefly. You say that's the highest threshold. Even at that level, it falls far short of the mark because it speaks to religious officials, and we have to consider marriage commissioners as being religious officials. If you look across Canada right now, it's in a tremendous state of disarray, and marriage commissioners are not being given the protection that is required.

It is very interesting that there's a creation of what's considered to be civil and religious, but as you say, that's really a red herring, because we really don't have that situation in Canada. There is a fusion of these kinds of marriages in most provinces. Certainly, if you look at legislation that gives marriage commissioners and religious officials the right to solemnize marriages, it is the same basic statutory declaration and provision. So we can't make that distinction.

In Manitoba and Saskatchewan right now, we have two marriage commissioners who are being forced to marry same-sex couples or resign. That's before the Human Rights Commission. What is really sad is that in one case the marriage commissioner purposefully became a marriage commissioner so that he could solemnize religious types of marriages.

To assume that these kinds of celebrations are only civil or do not have a religious content is incorrect. It's a wrong understanding of both what marriages are about and the purpose for which marriage commissioners become involved in this situation.

Mr. Rob Moore: Thank you.

I think that's a good point. In the Canadian tradition, in the Canadian context, there is only marriage. That's my understanding. There's the legal definition of marriage, and that's it.

The Chair: I'm sorry, Mr. Moore.

Mr. Rob Moore: Am I out of time?

The Chair: You're out of time.

Mr. Rob Moore: Thank you.

[*Translation*]

The Chair: Mr. Marceau, from the Bloc Québécois, please.

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

A thank you to the witnesses for being here today. I'm going to ask concise questions. I'd appreciate concise answers too, given that I don't have much time.

First, I would like to correct a major inaccuracy. The courts have clearly stated that the so-called traditional definition of marriage is unconstitutional. I will quote the Court of Appeal for British Columbia, which stated:

[*English*]

> "For the reasons which follow, I conclude that there is a common law bar to same-sex marriage; that it contravenes s. 15 of the Charter; and that it cannot be justified under s. 1 of the Charter.

[*Translation*]

The Court of Appeal for Ontario stated:

[*English*]

> Based on the foregoing analysis, it is our view that the dignity of persons in same-sex relationships is violated by the exclusion of same-sex couples from the institution of marriage. Accordingly, we conclude that the common-law definition of marriage as "the voluntary union for life of one man and one woman to the exclusion of all others" violates s. 15(1) of the Charter.

[*Translation*]

So, the courts didn't decide that the traditional definition of marriage was constitutional. That is wrong. What's more, I should tell you that the Court of Appeal for Quebec, in a unanimous decision by five people, also clearly stated that the legislative definition of marriage as the union between one man and one woman was unconstitutional. I think it's important that the premises of this debate be very clear.

You've all raised the issue of freedom of religion. If I belong to a religion which agrees to marry same-sex couples and that currently I couldn't do so because of the traditional definition, isn't my freedom of religion impinged upon, Ms. Buckingham?

● (1915)

[*English*]

Ms. Janet Epp Buckingham: There have been various situations in Canada where religious law with respect to marriage has been somewhat different from state law. I refer, for example, to the Roman Catholic situation. In some situations they don't recognize marriages solemnized outside their own church, and they don't recognize divorce. We're not asking for a total congruity between religious marriage and civil marriage. But where they become significantly at odds, there is very large risk or likelihood that religious freedom will be compromised.

I think the courts actually dealt with that situation. The Metropolitan Community Church of Toronto, for example, went to court and said that on the basis of their religious understanding of marriage, the state should recognize their marriages. The courts said they didn't necessarily have to recognize all marriages. Of course, that will probably come up with the polygamist marriage situation as well.

Those are issues yet to be worked out in Canadian law. The courts so far have denied the Metropolitan Community Church of Toronto the right to have every marriage that's recognized by a religious community necessarily recognized in law.

[*Translation*]

Mr. Richard Marceau: You talked about—and once again this concerns freedom of religion—the fact that representatives of various faith groups may be compelled to perform marriages. In some cases, religious groups are discriminatory in and of themselves. I'm referring to, among others, the Catholic Church, which, unless I'm mistaken, does not allow women to be ordained priests. Furthermore, the Church would not marry a divorcee whose marriage hasn't been annulled.

Archbishop Gervais, are you aware of one single example of the Catholic Church being compelled to marry a divorcee whose marriage hadn't been annulled or of a rabbi, for example, who was forced to marry a Jew and a non-Jew?

Most Rev. Marcel Gervais: No, I don't know of any example of such a thing occurring.

Mr. Richard Marceau: So, with all due respect, I would submit to you that the same would be true of same-sex marriage, should anybody attempt to break down the metaphorical doors of the Catholic Church or the Evangelical Fellowship.

I'd like to ask Ms. Aubé my next question. I need to move quickly because I don't have much time. I apologize for this.

Ms. Aubé, you referred to the following, and I quote: "The natural complementarity between man and woman."

I'd like you to expand on that please.

Ms. Hélène Aubé: Indeed, between a man and a woman, there is a certain complementarity which leads to procreation. Obviously, neither of us have any control of this, it is the nature of humankind.

Mr. Richard Marceau: So you're not referring to sexual complementarity, is that right?

Ms. Hélène Aubé: Complementarity leads to the marital sexual act, which, in turn, leads to procreation, which obviously requires the involvement of a man and a woman.

Mr. Richard Marceau: I'd like to come back to the question of procreation. I'm sure you can see what I am getting at?

You represent the Canadian Conference of Catholic Bishops. I, myself, have attended amazing marriages involving post-menopausal women who are unable to procreate. If one of the goals of marriage is procreation, then these people, as logic would dictate, shouldn't have the right to marry. The same would be true for couples that don't want to or can't have children. I, myself, have friends that don't want any. And yet, according to your fundamental premise, their union should be illegal because there is no procreation.

Ms. Hélène Aubé: You're asking me to comment on the teachings of the Catholic Church and its canon law. Within the Church, in order to get married, a man must be virile. Indeed, impotence is one of the grounds for annulling a marriage, no matter how old the parties are. Infertility, on the other hand is not, because one cannot be sure of it.

Furthermore, by their very nature, homosexual couples are infertile. In the case of an elderly couple, the Catholic Church considers that if there was no history of impotence before marriage, the marriage remains valid since the sexual act, which is designated as such by copulation in canon law, is possible. Of course, the peoples' anatomy and biology ensures that short of a miracle, procreation is not possible.

● (1920)

The Chair: Thank you very much.

[*English*]

Now we go to the New Democratic Party. Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Thank you very much for coming. We appreciate your efforts in coming forward and providing us with your opinion on this legislation.

A number of the presentations made reference to the inutility of clause 3 of the proposed legislation. That stems from the Supreme Court judgment that basically ruled that it was ultra vires. But none of the presentations made reference to the charter and paragraph 2(a) of the charter. In that same judgment, the Supreme Court found that paragraph 2(a) of the charter was sufficiently broad to protect religious officials from compulsion to perform same-sex marriages against their religious beliefs.

It's been the unspoken comment in your presentations. I'd like to ask each one of the groups if what you're saying is that you don't feel clause 3 of the proposed legislation is needed because the charter sufficiently protects religious officials.

Ms. Janet Epp Buckingham: I'll start off with that.

We actually recognize, in our longer briefs, that the court gave its opinion on this matter. We would still like to see it enshrined in legislation, but of course that's a provincial jurisdiction. We have been writing to attorneys general across the country, as have some of the other groups, asking them for this kind of protection. So far, only the Ontario government has responded by actually passing legislation that protects clergy. The Supreme Court opinion is a non-binding reference, so we would prefer to see this in legislation.

We would also prefer to see a broader protection for religious freedom. We are asking for more than just religious officials to be protected when they're acting in their religious capacity. We're asking for civil marriage commissioners to have protection in the solemnization of marriages. We're asking that religious institutions have protection from facing discrimination for their beliefs about marriage. Clergy religious freedom is really only the narrowest possible religious freedom.

Yes, we do recognize that the Supreme Court has given an opinion on that. That does provide some comfort. We would just prefer to see that enshrined in legislation that will be binding.

Ms. Ruth Ross: I think we all have to recognize that this flies in the face of the practical examples. It's great to treat this in the abstract, but I've presented many cases of problems with religious freedom that are out there right now that we have to contend with.

Mr. Peter Julian: But as I recall from your presentation, these are cases that are still being adjudicated.

Ms. Ruth Ross: Many of them are finished adjudication, but there are still some that are yet to be A number of them are finished, and some are yet to be decided. Unfortunately, they're being decided based upon these precedents that are out there.

Mr. Peter Julian: But in the adjudicated cases, what is it, in your opinion, that contradicts the Supreme Court judgment?

Ms. Ruth Ross: Well, the Supreme Court judgment says that there's a liberal and broad interpretation of religious freedom, but then Trinity Western basically says that you're free to have these beliefs, but you simply cannot act upon them. So what benefit is there to hold your beliefs within your mind and not have the freedom or the liberty to act upon them, which in fact is what the cases say at the outset.

When it comes to the collision of dignities, therein lies the problem. In practice, we are not seeing these freedoms being exercised in Canada. In Brockie, the case of the printer, it was the same thing. The judge basically said he was entitled to maintain this distinction provided it was part of his core religious belief, and then the court went on to determine objectively what that religious belief ought to be. That does not line up with what the cases say.

Mr. Peter Julian: But there's no piece of jurisprudence, from what I understand from your presentation, that directly relates to the charter and the Supreme Court judgment around paragraph 2(a) and religious officials.

Ms. Ruth Ross: As you mentioned, there are cases before the courts that are yet to be adjudicated, and they do involve marriage commissioners who are religious officials. They have the same power to pronounce upon marriage as clergy. And they are presently before human rights commissions because they have said, we have a conscientious objection here, and it's not being honoured.

We have a number of members who are also in situations where they may be the clerk of the court or they may be a justice of the peace, and they're very concerned about the interpretations that their provinces are taking. Both Ms. Epp Buckingham and I have letters from the provinces saying they are not going to grant permission to marriage commissioners in this area. They've already taken a position on this.

● (1925)

Mr. Peter Julian: I'll just come back to the point.

At this point in time, there is no adjudicated case that contradicts that Supreme Court judgment.

Ms. Ruth Ross: I think the alarm bells are going off right across the country. Surely we have to direct our attention to that, given that we are in court over these issues now. We are here tonight recognizing that there are flaws. Surely we don't have to wait for an adjudication to bring our attention to the problem.

Mr. Peter Julian: I'm conscious of the time.

I'd like to ask Mr. Tse, Monseigneur Gervais, and Madame Aubé the same question around clause 3 as opposed to the protection of the charter.

Rev. Dominic Tse: I'm a pastor, not a lawyer. One thing I'm aware of is that my licence to perform marriages comes from the provincial government. It's basically not the jurisdiction of the federal government regarding solemnization of marriage. That's the clear situation that I have.

I'm glad that the Ontario government has provided some protections for clergy in the Ontario legislation. It's not a uniform situation across the country. It will be a very concerned situation for many of our colleagues in other provinces.

[*Translation*]

Ms. Hélène Aubé: If you recall the Supreme Court's reference, you'll note that it didn't answer question 4, which sort determine whether heterosexual marriage, as currently defined, is constitutional or not.

The government decided not to appeal the provincial courts' decisions and in doing so, accepted the decision of the highest court in each province. Consequently the decision which applies in each province is that decision, and even if...

The Chair: You are going to end up thinking that I have got something against you.

Ms. Hélène Aubé: Excuse me?

The Chair: You're going to end up thinking that I've got something against you, Ms. Aubé, but I have to cut you off again.

[*English*]

We will now go to the Liberals.

Mr. Macklin.

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

Thank you for being with us tonight to share in this obviously very vigorous debate that is ongoing.

When we come here tonight we are, as a committee, seized of a bill that has had approval in principle by our Parliament. We are now tasked with the process of trying to see whether that bill can be improved in some fashion or other to meet the needs of all parties involved.

I would like to refer to the Christian Legal Fellowship in particular, because I'd like to go through some of your recommendations. I think it's important. That's what we're trying to work with.

First of all, looking at your recommendation one for amendments to the bill, you're indicating that under the consequential amendments you thought it should read: “officials of religious groups and marriage commissioners shall have the right to refuse to perform marriages that are not in accordance with their religious beliefs”. I would ask you, how do we do this if in fact your arguments are that this area of jurisdiction is with the province?

Ms. Ruth Ross: You're right. That is a definite problem with it.

I think the Evangelical Fellowship of Canada had a good suggestion in that you could delay royal assent of the bill until such time as there was provision provincially to ensure this kind of protection.

Again, we are saying it is technically flawed. It is basically, right now, a mess across the country, and in great part because the provinces have taken it upon themselves to change the definition and now the federal government is trying to correct it. You can't correct one without making a mess of the other. The problem began with the provinces getting into the realm initially, and the federal government didn't take action to correct that. I think now you are certainly left with this mess, but it's not really for us to decide. We recognize there's a technical flaw with it, and we are not in favour of it. Having said that, we have done our best to come up with a minimum standard.

Hon. Paul Harold Macklin: But you're advocating something that you believe to be unconstitutional to be placed in the bill?

● (1930)

Ms. Ruth Ross: No, I'm not advocating that.

I'm saying that as a consequence of the bill being enacted, should that happen—we are against it, but should that happen—there needs to be some protection given provincially. I recognize this is a problem. I don't know how you solve that. EFC did make a suggestion, and that may be the closest we'll get.

Hon. Paul Harold Macklin: In your recommendation two, you say: “A section be added that religious groups and individuals will have the right to refuse access/use of church and ancillary facilities for purposes of same-sex marriage gatherings or events leading up to and including the actual celebration following same-sex marriage ceremonies, and similar activities which are inconsistent with religious beliefs”.

I submit to you, isn't that equally unconstitutional?

Ms. Ruth Ross: Our fifth recommendation says that Bill C-38 must contain a prerequisite provision adopted by each of the provinces and territories to the effect that treatment of religious freedom as contemplated in this paper is consistent across all provincial jurisdictions and boundaries. You have to read these together. The recommendation would be that there would have to be a prerequisite that, before it was passed, the provinces would look after these issues. It would protect to the extent we've suggested.

Hon. Paul Harold Macklin: So your recommendation is not that we include these in the bill, then? You're saying these should just be preconditions to the bill. Is that correct?

Ms. Ruth Ross: Either that or they should be in place before the bill becomes effective as law.

Hon. Paul Harold Macklin: Okay.

You say that a clause should be added under the consequential amendments to reflect that expressing views opposing same-sex marriage will not be considered to be discriminatory speech. When you use the term “discriminatory speech”, to what definition are you referring? Do you see that in human rights legislation? Are you seeing that in the Criminal Code as hate speech? Where are you picking up this idea of discriminatory speech?

Ms. Ruth Ross: I'm referring to the Kempling case in British Columbia, which is now before the Court of Appeal. In that case, Mr. Kempling was found guilty of speaking against what he perceived to be immoral acts. The court declared everything that he said to be discriminatory. At the end of the day, there was no evidence of harm whatsoever. I don't have the all-out definition of discriminatory speech, but I am alerted to the problem by the case law. If his speech can be called discriminatory, then we're in a lot of trouble. It affects all professionals. It affects public officials as well, not just teachers.

Hon. Paul Harold Macklin: But what act or piece of legislation was that discriminatory speech term taken from?

Ms. Ruth Ross: It was not taken from any act. I'm referring to the case law where his comments were categorized as discriminatory. Once they were labelled discriminatory, the court no longer looked at what was considered critical speech and what was considered speech that was improper. It shut down the debate entirely.

My concern is that some might look at speech and call it discriminatory very quickly, when in fact it may just be contrary to our religious beliefs.

Hon. Paul Harold Macklin: Your recommendation six says, in effect, that Bill C-38 must contain a prerequisite provision that no action brought against any person or organization, which in good faith takes the position stated in recommendations one and two, will be sustained. What do you mean by "no action"? What are you referring to?

Ms. Ruth Ross: We mean there should not be any legal action or penalty brought to bear on individuals or organizations acting in good faith on religious or conscientious objections.

Hon. Paul Harold Macklin: Are you looking at this in accordance with the Criminal Code provisions on hate speech, where one is protected if one makes a statement based on religious belief?

Ms. Ruth Ross: No, I'm not looking at it from the standpoint of criminal protection. What I'm seeing is that everyone is hanging their hat on this legislation and saying it protects clergy and religious officials. But it really doesn't have any teeth. This would be a way of ensuring that there is in fact some protection. I don't see that there is protection at the moment.

Ms. Valerie Hazlett Parker: There's also a concern with the kinds of cases in our written submission—

The Chair: I'm sorry. Thank you.

[*Translation*]

Ms. Françoise Boivin (Gatineau, Lib.): I raise a point of order, Mr. Chair. The French text—or at least mine—doesn't include six recommendations, but rather five.

● (1935)

The Chair: There's a point of order.

There seems to have been a mistake. This is a House of Commons translation. The clerk will make enquiries tomorrow morning, and we will redistribute the whole text. Thank you, Ms. Boivin.

We're now up to the second round of questions. In accordance with our rules, questions and comments will now total five minutes.

I'd like to call on Mr. Brown to speak, from the Conservative Party.

[*English*]

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

I'd like to thank our witnesses for coming. I know they've spent a lot of time on their preparation for today.

One of the things that I find the most disturbing about the bill is the lack of religious freedom protection, and I appreciate the comments that I've been hearing. Hopefully it will help us put some things in the bill that may well allow us to do that.

Another thing I've been thinking a lot about and Mr. Tse gave us a little background on is marriage in other countries. I know there are only a few countries that currently recognize same-sex marriages. Maybe we could hear a little bit about what's going on in other countries.

I'll throw it open.

Ms. Ruth Ross: I know at the moment that yesterday the Constitutional Court of South Africa was considering this very issue. Their process is following very much along the same lines in the sense that there is a challenge in the highest court—although we didn't get to our highest court on this point, apart from the reference.

There is also, not legislation, but a royal commission paper that is being considered. It would perhaps run parallel to what happened in our country when we found that there was a position paper taken by the government in 2002-03. At the moment, we don't know what the outcome will be in South Africa.

There are other countries of the world that are considering these issues. I've actually received requests from the Caribbean and South America, because they're very concerned about what's happening in our country. I believe it's incumbent upon each one of us to be very careful in how we deliberate the outcome, because it will have global impact. We have to consider not only what is going to happen in our country, to families and children in our country, but globally. This is a huge experiment in many ways, and I believe we have an obligation to look carefully at how we invoke such a huge...what I consider to be social experiment when the lives of the most vulnerable in our country are at stake.

Ms. Valerie Hazlett Parker: I would just add that I believe Ms. Aubé spoke to the outcome that we've already started to see in the Netherlands and Belgium, I believe you referred to, with the decline in the heterosexual marriage rate, the decline in the birth rate, and so on, in those countries that have. That's the only thing we can look to in terms of an experience of what has happened.

There is some documentation on that, which we could get to the committee, if you wish. We don't have it with us today, but we could certainly get that to you.

Mr. Gord Brown: Okay.

In terms of some of the other countries that have dealt with this and had some equality issues, how were they dealt with? Maybe in countries such as France and a few others that did deal with this issue, how did that come out?

Ms. Ruth Ross: France has not accepted same-sex marriage. My understanding is that it has been denied.

New Zealand has adopted a regime where they recognize civil partnerships, but not same-sex marriage.

I believe the only other two countries that have adopted same-sex marriage are the Netherlands and Belgium, if I'm not mistaken.

Mr. Gord Brown: So these debates have taken place in other countries, and that has been the result, that they recognized civil union but not civil marriage. Is that correct?

Ms. Ruth Ross: Yes, that's correct, except in the Netherlands and Belgium.

In countries where they have looked at giving a certain amount of permission to homosexuals to create a form of union, there are, I believe, tremendous negative consequences on marriage. This is again something that would be incumbent upon this committee to consider before they proceed.

● (1940)

Mr. Gord Brown: Okay.

In the United States we see in the news quite frequently that different states and other municipal jurisdictions are actually recognizing these marriages. Maybe you can give us a little background on what's going on there, just for the committee's interest.

Ms. Janet Epp Buckingham: I've be tracking some of that. There have been municipalities that have granted marriage licences to same-sex couples. When this has been challenged at the state level, in California and New York, I believe, the state courts have stopped the practice and affirmed at this point the heterosexual nature of marriage.

I would just add one point. We, at least our organization, are not saying that gays and lesbians—

The Chair: I'm sorry, five minutes is very short.

We're now at the Liberals. Mr. Savage.

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

I want to thank you for coming this evening. I'm sorry that we kept you waiting for a while, as we came back from our vote.

As a point of clarification, initially, Ms. Ross, I wrote down here—I didn't find it in the written submission—that I heard you say something to the effect that heterosexual couples would have to go into the closet. Did I hear you say that?

Ms. Ruth Ross: No, I did not. I said the people of faith who wish to express opinions concerning what they might consider to be a moral behaviour will not be free to make those expressions and free to act out their faith positions in our culture because they would be forced to go into the closet. We are seeing that at the moment. We're seeing that in the cases.

Mr. Michael Savage: Tell me what that means, though, in this terminology.

Ms. Ruth Ross: I believe it means were muzzled and marginalized in our faith position, and I put that clearly in our materials, that there is a sense that because of this tolerant position, the tolerance does not come in our direction. There is a sense of intolerance coming toward us simply because we're being shut down in many of these areas.

Mr. Michael Savage: Okay. So you were referring to the points that you made in your recommendations here about being free to express views on marriage. That's what you're referring to, not to the institution of marriage itself being diminished by this bill.

Ms. Ruth Ross: I do think indirectly it affects heterosexual couples, because they came to marriage understanding that, as an institution, it meant one thing, and now it means something else. No longer do we have a distinct understanding of that marriage. It has now become something quite different from what we originally understood.

Before the Supreme Court of Newfoundland, Pastor Gord Young made a point—it was very compelling—to the judge at that time. He said it's like taking an orange and carving it out, and then on the inside you do not have an orange any longer, you have an apple. At the end of the day, the judge felt that was a very strong argument, but decided that he would allow these two types of institutions to coexist together. But in fact, you do not have that. What you are going to end up with is an institution that's totally changed. You're going to end up with a fruit salad, basically.

When you have one institution representative of all society, you can't call it this or that. It is one thing, and it is going to be seen to be one thing. So I believe for heterosexual couples, it does change for them the way they look at marriage, define marriage, the way they act it out, and they way they are informed in their societal roles, as husband and wife. And we are already seeing changes in the definitions.

Mr. Michael Savage: I believe that this would go to Archbishop Gervais and Madame Aubé.

In your comment on love and procreation, in the first paragraph, you indicate, “If Bill C- 38 is adopted, it will alter the nature of marriage and the family, and further contribute to their erosion”. We've heard an opinion that in countries that have taken the step of legalizing civil marriage, we've seen a reduction in the heterosexual marriage rate and the birth rate. I think we've seen the reduction in both of those things in Canada already without introducing civil marriage, and we've certainly seen lots of problems in heterosexual marriage, if you look at the children that are subject to abuse and the problems that come from heterosexual marriage.

Is there any reason to believe that gay and lesbian couples would be less capable parents than heterosexual couples?

[*Translation*]

Ms. Hélène Aubé: To tell you the truth, I don't think that that is the issue.

An erosion of heterosexual marriage has been observed for a number of years, in large part because the institution no longer enjoys the assured recognition by the State as far as taxation and social recognition are concerned. Little by little, people are starting to think that all types of couples are more or less the same. And that's a pity. You need to think of the children. As we make it clear in our brief, married couples separate less than couples living in common-law relationships or married couples who lived as common-law partners before getting married. The separation and divorce rates are far higher among the latter two.

As we stated in our brief, should the definition of marriage be completely changed, the institution will lose even more of its inherent value, and that has nothing to do with the ability of a person, be they heterosexual or not, to be a good or bad parent.

● (1945)

The Chair: Thank you, I'll hand the floor over to Mr. Ménard, from the Bloc Québécois.

Mr. Réal Ménard: Thank you.

Ms. Aubé, I get the sense that you feel like having a discussion with me. Let us both consider it a privilege. I am somewhat surprised by your presentation, which unfortunately contains a number of biases which would not hold up to scientific scrutiny, in my view.

First, we're still living in a society where people get married. When we held consultations throughout Canada, we heard some statistics. Not only are people getting married, but people are getting remarried. Perhaps less so in Quebec and elsewhere, but marriage remains the form of commitment most people choose.

You didn't answer the fundamental question: how could we not pass this bill. First, it would go against the Canadian Charter of Rights and Freedoms. Second, the people who have most abused the institution of marriage, you'll agree, are heterosexuals, because homosexuals don't have access to it. Obviously, we must be merciful and forgive them for it. However, I fail to see any objective reason why homosexuals, who want to reinforce the institution of marriage, could not accede to it. Under this bill, right after school, marriage is the most promising secular option for people. I'm sorry, I see no reason why we shouldn't be able to do it.

Moreover, and you'll have the floor in a moment, your speech on procreation is a throwback to the Flintstones, in my opinion. I'm sorry, but I can hardly imagine anyone coming before a committee to say such things.

Homosexuals have children, either through insemination or adoption. You know that a bill on assisted human reproduction was passed and that that was stated in the preamble. Homosexuals have children. I hope you will have the intellectual rigour to hand over the studies you're referring to our clerk. Two Quebec research centres have carried out research on the subject. People have been interested in this matter for 30 years.

Homosexuals can be very good parents just like they can be very bad parents. Sexual desire has nothing to do with parental abilities. I hope that you will table the studies. I know two researcher centres, one in McGill and the other at the UCAM, that have been following this issue for 30 years. None of what you've said can be supported in any way by any scientific evidence available.

You are working within a conceptual framework that is very far removed from reality. I'm sorry, but I think that given your approach, it should come as no surprise that an increasingly large segment of the population wants nothing to do with the Church. Your stance dates back to the 19th century. But I wanted to...

Ms. Hélène Aubé: I'm obviously not a scientist. However, numerous studies have been done on children. Some of them are referred to in our brief. These studies unequivocally state that the best way for a child to blossom is to be with his or her biological father and mother. Obviously, that's the ideal. And then, there's what happens in real life. I don't know if Archbishop Gervais agrees.

You asked so many questions.

I don't believe that the statement according to which procreation requires both a man and a woman is something that dates back to the stone age. You know full well that the option, which is offered to heterosexuals and homosexuals, requires very advanced technology and does not guarantee the ability to have children.

● (1950)

Mr. Réal Ménard: Answer the question. They are skills. You and I are not going to explain how you make a baby. There are scientific issues. You are appearing before a committee. We have a Supreme Court decision. We have the Canadian Charter of Rights and Freedoms, which embodies fundamental values. How does being homosexual disqualify us, make us objectively unfit to being good parents?

If you ask me whether I want to live in a society where everyone lives happily in monogamous couples, I might say yes, but that's not what we're talking about.

Ms. Hélène Aubé: Homosexuality does not make a person unfit to make a good parent, but it does disqualify a person from marriage. It doesn't prevent a person from having sexual relations, be they homosexual relations or not. That is not marriage. You are confusing an intimate personal relationship with an institution that has objectives. The reason for state involvement in marriage, Mr. Ménard, is that the state has an interest on a social level, because the institution leads to children...

Mr. Réal Ménard: What are marriage's underlying values? In my opinion, they are fidelity and reciprocity.

Ms. Hélène Aubé: Of course, but procreation...

Mr. Réal Ménard: I don't think I'm any less capable of that than you are.

Ms. Hélène Aubé: As was already said, if you take away the notion of procreation, there isn't any.

Mr. Réal Ménard: So single mothers should not be recognized!

The Chair: Mr. Ménard.

Ms. Hélène Aubé: We are talking about marriage, not the situation of children.

The Chair: Thank you.

Ms. Hélène Aubé: Oh! it's finished.

The Chair: Thank you.

[*English*]

And moving back to the Liberals, Mrs. Neville.

Ms. Anita Neville: Thank you, Mr. Chairman.

Let me too extend my thanks to those of you who have come here for this evening.

My first question is a general one to whoever chooses to answer it. I have a number of questions; I'm just going to put them out there and see what we can get answered in the time we have allotted.

You've all spoken about your desire to protect values that you speak to in your presentations. Canada has a desire to protect religious freedom and to eliminate discrimination based on sex. I'm wondering how you would each suggest an approach that would allow for honouring the biblical or the religious principles that are important to you, as well as for honouring the charter. That's my first question.

My second question is to the Canadian Conference of Catholic Bishops. You state that discriminatory attitudes towards homosexuals will not be eliminated by the bill. I wonder, given your own concerns about discrimination against religious groups, how you would propose that discrimination against gay and lesbian people be addressed or be prevented.

My third question—and we may not get finished one, but I'll put them all out there—is this. The Ontario bill was put forward and passed in June 2003, coming up to two years ago. How has life changed for members of your communities since gay and lesbian same-sex marriages were recognized, certainly in the province of Ontario, and then elsewhere, in that two-year period of time?

My last question, if we get to it, is this. Mr. Macklin and I are sitting and trying to understand what "discriminatory speech" means —I don't understand it—if that can be expanded on.

But I really would appreciate an answer to my first question: how do you reconcile your own underpinnings of biblical and religious teachings with the desire of protection under the charter?

I'm sorry, I'm having a hard time seeing at the end of the table here, but I'm doing my best.

Mr. Bruce Clemenger: My microphone light is on, so I will begin.

That's why in my opening comments I raised the issue of pluralism. What does it mean...? This is a good example, this issue of marriage, of how we as a society begin to grapple with what it means to be truly a plural society, what it means to be multi-religious, multicultural, multi-ethnic.

I affirm the charter. I believe I can affirm it on the basis of biblical principles, principles of freedom, principles of equality. The question then becomes, is the charter a self-interpreting document; or rather, what infuses, what fills the concept of fundamental principles of justice? What does it mean? What does freedom mean? What does equality mean? That is not defined by the charter itself. It's left to courts. I think it's left to civil discourse to begin unfolding it.

I don't see a dilemma until we come to this kind of issue, and then my question would be, was the charter really intended to be used as a sword, as a way of unravelling, of deconstructing, or of refashioning basic social institutions that pre-existed the charter? Or is the charter intended to be a shield; is the charter intended to protect our freedoms from government action, to protect equality from government action?

As I said, I think there's a way to affirm equality without imposing uniformity on Canadians. My concern is that the way the Ontario Court of Appeal and other courts in Canada are using the charter is in a sense working against plurality, against the ability of our communities to continue to promote something we think is important and distinctive. I think there are other ways. There could be civil union regimes; there could be a variety of other approaches that I think may well be consistent with the charter and still protect the religious freedom, protect the ability of our faith communities to continue to hold forth in a public way that marriage is the enduring and exclusive union of one man and one woman.

And I think the onus is on this committee to begin examining what the other alternatives are. The Supreme Court did not preclude that. It did not answer the question.

● (1955)

The Chair: Thank you.

We're back to the New Democratic Party.

Mr. Julian.

[*Translation*]

Mr. Peter Julian: Thank you very much.

Last time around, Ms. Aubé, you started answering my question about the relationship between clause 3 of the bill and paragraph 2(a) of the Charter of Rights and Freedoms. The question I had asked you and Archbishop Gervais was the following: do you think the Charter protects you sufficiently to remove clause 3, since several presentations were to that effect?

Ms. Hélène Aubé: The Supreme Court has indicated to the government that clause 3 is superfluous, that it's a good effort to reassure us, but that this aspect definitely comes under the jurisdiction of the provincial legislators, in that they are the ones who will decide whether or not to clearly protect freedom of religion if the bill, which redefines marriage by including two people regardless of their sex, is enacted. The problem raised by the Supreme Court judgment is clear: there will be a collision between two rights if the protection is not spelled out in legislation. The Supreme Court added that it had always jealously guarded freedom of religion.

For all religious groups, not just Catholics, that means that whatever is done and thought—we have already seen this with Archbishop Henry—once a public statement is perceived as being discriminatory by other groups, the individual citizen who belongs to a religious group will have to go and state his or her position, rely on freedom of religion, and will probably win. However, that involves court proceedings. We all know that in Quebec and elsewhere, that is a very difficult thing for an individual to do. For a group, it would be a huge burden, because we know that freedom of religion obviously involves freedom of worship, certainly, but it is much more than that: freedom to preach, to teach, to have an education that does not go against our beliefs, so that in ordinary life, there is always the possibility of being prosecuted for saying or doing something discriminatory.

It was asked whether the Catholic Church had ever been forced to do something contrary to its beliefs. That hasn't happened with marriage, but when it comes to the testimony of Catholic priests in criminal court, there could be a conflict. In the Wigmore decision, the Supreme Court indicated that there would probably be no conflict, but being a Catholic priest does not necessarily provide protection, and they may be called upon to testify in criminal court about a confession they may have heard.

● (2000)

Mr. Peter Julian: There would be nothing unusual about that. Given that we have separation of church and state, it is to be expected that the judiciary be able to sit and make decisions.

Ms. Hélène Aubé: A conflict could arise between a state-imposed obligation and a church-imposed obligation. These conflicts exist. The conflict is definitely going to arise over marriage, because in Quebec—I'll talk about what I know—you don't get married twice. If there is no written protection to the effect that Catholic priests and ministers of other religions are not required to act contrary to their religious obligations, Catholic priests could lose the right to perform marriages with civil effect, if they don't want to marry homosexuals. That is a very real possibility. That is what the Supreme Court said. The protection that would allow religious authorities not to celebrate a marriage will have to be provided by the provincial legislatures. Otherwise, there will be a conflict between two...

Mr. Peter Julian: That is not what the Supreme Court said. The Supreme Court said that the protection already exists within the Charter.

Ms. Hélène Aubé: The Supreme Court said that freedom of religion exists, clearly, but that it has never had to deal with a case of conflict between Charter-protected rights. That is what it said.

The Chair: I'm sorry, but I have to interrupt you. Thank you.

[*English*]

We're back to the Liberals and Ms. Neville.

Ms. Anita Neville: Thank you.

I'm going to continue with my questioning.

Oh, Françoise is ahead of me.

[*Translation*]

The Chair: Ms. Boivin.

Ms. Françoise Boivin: Thank you, Ms. Neville.

My intervention is along the same lines as those of a number of my colleagues who have spoken this evening. These are sort of like snappers, as they would say on *Reach for the Top*.

> 3. Does the freedom of religion guaranteed by paragraph 2(a) of the Canadian Charter of Rights and Freedoms protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?

In English, false hope was mentioned. In French, it was said to be superfluous. In any event, the question was referred to the provincial legislatures.

However, the Supreme Court goes much further. It says:

> 57. The right to freedom of religion enshrined in section 2(a) of the Charter encompasses the right to believe and entertain the religious beliefs of one's choice, the right to declare one's religious beliefs openly and the right to manifest religious belief by worship, teaching, dissemination and religious practice. The performance of religious rites is a fundamental aspect of religious practice.
>
> 58. It therefore seems clear that state compulsion on religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion under section 2(a) of the Charter. It also seems apparent that, absent exceptional circumstances which we cannot at present foresee, such a violation could not be justified under section 1 of the Charter.

The Supreme Court of Canada, with all due respect, seems to have answered that question really well and provided all of the protection, which lead to the Minister of Justice, when he appeared before us, to say that clause 3, ultimately, was a declaratory clause, that could not be binding, given that the celebration of marriage is under provincial jurisdiction.

So I have some trouble understanding your argument on that point.

On page 3 of your brief, there is a paragraph that I would like you to explain to me, Ms. Aubé. It says:

> Why would young heterosexual adults continue to marry and take on collective responsibilities, if the state devalues their commitment and offers no special benefit which recognizes their essential contribution to the survival of society?

I have some trouble understanding that. The question that piggybacks on all of that is this: how does adding a right for a minority group take anything away from the majority?

● (2005)

Ms. Hélène Aubé: Your question has to do with the Charter. As I said, freedom of religion is jealously guarded by the Supreme Court, but there will probably be a collision between rights. I was saying that currently, a religious minister is also a civil minister, and that option could be taken away in the future. I also said that an individual might sue a religious minister for refusing to celebrate his or her homosexual marriage. The problem is that the minister will have to defend against an allegation of discrimination, which will clearly be protected by the Charter. That is what I meant.

Ms. Françoise Boivin: Ms. Aubé, as an aside, I'd like to tell you about a point that was made when I was discussing and trying to understand my Church's reasoning on this. The fact that the Catholic Church does not accept the ordination of women as priests goes back to time immemorial. Yet, to my knowledge, women have not challenged that in court, because they know that it is a recognized religious right, a religious principle. So I get the feeling that your theory is based on fears that will never materialize.

Ms. Hélène Aubé: So much the better!

Ms. Françoise Boivin: So are we going to deny a minority a right because we fear something that will never come to pass?

Ms. Hélène Aubé: In Canada, currently, everyone has the same fundamental rights, regardless of sexual orientation, colour or religion. The problem is, according to certain judgments...

The Chair: I have to interrupt you. Thank you, Madam.

[*English*]

We're back to the Conservatives.

Mrs. Smith.

Mrs. Joy Smith (Kildonan—St. Paul, CPC): Thank you, Mr. Chair.

Thank you, presenters. Each and every one of you has had very insightful commentary—you've done a lot of research—on this very important issue.

Bill C-38 has been very worrisome for a lot of us, for a lot of reasons. There is one part of it that I would like to ask you about further, and I would like to direct my questions to Mrs. Ross, from the Christian Legal Fellowship.

Mrs. Ross, your legal association's sixth recommendation says: “Bill C-38 must contain a prerequisite provision that no action, which may be brought against any one person or organization, which, in good faith, takes the position stated in recommendations 1 & 2, will be sustained.” Those recommendations talk about no action being taken against anyone who refuses access to a religious building or a religious camp or another facility. I know there's been action taken against Camp Arnes, in the province of Manitoba, and I know there are some great difficulties there. It has tied up a lot of things in the courts.

I know you can't talk specifically about that case, but could you comment on your feelings about what would happen if Bill C-38 were to become law and these provisions weren't put into it? Could you make some comments on the ramifications around this? I know this particular situation has caused a lot of grief to a lot of people.

Ms. Ruth Ross: There's no question it's a problem area in the law.

Perhaps I could just commend our 15-page brief to all of you. You don't have it tonight, but you will have it. All of these cases are outlined in detail. It's very difficult to pick at them piecemeal tonight, but if you look at them, they outline for you a lot of problems with freedom of religion, freedom of speech, and access to sacred facilities.

Yes, the Camp Arnes case is outstanding at the moment. By the way, that has come into effect since—the comment was made earlier—the 2003 legislation. This is a fairly new case. We are looking now at the potential threat to a lot of religious groups for the use of their facilities. Even in Ontario, where they've amended the legislation, it talks about “ancillary” facilities. There's a real question about what that means.

So the concern is not only during or after the religious celebration but also at any given time surrounding these kinds of things: when in fact would this threat be imposed upon a religious group? The legislation does not talk about this. It does not speak to issues of religious institutions or schools that may be threatened in this area. So it's a very limited protection being given, I believe.

By the way, it's simply a whereas clause. It's simply a preambular clause. It talks about paragraph 2(a) of the charter. This is not legally binding on anyone. So we have to look at this in the context in which we are here to discuss it, and I believe it falls short of the mark.

I believe everyone is aware of the case in British Columbia, where the Knights of Columbus have been taken to the Human Rights Commission by a lesbian couple over the rental of their hall. Again, the question will become, okay, at what point is this considered to be a hall that is used to celebrate this marriage or is it no longer something we can maintain protection for? A lot of these issues remain outstanding.

By the way, perhaps I could just speak to this whole thing about discriminatory speech. You need to appreciate that in the Kempling case in British Columbia, what happened there is that a teacher spoke through a letter to the editor—not in the school situation, totally on his own time—and he simply made a comment about what he considered to be immoral behaviour. The judge made a decision that even if he had not mentioned that he was a teacher, the fact that he lived in a small town meant that a natural parallel would be drawn to the fact that he was indeed a professional. The connection was made from the words he spoke, quite apart from his declaring who he was.

The question becomes, as a professional, does that mean I'm now shut down as a lawyer from being able to simply make a commentary in a public place because you know me to be a lawyer, and I no longer can say things freely?

● (2010)

The Chair: Thank you.

We're back to the Liberals, and Mrs. Neville this time.

Ms. Anita Neville: Thank you very much.

I'm just going to continue with the questions that I asked. The first one was if you could comment on reconciling your own religious beliefs and the government's desire to protect human rights.

My second one was to the Conference of Catholic Bishops. Given your concern about religious discrimination, how would you propose protection of gay and lesbian people?

My third question was how has life been different for your communities in the last two years since the law was passed?

Mr. Vic Toews: On a point of order, I again want to note my concern that some members of this committee have spoken twice now, whereas other members have not been able to speak. There's a fundamental flaw in the way this committee is being operated. I'm very concerned this process is obviously working against one particular party, the Conservative Party.

This issue needs to be addressed, Mr. Chair.

The Chair: I appreciate your concern, Mr. Toews, but as you well know, in our first meeting, all members voted for a process, and this was one of the rules that were agreed to. You are at liberty to give us a notice of motion, and it can be discussed at a further meeting, sir.

Mr. Vic Toews: Thank you.

The Chair: Thank you.

Mrs. Neville, please carry on.

Ms. Anita Neville: I think I've asked my questions. I don't want to use up more of my time.

The Chair: No, no, that was not on your time.

Ms. Anita Neville: That's not on my time, thank you. I don't know who would like to go next.

Ms. Janet Epp Buckingham: On the issue of discriminatory speech, I'll draw your attention to sections 12 and 13 of the Canadian Human Rights Act that deal with publishing a

> symbol, emblem, or representation that
>
> (a) expresses or implies discrimination...or
>
> (b) incites or is calculated to incite others to discriminate

What is going to be considered discriminatory in this kind of situation, where it's said to be “a discriminatory practice for a person or group of persons...to communicate telephonically....by means of... the Internet”? I think our concern is that at some point it may be considered to be a discriminatory practice to say that in our religious communities marriage is understood to be between a man and woman. Is that now discriminatory, and is it going to be a discriminatory practice?

We would like to see this enshrined in the legislation as non-discriminatory within the meaning of the Canadian Human Rights Act, so we can maintain our religious websites and our communication within our community on our religious practices of marriage.

● (2015)

Ms. Anita Neville: Thank you.

Rev. Dominic Tse: I would like to respond on the change in the community over the past two years since the legalization of same-sex marriage. I speak for the traditional ethnic Chinese communities.

It has caused quite a lot of conflict in the Toronto area. Several months ago, there was concern on the part of religious groups who wanted to pull their children out of normal schooling, because they found that their kids were being read certain books promoting a homosexual lifestyle for children of a very young age. Those religious groups were very concerned and talked to their human rights expert, but they were denied the right to pull their kids out of the school. This has created a lot of conflict. You can see this as a classical situation between the values preached in schools in contrast to the values in homes. This has escalated tremendously in Ontario homes.

My son came to me one day last year and said that their class had taken a vote on same-sex marriage. I asked him how he had voted, but he said he hadn't voted. Why not? Because he was scared for his life; he didn't want to vote against it because everybody waved their hands, which he saw as intimidation, but not of anybody in particular. So there are these kinds of conflicts. I had to comfort my son for a long time and say, I'm sorry. I said, are you okay? I mean, this is a ten-year-old boy. So I see this kind of conflict or clashing of values escalating in families and homes.

As I said in my oral presentation, many parents from ethnic communities are very concerned. The private schools are booming, because the parents are looking for options to relieve their concern, and even voting with their feet by moving out of the country. That's happening in an anecdotal way.

Ms. Valerie Hazlett Parker: I think the other thing that I have seen in my community is that the church leaders—meaning the lay leaders, the clergy—across the denominations I am familiar with, which area predominantly Protestant denominations, are scared. They're scared that they're going to be forced to perform marriages that are against their fundamental beliefs; that there is no protection in the law; that if they're taken to the Human Rights Commission they will not be protected; that their freedom of religion, their freedom to live out their religious beliefs, will not stand up in a tribunal or in a court. There is a great deal of fear and controversy there.

Ms. Anita Neville: Are there incidents upon which they can base their fear?

Ms. Ruth Ross: There are cases. We have cases that I've mentioned in the brief.

The Chair: I'm sorry, again. Thank you.

[*Translation*]

It is Mr. Marceau's turn, from the Bloc Québécois.

Mr. Richard Marceau: Ms. Parker and Ms. Ross, don't be disappointed, we are coming back to look at the same point.

As group members and leaders, you have a fundamental responsibility to explain things as they are and to dispel fears that aren't valid.

I asked Archbishop Gervais the following question quite clearly before. Has any minister of any religion ever been forced by the courts or by the Human Rights Tribunal to marry someone contrary to his or her religious dogma? He replied clearly, and rightly so—I've done the research—that the answer was no. You know it; all of the courts have said it.

If you have that fear, Ms. Parker, you who are part of the leadership—and Ms. Ross, who is a lawyer, knows it too—you have a responsibility to tell people that this fear is unfounded. In my opinion, if you don't do that, you are contributing to a collective hysteria and you are responsible for that. That could, in my view, tear the social fabric and result in certain groups that already feel attacked, wrongly, in my view—I'm talking about Christian fundamentalists, among others... You are partly responsible, I'm sorry to say.

That applies to you too, Ms. Aubé, because I heard you say to Mr. Julian that you were afraid that priests of the Catholic Church who refuse to marry same-sex couples might one day lose their provincial marriage licence.

Your superior replied, rightly, once again, that this had not happened in the past. The Church has never been forced to marry a divorced person whose marriage was not annulled. So I'm asking you to take some responsibility.

That said, I'm going to ask Ms. Ross a question. You said, and I quote:

● (2020)

[*English*]

people go into marriage expecting something, and it is now something else.

[*Translation*]

Do you know whether any people in heterosexual couples have indicated that they would get divorced, now that homosexuals have the right to get married in Quebec, Ontario, British Columbia or one of the eight jurisdictions that allow same-sex marriage?

[*English*]

Ms. Ruth Ross: I am aware of couples in New Brunswick who are challenging the marriage case there, who are heterosexuals and do perceive their marriages have changed. But I would like to back up and ask you to comment, because you put on the record some incorrect information about religious officials not being forced to marry.

As I explained earlier, we do have marriage commissioners in Manitoba and Saskatchewan. And we have letters. I personally have letters from these provinces saying they are compelled to marry. They are being compelled to marry.

[*Translation*]

Mr. Richard Marceau: That's not the same thing.

Ms. Ross, wait a minute. I just want an answer to the question, because it's quite clear: a marriage commissioner...

The Chair: Mr. Marceau.

Mr. Richard Marceau: I want control over my five minutes. A marriage commissioner, Ms. Ross...

[*English*]

Mr. Vic Toews: I have a point of order, Mr. Chair.

Ms. Ruth Ross: Do I not have the right to answer the question?

The Chair: Excuse me.

On a point of order, Mr. Toews.

Mr. Vic Toews: You know, there are times when I ask questions and I interrupt, and the other side is very quick to stop me from doing that. Now, there were certain questions put to this witness. She says that certain incorrect—

Mr. Réal Ménard: This is not a point of order.

Mr. Vic Toews: Yes, it is.

Mr. Réal Ménard: You have to respect the time for the opposition. It's not a point of order.

[*Translation*]

The Chair: Just a minute, please.

[*English*]

Mr. Vic Toews: The witness has indicated, Mr. Chair, that there was incorrect information put on the record. She has the right as a witness—

Mr. Réal Ménard: This is a debate. It is not a point of order.

Mr. Chair, this is not a point of order.

[*Translation*]

The Chair: Mr. Ménard, please.

[*English*]

Mr. Vic Toews: It is a point of order because this witness—

The Chair: Mr. Toews, bear with me. Mr. Marceau has five minutes. He is entitled to control the five minutes allowed to him. Unless there's absolutely major misrepresentation from one witnesses to a member, or from a member to witness, he is allowed to control his time.

Mr. Vic Toews: On the same point of order, we haven't heard yet whether it is a major misrepresentation. It could well be.

The Chair: We're going to ask Mr. Marceau to continue with his time, and we will ask Mr. Marceau to give the witness an opportunity to answer.

[*Translation*]

Mr. Marceau, did you want to say something about the point of order?

Mr. Richard Marceau: What I am going to say about the point of order should not be considered part of my intervention.

The Chair: Fine.

Mr. Richard Marceau: First, I thank Mr. Toews for what he said. I'm going to frame that and put it in my office. He often acts this way at meetings of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. So I will be able to quote his own words to him.

Second, I was actually going to allow Ms. Ross to answer, but by clarifying something she had just said.

Third, I would appreciate not being interrupted by Mr. Toews and my Conservative colleagues, whom I respect, by the way. I did not interrupt the eloquent speech he made before. I would appreciate the same courtesy from him.

Ms. Ross, I come back to you. When I spoke about religious officers, you replied by referring to marriage commissioners. But a marriage commissioner is not an officer of a church, temple or synagogue. He or she may have religious convictions, but works for a secular, non-religious state in a country where there is separation between church and state. I will ask you my question.

Are the marriage commissioners to whom you referred, yes or no, officers of a recognized religion in Canada?

[*English*]

Ms. Ruth Ross: The same statutory power is given to both. The legal consequence is the same.

[*Translation*]

Mr. Richard Marceau: No, that is not the question I asked you.

[*English*]

Ms. Ruth Ross: There is no distinction made by her Majesty the Queen in granting that authority. In the province of Manitoba, it has become an issue. The Minister of Justice is saying they must marry in that very province. I'll read the Marriage Act to you. It does not use terms like “religious ceremony” and “civil ceremony”. Instead the act, in subsection 3(1), makes reference to a person qualified by the ecclesiastical authority of religious denomination. It also makes reference to the appointment of “marriage commissioners” to solemnize ceremonies of marriage. They have the same power under that statute.

● (2025)

[*Translation*]

Mr. Richard Marceau: Ms. Ross, you are not answering my question. That is not what I asked. I did not ask whether they had the same powers. Are these marriage commissioners delegates of a specific religion, or are they simply government employees? What is the right answer? I don't want to know whether they have the same power, I already know that. Are they delegated by a religion?

[*English*]

The Chair: Monsieur Marceau, merci.

Thank you, Mrs. Ross.

Unfortunately the five minutes is over. This brings to a conclusion this evening's very pleasant two hours.

[*Translation*]

Mr. Ménard, do you have a point of order?

Mr. Réal Ménard: I would like to ask Ms. Aubé, who is so gentle and engaging, if she would be willing to provide our clerk with the list of her studies so that we can have the benefit of that information. I would be grateful to her for that.

The Chair: Mr. Ménard, that is not a point of order.

I would like to thank the witnesses for taking the time to come and meet with us, and I would also thank committee members.

[*English*]

Thank you ever so much. Have a good evening.

The meeting is adjourned.

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