



House of Commons
CANADA

Legislative Committee on Bill C-38

CC38 • NUMBER 010 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, June 2, 2005

—
Chair

Mr. Marcel Proulx

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Legislative Committee on Bill C-38

Thursday, June 2, 2005

• (1530)

[Translation]

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

[English]

Good afternoon. Welcome to the legislative committee on Bill C-38.

Members, before going any further, we have a bit of business to carry out while we have quorum. You will agree that it's very important business: to get our budget approved. You should have it in front of you.

It's coming. It's just off the press.

[Translation]

It is our opportunity to confirm the budget before its tabling. Do I have unanimous consent?

[English]

To start with, you will recall that when the committee was mandated by the House, there was an automatic \$50,000 assigned to us. This budget changes the \$50,000 to this new amount.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Is this additional?

The Chair: It's not additional; it includes the original \$50,000 with this new amount.

Do I have a motion?

Hon. Paul Harold Macklin: So moved.

The Chair: We don't need seconds, but Monsieur Ménard would like to anyway, and Mr. Siksay also.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you.

Welcome to the witnesses. We appreciate you coming today on such short notice. It was decided earlier this week how we would do this, so we haven't had the opportunity to invite you weeks or months ahead of time, but we appreciate you making yourselves available today.

We have a special situation today. One of our witnesses must absolutely leave early, so I would suggest, and I would appreciate having unanimous consent for this, that we let the witness, Mrs. Somerville, from the McGill Centre for Medicine, Ethics and Law, give her 10-minute statement, and then arbitrarily I would give each

party five minutes, which would be shareable among your own party representatives, to address Mrs. Somerville, ask her questions or make comments. We would then come back to our regular mode of operation, which is 10 minutes for the three remaining witnesses and then the regular rounds of questioning.

Do I have unanimous consent?

Some hon. members: Agreed.

[Translation]

The Chair: Thank you.

Welcome, Ms. Somerville.

[English]

This is exceptional, but we'll give you 10 minutes, and then you'll have questions for up to 20 minutes. Then as soon as 4:15 p.m., or something like that, if you need to leave you will be able to do so.

As you well know—we've informed you—you have 10 minutes. If you brought a bilingual brief or a document, it has been distributed. If it was not in two official languages, the committee will get it translated, and then it will be distributed to all members.

So you have 10 minutes, and then we'll have questions and comments.

Ms. Margaret Somerville (Samuel Gale Professor of Law, McGill Centre for Medicine, Ethics and Law): Thank you, Mr. Chair. Thank you to the committee members for the courtesy you extend to me.

I must admit, after reading this morning's paper, I wondered whether it was worth coming to speak to you, but I decided it was, if only to put a few things on the record that I think perhaps are not on the record so far.

I see this whole same-sex marriage debate as an awful conflict of rights. I'm extremely sympathetic to the gay community and its desire to have a public recognition of the stigmatization, discrimination, and wrongful conduct that's occurred in relation to them, and to have public recognition of their love and commitment in relationships. Personally, I have no problem with that.

My problem is that I also see another very large constituency who I think do not have a voice directly in this debate because they're children. The work I've been doing over the last two years has related to what effect legalizing same-sex marriage would have on children. That's not only my primary concern, it's my only concern in this matter.

I've written previously that I believe children have a basic right to a mother and a father—preferably their own biological parents. They have a right to know who those people are, if at all possible, and—unless you can justify something different in the best interests of that particular child—to be reared within that biological family. I've written a long article on that. I'm not going to go into it today.

My most recent work, which I've only presented, hasn't been published yet. What it has to do with is the combination of same-sex marriage and new reproductive technologies, which is an area in which I've done a lot of work ever since their advent on the scene in 1980.

I happen to be Australian. The Aussies were the first people who started to develop these, as you probably know. I was invited back to Australia right at the beginning of the reproductive technologies. As Alan Trounson, one of the founders said to me, scratching his head, "Gee, Margo, we didn't think we had a problem till we brought you home."

I would like to raise some problems for you today, if I could. That is, the change in marriage changes parenthood. Actually, Bill C-38 expressly recognizes this, because what Bill C-38 does is disconnect parenthood from the biological connection—the natural parent, the natural child—and substitute legal parenthood for natural parenthood.

That change makes an enormous difference in a whole lot of areas. First of all, it makes a big difference in societal norms, symbols, and values. It also makes a difference to children's rights—for instance, to know who their biological parents are and to be raised by them. Even more importantly, in my view, I think there are technologies coming down the line that raise extraordinarily sensitive and difficult questions in relation to their use in a same-sex marriage context.

What I'd like to do is take some lessons from the new reproductive technologies. Just in about the last, I'd say, nine months, there's been an increasing movement around the world of what are called "donor-conceived adults", people who were conceived through reproductive technologies. They're all now around about 20 to 25 years of age, and they have websites where they're all contacting each other. One of them is called "Tangled Webs". What these children are almost unanimously alleging is that their needs, their well-being, and their psychological development, even, have been ignored.

I think if you look at the literature, that's largely true. We concentrated a lot in the new reproductive technologies on whether they would physically harm the children. What we didn't do was to look at this in terms of how they might feel. As one young woman put it, a woman called Narelle Grech, "I look in the mirror and I feel that half of me is missing. I don't have half of my biological connection." She's a donor-conceived adult from a donated sperm.

I think that's one of the things we have to think about, because one likelihood in same-sex marriage is that same-sex couples will use new reproductive technologies.

• (1535)

You can go to a website called www.mannotincluded.com. It has recently been set up in the U.K. to avoid the U.K.'s new prohibition on disclosing the identity of gamete donors, that is, sperm or ovum donors. This website guarantees that the child would not be able to

find out who the parents are. The website has on it that 40% of its customers are lesbian women. That's a big issue in the context of children having the right to know their genetic identity.

In Canada, there is a very inconsistent approach to children's rights to know their genetic identity. Those of you who read *The Globe and Mail* or come from Ontario probably know there's a huge fuss going on about changing the adoption act. That's been an issue across the country—whether adopted children have that right. The same issues apply to donor-conceived children. The problem is that the Assisted Human Reproduction Act actually makes it a criminal offence to disclose that identity without the consent of the donor. This means the child has no automatic right to find out who their parent is.

There's something even bigger coming down the line. It is on the horizon. This is the possibility of making children not from a sperm and an ovum. You're all aware of cloning, which is asexual replication, not sexual reproduction. Other possibilities are that in the future you will be able to make a baby from two ova or two sperm. The other possibility, which has just been reported, is that you could make sperm and ova from adult stem cells. This opens up the possibility of the same-sex couple having their own shared child—half the genetics from one woman or man, half from another. Or you could have multiple parents.

There's already been one baby born in the United States who has three genetic parents. I was at a biosecurity conference recently where they were talking about what's called synthetic biology, where you start from the genes up and build the living organism. We couldn't do this with children at the moment, but there are a lot of things we felt we couldn't do with these technologies that we're now doing.

This is important because the right to marry is a compound right. It's not a single right. It's the right to marry and form a family. So if it is wrongful discrimination to prevent same-sex couples from marrying, I would argue to you that it's wrongful discrimination to prevent them from having a child in the only way possible for them. This opens up the issue of whether prohibiting these reproductive technologies—for instance, in the Assisted Human Reproduction Act—is also wrongful discrimination. I've been told—I haven't got confirmation of this—that there is thought in the same-sex marriage advocacy groups of challenging the Assisted Human Reproduction Act to see whether it would be wrongful discrimination.

I would suggest that we have to think about new rights for children. First of all, there's the right to be born from the union of one natural sperm from one identified man and one natural ovum from one identified woman. Second, there's the right to know the identity of their biological parents. Third, there's the right to be reared by their biological parents, that is, to have both a mother and a father, unless there are good reasons to the contrary in the best interests of the child.

The problem with same-sex marriage is that it potentially breaches all of those rights of the child. So what we have here is a conflict of rights between—

• (1540)

The Chair: One minute.

Ms. Margaret Somerville: —doing the right thing by same-sex couples.... And I really think we should do that. What I think is wrong is doing it through a change in marriage.

The reason I would give priority to the rights of the child over the rights of the same-sex couple is a collection of ethical principles. First of all, informed consent. The child is the only one who doesn't give any consent. A principle is to favour the most vulnerable person. I think in this circumstance the children are the most vulnerable.

Experimentation on children. This is an unprecedented social experimentation of thousands of years of uniform practice across all kinds of societies.

Chance differs ethically from choice.

There are obligations on society not to create genetic orphans, which is what we would be doing. I think we have to recognize a right to natural genetic origins and genetic identity. We have to recognize the full scope of the harms we do and the ethical problems, and first we have to be activated by a principle that's called non-maleficence—first do no harm.

In conclusion, children and their descendants who don't know their genetic origin cannot sense themselves as embedded in a web of people past, present, and in the future through whom they can trace the thread of life's passage down the generations to them. As far as we know, humans are the only animals where experiencing a genetic relationship is integral to their sense of themselves. We do know the effect of eliminating this experience—which we do know through reproductive technologies and adoption—is harmful to children, to biological parents, to families, and to society.

Same-sex marriage puts in jeopardy the rights of children to know and experience their genetic heritage in their lives and withdraws society's recognition of its importance to them, their wider family, and society itself.

Finally, same-sex marriage also opens up the wider, unprecedented question of what is ethically required in terms of respect for the mode of transmission of human life.

Thank you, Mr. Chair.

The Chair: Thank you.

So now with our special arrangements we'll go to five-minute questions or comments for each party, and we'll start with the Conservative Party.

Mr. Vic Toews (Provencher, CPC): Thank you, Doctor. I appreciate your comments, and it's certainly something we have not yet heard from that perspective. In fact, all of the evidence we seem to hear, especially from those who support the concept of same-sex marriage, is that there has been no demonstrable harm to children in this respect. I think your evidence is very telling that sometimes we simply look at these issues from our point of view as adults, as our personal right to choose, without considering the consequences of those choices upon other generations.

I want to thank you for pointing that out, Doctor, because that's a part of the debate that has been sadly missing in this entire push—and I say “push”—to get this bill enacted as quickly as possible, as

though a summer is going to make any difference in the course of a millennium or more that you have suggested. Yet it seems the government is intent on doing that.

I know there have in fact been a number of studies done throughout the world on the issue of the effect on children, both simply as adoptive children in a heterosexual marriage situation and also in a homosexual marriage situation.

Are you aware of any of those studies out of perhaps the Netherlands, Belgium, or the United States?

• (1545)

Ms. Margaret Somerville: I've read a lot of the literature; I'm not an expert on the effect on children. Because I've been doing this recent research, people have heard I've been doing it and have written to me.

Here's a letter. I have permission to use her name. It's actually from a woman lawyer in Vancouver who heard me speak a couple of weeks ago, and she wrote to me and said she was adopted herself. Here's how she starts:

I am glad that you could sense the grief in my writing [to you]. Adoptees are generally not permitted to express these emotions [about their loss of knowledge of and contact with their biological parents] as they are seen as ungrateful, and it is one way that we have been silenced (not doing today's donor-conceived adults any favours).

Then a young woman from Australia wrote to say:

To say and imply that everyone will be a-okay with this situation

—she's talking about donated gametes—

is naive. What about the person being born as a result who has no say in this intentional separation from their biological mother and their maternal family??

Then she goes on with a whole lot of other things, and she says here:

Little bits of non-identifying information will not substitute for the real person: that person's family!! You are not only encouraging people to intentionally separate people from their families, you are going to be the cause of people who have to question their identity, and no one on this earth should ever have to do that. How dare someone take away someone else's freedom to know themselves! It is one of the most de-humanising experiences I have had to face in my life. To look in the mirror on a day to day basis and question so much is one of the worst feelings.

Mr. Vic Toews: Thank you, Doctor.

In the last Parliament, during the debate on Bill C-250 and hate literature, we heard an NDP member of the committee say that males were simply irrelevant, that all we really needed was a turkey baster to do the job. Those were his words.

What do you think about that NDP member's comments? I would think that you'd be a little concerned about that type of dismissal of the male role in the reproductive situation.

Ms. Margaret Somerville: I am—but I would add something more to that.

We've got some extraordinary new genetic research showing that we're born with genes to be able to exhibit certain behaviour. This research was done on nurturing behaviour in rats, as it happened, but there's no reason to think we're not occasionally the same as a rat.

What we now know about this is that you've got to have a certain kind of contact for that gene to be imprinted, meaning to be activated. If it's not imprinted within a very short set time period, it shuts down for life. My guess is that we will find there are genes in humans, some of which will be activated by maternal behaviour and some of which will be activated by paternal behaviour towards the baby. There's a complementarity in the parenting between the two sexes. There are studies and literature on that.

That's one of the things that concerns me.

Mr. Vic Toews: Thank you.

The Chair: Thank you. Your five minutes are over.

We'll go to the Bloc Quebecois.

[*Translation*]

Mr. Réal Ménard.

Mr. Réal Ménard (Hochelaga, BQ): Good afternoon, Ms. Somerville. It is a pleasure to meet with you again. I find that we do not have sufficient opportunity to see each other. I should go to McGill University one of these days in order for us to have lunch together.

I sat on the committee that was mandated to study the Human Reproductive and Genetic Technologies Act. There were three bills. The first goes back to Allan Rock's time. Then there was one while Ms. McLellan was minister of Justice. The committee had at the time chosen to not allow the disclosure of the identity of donors. Opinion was divided: some witnesses wanted it to be allowed and others were of the contrary view. In the end, we leaned towards the argument that those persons donating eggs or sperm do not do so in order to raise a family: it is a philanthropic gesture, a gesture of social solidarity. Indeed, as you are most likely aware, one out of five Canadian couples encounters infertility problems.

Furthermore, in the legal sphere, we feared for example, that in allowing for the disclosure of parentage, a young 18 or 19-year old might go before the courts to claim a maintenance allowance. This is the dilemma the government faced at the time of the study of that bill.

To my mind, your arguments do not fit with the debate we are now having. Today, the question is whether or not two persons of the same sex should be united and able to organize their lives around marriage as a loving relationship. I would ask that you table any studies that might exist questioning the parenting skills of these persons.

The right to know one's parentage is an issue we discussed at the time of the passage of Bill C-13, previously known as Bill C-56. The issue was reproductive technologies. It is possible that the legislator erred in not allowing for the disclosure of the identity of donors, but that was the decision made at the time. Furthermore, in my opinion, this has nothing whatsoever to do with Bill C-38.

With regard to parenting skills, you are perhaps aware that Ms. Danielle Julien, from l'UQUAM, a colleague you most probably hold in very high esteem, studied groups of children raised by homosexual couples in the United States and in Canada. There is no indication that a child raised by a homosexual family will be a homosexual. You seem to be saying that children are not at the heart

of the concerns relating to the bill at hand, and I am having difficulty understanding your point of view. I, just like you, would be very worried if a child were to grow up in a world where there would be only men or only women, notwithstanding the issue of homosexuality. In my view, both types of models are necessary. I fail to see the link you are making between this bill and the possibility that children would be neglected.

I now give you the floor.

• (1550)

[*English*]

Ms. Margaret Somerville: Again, I don't claim to be the expert on saying what is the best situation for children. That's not right, no. I don't claim to have all of the research at my fingertips in that respect.

What I do know is that for at least some, and probably the majority, of the studies that have been done looking at children and whether they're equally well off in a same-sex family as they are not in a same-sex family, the comparison group has been children living with single mothers. I don't think that's a fair comparison. I think what you have to do is have children who have an intact family, with a mother and father, even though that can't always be achieved. What we're talking about here, and with this law, is what is our basic presumption. We're always going to have exceptions to it, whether it's for same-sex couples, single couples, children whose parents die, or whatever it is.

What this bill does is it radically alters the basic presumption. The basic presumption, at present, under marriage as an opposite-sex couple is that children have the right to a mother and a father. Not only that, but that right is set up as a natural result of the biological connection. The very reason why we have to have a law that legitimates adoption is because when the biological bond is not present, you have to use the law to establish it. That's exactly why it's the major change in the basis of the nature of parenthood.

At present, I think you can argue that parenthood comes from the biological link. The marriage laws then recognize that biological link; they don't establish it. Under Bill C-38, the biological link is eliminated. That's the purpose of the amendments. Then the law has to recognize the link. That's why you go from natural parent to legal parent. That means what the law can give, the law can take away or change. It's not nearly as strong a legal recognition as the other.

[*Translation*]

Mr. Réal Ménard: Do I still have some time left, Mr. Chairman? No? In that case let us say that there is disappointment on both sides.

I will go to McGill so that we might have lunch; it would be a pleasure.

The Chair: If Ms. Somerville stays longer, you might have the opportunity to ask further questions.

Mr. Réal Ménard: That would be great.

[*English*]

The Chair: We'll go to the New Democratic Party.

Mr. Siksay, for five minutes, sir.

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

Thank you, Dr. Somerville, for coming this afternoon on short notice.

I am concerned about your answer to both Mr. Toews and to Mr. Ménard, about your lack of familiarity with the research around donor-conceived adults and their experience of that. When we ask for those studies, you quote websites and anecdotal letters that you've received from people. I wonder if you can comment further on that.

It seems to me that it's a pretty crucial aspect of the theory you're putting forward today. But you say you aren't familiar with studies that would actually have investigated that experience and be more clear than what might appear on a website on the Internet some place or in anecdotal letters you've received from people who've heard you make comments some place.

Ms. Margaret Somerville: I didn't say I wasn't familiar; I said I wasn't an expert, which is different. I was not claiming expertise. I'm familiar with the literature. I read the literature.

As to the websites and the donor-conceived adult studies, they're extremely recent. As far as I know, they've only started coming out in about the last 9 to 12 months. I have a thick file of them on my desk now because this has been my latest research project, and it's not even finished yet. There are some small surveys. For instance, in one survey of donor-conceived adults—and this is very remarkable for a survey—every single person responding said yes, they believe they had the right to know their biological origin. So there are some small studies.

There's a big literature on artificial insemination. Ovum donation is much rarer and it's much more recent, so there's not a big literature on that. I want to correct that.

The other thing is, I think that here there is a problem with your basic presumption and burden of proof. You are requiring me to show this won't harm children, that this wouldn't be any problem. I think the people who want to change the law to say that children don't need a mother and a father should show that's not harmful to children, and everything we know so far would be that it is. Everything we know about children is they want to know who their mother and father is, and not just them but that larger biological web in which they're embedded. You only just have to look at adults who want to go back and look at where their great-great-great-grandmother walked the earth generations ago. It's the same sort of thing.

•(1555)

Mr. Bill Siksay: I have some difficulty with that. It seems to me that children want to know that they're growing up in a family, in a circle of people who care for them, and stand for them, and will do anything for them. I think that's what's important, in terms of building families.

One of the things you said was—

Ms. Margaret Somerville: Can I just say—

Mr. Bill Siksay: You'll have your moment in a second.

I wanted to come back to something else you said, that you're afraid this changes the notion of parenthood from something that was biological to legal parenthood, and you mentioned values. I'm wondering, what are the changes in values around parenthood that you've perceived? Is there any difference in the values a gay and lesbian couple would bring to parenthood and what a heterosexual couple would bring to parenthood? Have you seen anything to indicate that there are different values at work there?

Ms. Margaret Somerville: Just to answer your last question first, I think the values of the institution are changed, because the values at present with opposite-sex marriage say the kids have a right to a mother and a father, and that's the basic value, whereas this states the child hasn't any rights. So it's a negation of that value that the child has that right.

You're looking at it from the adult's point of view, and I think from the adult's point of view it probably doesn't differ. I'm focusing on the child's point of view, and I think from the child's point of view it matters enormously.

Mr. Bill Siksay: So you're saying that gay and lesbian people don't bring the same values to parenthood that heterosexual people would bring to it?

Ms. Margaret Somerville: No, what I'm saying is that a child in a same-sex relationship doesn't have the same access to their biological parents, unless we get into this new reproductive technology stuff, which I think we shouldn't, because I think that's wrong for another reason. That child does not have the same experience or the same access to both a mother and a father and to their own biological parents.

As to whether children want to know, just from even a very practical point of view, with our new pharmaco-genomics and our new genetic medicine, people absolutely want to know what their genetic origins are. As one person pointed out, the fact that you have a brother or a sister who has a child with something wrong with them can give you information about having your own children. So of course they want to know, more than ever.

The Chair: Thank you.

From the Liberal Party, Mr. Macklin, the parliamentary secretary.

Hon. Paul Harold Macklin: Thank you very much, Chair, and thank you, Doctor, for being with us today.

I guess I'll go back to the beginning of your commentary, when you, I think, said that basically you don't have a problem with the recognition of the relationships of gays and lesbians, and that there are many types of relationships that bear children today that don't necessarily fall into the "marriage" category. Bearing that in mind, I guess I'm concerned that we as parliamentarians are trying to recognize a certain community that exists within our society to give them a degree of legal recognition to allow them to receive certain benefits within our society.

I'm wondering, are you suggesting then that we are going to encourage these relationships to be created? I thought primarily we were actually trying to recognize existing relationships, and as such, we were giving benefits, but if children happened to be in those family units, we were not taking away any rights. Or are you making an advocacy on behalf of the children, saying that really, regardless of the relationships, we need to go back and advocate on behalf of children who don't have, shall we say, loving parental situations where they will ultimately be exposed to both maternal and paternal behaviour in their earliest stages of life?

•(1600)

Ms. Margaret Somerville: You've raised a large number of points.

First of all, I absolutely think we must do things to recognize how wrong discrimination and stigmatization against gay people has been, and we have to recognize their relationships and give them legal protections in all respects. What I'm arguing here is that when I step into the child role and ask what it is I want as the norm in this society for children, I want the norm to remain what it is, that a child has a right to a mother and a father, preferably their own biological parents. I recognize that not all kids are going to get that, and then we're going to do the very best we can to try to look after, accommodate, and help children who aren't in that position. I don't think we should throw the whole thing out about having the right to have a mother and a father.

It's just the same thing as having criminal laws, for instance. We don't think they'll never be broken, but it's very important to have them.

Hon. Paul Harold Macklin: I'm sorry to interrupt, but surely with this piece of legislation we're not throwing away anything. Aren't we extending rights?

Ms. Margaret Somerville: No, you're absolutely throwing away a child's right to a mother and a father. Under article 16 of the Universal Declaration of Human Rights, and indeed under the Convention on the Rights of the Child, marriage... Canada will actually be in breach of two international treaties to which it's a signatory with this legislation, because under that legislation the right is to the right to marry and found a family, so if a same-sex couple is married, they have a right to found a family. That means the kid has no right to a mother and a father, by definition.

Hon. Paul Harold Macklin: But aren't you at that point advocating that the biological components of that child—in other words, the mother and father—are really what ought to be made known to the child? Isn't that what you're really saying?

Ms. Margaret Somerville: No, that's the first step in it.

The first step is that it should be natural sperm and ovum. The second step is that the child should know whose ovum it was and whose sperm it was. Then the third step is that it's not just getting made by a mother and a father, it's getting reared by a mother and a father, because that's the best thing for a child, I think. If people think it isn't or it doesn't matter whether you have both a mother and a father, then I think the burden of proof should be on them to show it doesn't matter, not on me to show that's what a child needs.

Hon. Paul Harold Macklin: I'd like to go back to the concept of imprinting. From some of the evidence we've heard over the last

couple of years, if the imprinting... We didn't hear it in that terminology but rather that they should have exposure to paternal and maternal influences. In many cases it was suggested to us by families that had gone through this process that in fact the children got it from grandparents—grandmothers, grandfathers—and they had a fairly good exposure. Surely that would make up, to a great extent, for whatever type of imprinting one would have to have in that biological process.

Ms. Margaret Somerville: It could well do so, but the fact is that you're still abandoning the idea that this is the norm. The norm is that you have those two parents there and constantly interact with them on a daily basis. If you're aware of it, you can substitute for this.

Hon. Paul Harold Macklin: Thank you.

The Chair: We will now go back to our original mode of operation. We will be hearing from REAL Women of Canada, then the Islamic Council of Imams-Canada, and then the Canadian Bar Association.

Ms. Landolt and Mrs. Watts, welcome.

Ms. Gwendolyn Landolt (National Vice-President, REAL Women of Canada): Thank you very much.

I was going to say it is a pleasure to be here today, but I would like to reiterate what Dr. Somerville has said. Reading the newspapers this morning, we were very disturbed to discover that everything is cut and dried, and that our time on this committee is a performance. Obviously, the government has decided to proceed with the legislation, and we are very troubled that we are being part of an organization or a system that is ostensibly consulting the public, but that really doesn't care what we have to say. I would like to make that point very clear. It's offensive to individuals such as me and our organization, who are part of the public, who do want to share in the process, put our views forward, and be taken seriously. It appears this government isn't interested in what we have to say, and that we're part of a sham that's going on.

However, I am here as a matter of record to put our views forward, even though, obviously, some of the Liberals are not going to pay attention to what we have to say or take us seriously and will proceed regardless of what we say, according to the newspapers this morning.

First of all, I'd like to point out that we're an organization of women who care about women and who deeply care about children. We've been around since 1983, and we have always looked at any piece of legislation with a view to how it will affect families and women and their children. This is our grave concern about Bill C-38.

First of all, the question we have to ask is this: English, American, and European law, with the recent exceptions of the Netherlands and Belgium, have all confined marriage to a union of a man and a woman. We find the European Court of Human Rights, the European Commission on Human Rights, and many UN treaties have all said marriage is between a man and a woman. Then a reasonable, thoughtful person would ask the question, why then has marriage, defined as a union of a man and a woman, remained such a constant throughout cultures, religions, and times, and through all the UN treaties? The answer is that the traditional definition of marriage serves a purpose. It is the adhesive that holds society together.

Changing the definition of marriage destroys that adhesion and leads to undermining and the ultimate destruction of our society. Why and how does Bill C-38 do that? First of all, surprisingly enough, same-sex marriage results in a decrease in marriages. One would think that by granting marital status to same-sex couples there would be a numerical gain for the institution of marriage, but in reality, few same-sex couples apply for marriage, and those who do divorce at a higher rate than heterosexual couples. Meanwhile, the overall trend among heterosexual couples is away from marriage because they begin to look at it, and it's open to anything. It means anything to anybody, and it simply becomes meaningless to people after time. This will contribute to that sense of moving away from traditional marriage.

Why is traditional marriage so valuable? First of all, it's beyond dispute now that children thrive best in an opposite-sex family environment. How do we know that? Statistics Canada has told us. They did a national longitudinal study of 23,000 children, and the results were released partly in 1996 and partly in 1998. They found that children thrive best with a mother and a father. Children, we must remember, are neither status symbols for couples nor are they to be used to further political agendas. They are human beings who are owed responsible, loving care and dignity in their own right. Therefore, their best interests must be given priority.

We have a grave concern because comprehensive, controlled studies indicate that children are at greater risk of harm if raised in same-sex relationships. The reason harm is caused to such children is that same-sex unions are not equivalent to opposite-sex unions, and it is these differences that cause the harm.

• (1605)

In our brief, which we sent about a week or two ahead, so hopefully it has been translated, we carefully listed many studies. They're all on pages 23 and 24 of our brief, which lays out the many studies that indicate how children are affected by same-sex parenting.

For example, there's a shorter duration of same-sex relationships than there is for traditional married couples. There's a higher rate of infidelity in same-sex relationships. Now all of those are based on studies. There's a lack of commitment, as evidenced by very few legalizing their unions through marriage. There are increased mental health problems, and that in fact comes even from the homosexuals' own studies. There's an increased risk of suicide and increased substance abuse problems. Homosexuals experience a significantly reduced life expectancy. Same-sex partnerships have a higher level of violence. Same-sex parenting influences children's sexual orientation. Sexual interference with children by same-sex parents is a problem.

Those are all listed. The studies are there, and if anyone wants to and really cares about children they should take a look at those references. This is extremely crucial to the issue we're dealing with.

We acknowledge that there are studies that purport to establish that same-sex parenting is equivalent to heterosexual parenting, but experts in psychometrics and empirical research in psychology have extensively reviewed such literature and they've determined that such studies fail scientific standards and that the conclusion that there are no adverse consequences for children is simply unjustified.

In fact, I think you'd be interested to know that the Attorney General of Canada submitted evidence in the Ontario Court of Appeal in 2003 in which he said there are concerns about children. He also said that studies supporting homosexual parenting were based on unreliable research and flawed methodology and as a result provided a very tenuous basis on which to set public policy. Again, that was the Attorney General who submitted evidence to that effect.

We do have concerns about children, as a women's organization. The children are our primary concern, but we are concerned about the institution of marriage, because children need a mother and a father. Again, you'll find that we have all sorts of studies listed indicating that the primary responsibility of any society is to protect children. We are concerned that this is not being done by this proposed legislation because same-sex marriage also leads to other relationships demanding marital status.

The characteristic that defines same-sex partners as a group and as couples is not belief or biology; it is behaviour, and if you use behaviour as the criterion to enter into marriage, then marriage, which was supposed to protect the core identity boundary structure and order of society, is open. If that is the guiding rule in setting a marriage, there can be no principle—

• (1610)

The Chair: Excuse me, on a point of order, Mr. Toews.

Mr. Vic Toews: I'm getting a lot of feedback. I don't know if it's a hearing aid turned up really loudly and it's interfering, but it's detracting from your presentation.

Mr. Réal Ménard: I think God is mad.

Mr. Vic Toews: I don't want to get into a discussion about anyone's God, but I do find it troubling to try to concentrate on what Ms. Landolt is saying while we have the feedback.

Ms. Gwendolyn Landolt: The point I was making is that if the guiding rule to marriage is behaviour, then there can be no valid reason why it can't be open to other relationships—brother-sister, father-mother, and polygamy.

In that regard, I'd like to raise a point. Justice Minister Cotler appeared before this committee on May 12. In fact, his statement was extremely disingenuous and is very troubling to us as an organization. Here are the words of the Attorney General, Mr. Cotler. He said that polygamy and incest will not result from the passage of Bill C-38 because "polygamy, bigamy, and incest are criminal offences in Canada. That is the law of the land. That will not change." Perhaps Mr. Cotler believes that Canadians are very simple-minded and easily confused, but it would be extraordinary if the government could make the revolutionary change in the definition of marriage by opening it up to two persons but would be incapable of making further amendments to the legislation at a later date.

Despite Mr. Cotler's assertions—he also said that there is a difference between criminal law and civil law in respect to amendments, and that's simply preposterous. As a lawyer, I'm very troubled that he would make such a statement before this committee. Does he not recall that we've had amendments to the Criminal Code dealing with pornography, homosexuality, abortion? There's been no trouble at all making those amendments, so why would he suggest that the laws in the Criminal Code dealing with polygamy would not also be changed?

It seems clear to us that the definition of marriage can and will also be changed to expand to other relationships. By keeping the label and legal status of marriage but changing the meaning and concept, it seems clear to us that the legalization of same-sex marriage involves a rejection of what marriage means and has meant for millennia. Indeed, it is replaced by a relativistic, postmodern extension of private preference or choice for personal intimacy, but it doesn't deal with the institution of marriage and the purpose it has for society.

•(1615)

The Chair: Excuse me, you have one minute, please.

Ms. Gwendolyn Landolt: We'd like to mention another problem we have with what Mr. Cotler said. Again he made a preposterous statement when he said that this legislation protects religious freedom. That is absolute nonsense. The Supreme Court of Canada, in a reference in December, stated clearly that any protection for religious rights is simply a matter for the provinces. Therefore, we've got all sorts of problems dealing with teachers in the schools. What about the rights of parents who object to this homosexual education? What about teachers speaking out against homosexuality? Will the tax-exempt status of churches and organizations be placed in peril because of this bill? Those are very serious unanswered questions.

According to surveys, we find that there are approximately 310,000 homosexuals in Canada—according to Statistics Canada—but only approximately 1,950 homosexual marriages were made by Canadian same-sex couples, so why are we going ahead with this legislation when so few seem to be interested in it?

In fact, I have an article from the May issue of a homosexual newspaper. The organization is called *fab*. It says:

The gay marriage movement in Canada has been spearheaded by a handful of lawyers and a few homo activists.... ..there has been no mass gay movement supporting same-sex marriage here in Canada.

The Chair: Thank you.

Ms. Gwendolyn Landolt: Yet you're going to change the whole law for a handful of people who basically don't have any interest in it. Public policy—

The Chair: I am sorry, Ma'am.

Ms. Gwendolyn Landolt: Yes. I want to say that public policy must deal with what is for the benefit of society, Mr. Chairman. It should not be deemed to be for the private purposes and ends of private people.

Thank you so much for your patience.

The Chair: Thank you.

We will now go to Mr. Patel from the Islamic Council of Imams-Canada.

Mr. Abdul Hai Patel (Coordinator, Islamic Council of Imams-Canada): Thank you, Mr. Chair and honourable members of Parliament on the committee.

The Islamic Council of Imams-Canada is a collective leadership of imams, or ministers of religion, in Canada. Before I go any further, I'd like to echo the same sentiments of Gwendolyn Landolt about whether this is an exercise in futility or not, after reading today's newspaper. I urge the committee to consider our presentation today, before any parliamentary vote takes place.

The council was established in 1990. The council comprises Islamic scholars serving the Muslim community across Canada. We are members from two major sects: the Sunni and the Shi'a. We deliberate over many issues affecting the community and propose solutions whenever possible. The Muslim population in Canada is estimated to be over 650,000, and more than half of them live in the greater Toronto area.

On March 11, 2003, our council appeared before the parliamentary committee in Toronto on this subject, outlining the Islamic position on same-sex marriage. Today's presentation deals with potential problems and their solutions in the form of protections that require amendment to Bill C-38.

As a former commissioner of the Ontario Human Rights Commission—my term just finished in February this year—I am fully aware of the need to respect the rights of every individual. However, I find that some areas in Bill C-38, if exercised, can become the subject of future challenges with respect to the Ontario Human Rights Code.

I would like to start by quoting the Supreme Court of Canada's ruling as follows:

The Supreme Court of Canada heard arguments in the Reference on 6 and 7 October, 2004, and issued its ruling on 9 December 2004. It found in part, that: The religious freedom guarantee in subsection 2(a) of the Charter is sufficiently broad to protect religious officials from state compulsion to perform same-sex marriages against their religious beliefs.

This ruling is not fully reflected in the protection in clause 3, which states:

Clause 3 recognizes that officials of religious denominations may refuse to perform marriages that are at odds with their religious beliefs. It is worth noting that the Court's reference decision considered a differently worded provision of the draft legislation under which "[n]othing in this Act affects" religious officials' freedom not to officiate at same-sex marriages. The Court found that provision ultra vires Parliament's constitutional authority, in that it related to those who may perform marriages, a matter over which provincial legislatures have exclusive competence under subsection 92(12) of the Constitution.

Our concerns are as follows.

The protection is not clearly spelled out. It is assumed that it is limited to clergy or a minister of religion of any faith in places of worship. If the refusal is outside the precinct of the place of worship, does that protection apply? The following examples will illustrate my points.

Legislation has to be explicit in language to protect not only the individual but the religious institution as well. Most of the places of worship, especially non-Christian denominations in Canada—and they are growing in number—are institutionalized, hence it delegates to its staff, volunteers, groups, and committees the performance of religious services by religious authorities in relation to marriage. Failing to protect them opens more doors to future challenges in relation to sincerely held beliefs.

There is a fine line intersecting business operation and place of worship. For example, a banquet hall contracts a minister of religion—of any faith, for that matter—authorized to perform marriage, and it offers a package deal to prospective customers for all services required for a wedding. A refusal will be in violation of the Ontario Human Rights Code because it will be treated as a business, and as such the minister will be compelled to perform the ceremony. Where is the protection for religious beliefs in this area? The legislation is not clear as to who and where the refusal will be acceptable.

Justices of the peace and other commissioners are not protected either for their religious beliefs. As a human rights commissioner in Ontario myself, I had to ensure that the rights of every Ontarian were protected, regardless of sexual orientation; however, I also had the choice of abstaining on certain matters if they conflicted with my religious beliefs. There was never an occasion when I had to abstain in my six years as a commissioner.

•(1620)

The same provision of abstinence is not available to judges, which means people of some faiths will not be able to accept such positions if they are practising their faith.

The act redefines the provision of equality of genders for purposes of matrimony. Does that mean such equality will extend to same-sex washrooms and change rooms in public places? This may be a new issue. Employers, collective bargaining units, and the Human Rights Commission are still trying to deal with washroom and change room difficulties for people during the transitional period of sex change operations, during which time they cannot be classified as either sex. In Ontario we have had two or three cases like that.

Finally, Parliament has taken a bold step to change the definition of an important family institution, cherished and valued from time immemorial, and is shaking the foundations of many faiths. It would be advisable to retain the current definition of marriage and expand the definition of civil union only to marriage of same-sex couples. This will most likely satisfy the faith communities and protect the rights of minorities.

Thank you.

The Chair: Thank you.

We will now move on to the Canadian Bar Association, Mr. Lebo and Mr. Foreman.

Mr. James Lebo (Member, Legislation and Law Reform Committee, Canadian Bar Association): Thank you, Mr. Chair. Mr. Foreman and I will share our ten-minute time, if that's acceptable.

Members of the committee will be relieved to know that I hardly read the paper this morning.

I would like to start off by thanking you for having us here today. As most of you are probably aware, the Canadian Bar Association is a national professional organization with about 34,000 members across this country. One of our goals—one of our primary goals, I would say—is to work towards improvements in the law and improvements in the administration of justice.

The CBA has a long history on the issue of the removal of discrimination on the basis of sexual orientation. We have been involved in cleaning up our own house internally. We have been involved in calling upon governments. We have intervened in two cases before the Supreme Court of Canada on this issue, including the recent Marriage Act reference. We have also appeared before this committee and other committees on several pieces of legislation that have come before the House.

Honourable members, I would suggest to you that this bill is being considered in a very unique circumstance, which is that the subject matter of this bill, same-sex marriage, is already the law across much of this land. It is already, as we sit here today, the law in seven provinces and one territory. That translates into the fact that 28 million Canadians, or about 90% of the population, live in jurisdictions where same-sex marriage is the law.

It's our respectful submission to you that it is the duty of this Parliament to pass the bill and to bring uniformity of the law, consistency of the law, across this great country of ours. It's also our respectful submission that there has been enough debate on this issue. In parliamentary terms, it's time to call the question.

In addition to the long public consultation that has gone on, there have been several court cases on this issue. The highest courts in the three most populous provinces of Ontario, Quebec, and British Columbia have dealt with the issue, as has the highest court in the land, the Supreme Court, dealt with the issue. Many of the matters you've heard today and in your previous proceedings have been addressed by the court. In my respectful submission, from an MP's standpoint this is a wonderful opportunity. You have an opinion of our highest court in the country behind you telling you what is the right thing to do and what is the law.

Our association handed out earlier today a brief that contains more detail on our position. There are a couple of points in particular that I want to touch on, and that Mr. Foreman will address as well.

The first one—I've touched on this already—is that this issue has already been examined in great detail and has already been determined. There is no question about the legality of this move and this proposal. There is no question about the legality of same-sex marriage. There is no question that not permitting same-sex marriage violates the Charter of Rights and Freedoms.

As I said earlier, it is important to now bring the validity of this law across the country. Parliament is the legislative body that has the authority to do that. In our respectful submission, it is only fair to the rights of all Canadians across the country that this be done.

I should say as well that the consistency of law is not an abstract concept. It is important for couples to know where they stand in their marital relationships. As you can probably appreciate, in those jurisdictions where same-sex marriage law is not the law right now, it is not clear what happens. What are the duties, and what are the responsibilities in the case of marital breakdown, in the case of a death of one spouse, in the case of a whole bunch of things that happen that are incidents of marriage? It is important, I would respectfully submit, for Canadians to know.

Another aspect is that it's unfair to private persons and it's an unfair burden to the taxpayers of this country to continue to fund same-sex litigation across this country. This is a very expensive proposition. Any of you who've had the delightful opportunity to be involved in litigation will know that. It is costing this government, and the taxpayers of this country, a lot of time and attention that could be better spent on other things.

The other point I wish to address relates to the freedom of religion aspect.

• (1625)

I wish to be clear that the CBA does not pick and choose its charter values, that it values freedom of religion in the same way it values the protection of discrimination pursuant to section 15 of the charter. We see both as core charter values, and we point out that these two important charter values have been addressed before and are respected in this bill. We would submit that there is no competition of rights here. Both rights are observed, and we would urge you to pass the bill quickly.

I'll ask Mr. Foreman to pick it up now.

Thank you.

• (1630)

Mr. Sean Foreman (Chair, Sexual Orientation and Gender Identity Conference, Canadian Bar Association): Thank you, Mr. Chair and honourable members.

The Supreme Court of Canada has recognized that Canada is a diverse, multicultural, and multifaith society with respect for human dignity at the core of who we are as a people. Civil marriage does not require or coerce every married couple to fulfil every purpose of marriage—whether it's intimacy and companionship, wider societal recognition of committed relationships, distribution of economic benefits and responsibilities, blending families, or supporting procreation and child-rearing. The fact is that same-sex relationships can and do share in all of the purposes of marriage, including procreation and the rearing of children.

Gay and lesbian families are a growing reality across our diverse country, and the courts have consistently agreed that it is not anti-family to support protection of the non-traditional forms of families. The courts have also agreed, having heard substantial amounts of expert evidence and comprehensive arguments from all perspectives, that it is in the best interests of children to include same-sex couples in civil marriage, since doing so poses no harm to children of opposite-sex couples while providing stability and protection to children of same-sex couples.

The CBA supports Bill C-38 as an important step in the goal of full, substantive equality for same-sex couples. It creates a consistent regime of civil marriage across Canada, while affirming the charter guarantees of freedom of religion by recognizing that religious officials are free to define and perform marriage ceremonies in a manner consistent with their religious beliefs.

In conclusion, the CBA urges this committee and Parliament to complete the passage of Bill C-38 without delay and demonstrate Canada's strong commitment to equality and justice for all.

Thank you, Mr. Chair.

The Chair: Thank you.

We will now go to the first round of questions. This is a round of seven minutes, questions and answers all included. We'll start with the Conservative Party.

Mr. Moore.

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

And thank you to all the witnesses who are here.

My questions are for Mr. Lebo and Mr. Foreman. I've read your brief and I know you're from a national professional association. I'm actually a member of the CBA. But to be honest, I think your brief and your presentation have crossed the line here into advocacy. You are a professional organization that purports to represent lawyers across this country, and being one myself, I know you're certainly not reflecting my views on this issue.

But I want to get to some of the substantive points you've made, which I think are inconsistent with the law, including the Supreme Court's recent reference decision, and which are not even acknowledging the present reality. I have just a few of them, and I'd like your comment on each.

You say:

The rights of same-sex couples do not conflict with the rights of religious groups. Neither are these competing rights. Both are affirmed and protected by the Charter and, in our view, by Bill C-38.

One, I hope you're not proposing that the purported protections in Bill C-38 for religious freedoms have any legal effect, because we know that the Supreme Court of Canada has already ruled that the provision is outside the jurisdiction of the federal government and is ultra vires, and you know that.

In its reference decision, the Supreme Court of Canada also said or contemplated that there could in fact be a conflict of rights; that's in the decision. You've read it, but your brief says there could not be a conflict of rights. That's completely inconsistent. I point to the case of the Knights of Columbus. It is a religious group, and it's currently in a conflict with the purported rights of some same-sex couples who wish to use their grounds for a marriage ceremony. You only need to look to the papers of recent days to see that your assertion is incorrect. I'd like your comment on that.

Also, you say that Bill C-38 is required by the charter. This very question was put to the Supreme Court of Canada, which you'll acknowledge is the highest court in this country. It was put to them: is the traditional definition of marriage unconstitutional? The Supreme Court of Canada did not answer that question. It is our highest court, and until it rules that way, arguably the opposite of your assertion here is constitutional.

And there is another, which I laughed out loud about when I read it, that somehow because of our immigration laws we need national consistency, that changing Bill C-38 is going to cause a great disturbance. Just the opposite is true, because when the people who were married here yesterday, the contestants from *The Amazing Race*, return to wherever they are from, their marriage will not be recognized, because as you know, if you've studied the international context, this is not the path other countries have followed. They've recognized equality rights, which we could do, without changing the definition of marriage.

I'd like your comment on those three points raised by your brief.

• (1635)

Mr. James Lebo: Thank you very much. I am pleased to meet another CBA member; it's always a pleasure.

Of course, as you'll know, sir, we have a governing council within our association of elected representatives, which makes policy decisions in the same way that the Parliament of Canada makes decisions, by majority vote.

Mr. Foreman is going to touch upon a couple of the issues you've raised, but since I was counsel at the Supreme Court of Canada, I would like to point out that that court declined to answer the fourth question largely because of the rights that had already accrued to people who had governed their lives as a result of the previous litigation that had gone on in Ontario, Quebec, and British Columbia to that point. There is nothing, I would respectfully submit, in there that translates into a condemnation of this bill. Quite the contrary. The answers to the three earlier questions make it clear that the Supreme Court of Canada agreed with the highest courts of Ontario, Quebec, and British Columbia on that point and that the proposal in the bill is consistent with the charter. If the opposite conclusion—

Mr. Rob Moore: Mr. Lebo, I'm going to have to interrupt you there.

There is a difference between something being consistent with the charter—I acknowledge that the court said that—and being “required”, as your brief says. You're here representing lawyers. Your brief says this is required by the charter. The Supreme Court of Canada has not said that.

You can maybe address this too. I know you're familiar with Eugene Meehan, a former national president of your association. He's a constitutional expert, he was with the Supreme Court practice group at Lang Michener, and a brief of his I've seen completely contradicts many of the assertions you've made here, including the following. Does the Parliament of Canada have the jurisdiction to protect religious groups? His answer is no. Could religious groups or officials who refuse to solemnize a marriage become the subject of actions by others? His answer is yes. Does the Parliament of Canada,

through Bill C-38 or otherwise, have the power to protect religious groups or officials? The answer is no.

Maybe you could flavour your response in light of that opinion; it's completely inconsistent with what you've said. I would like to know, is he categorically wrong on all of those, that there could be no conflict of rights and that religious freedoms can somehow be protected, as your brief says? Your brief says the rights of religious groups are protected, in your view, by Bill C-38.

Mr. James Lebo: I'm sure you appreciate, sir, that Mr. Meehan as a former president was not speaking on behalf of the organization when he wrote that. Of course, he is entitled to his opinions, as we all are, sir.

Mr. Rob Moore: My point is, your association is not speaking on behalf of lawyers, because I know I have not been asked. I just find it offensive that you would come here purporting to speak on behalf of 38,000 lawyers when I was never asked my opinion. I've been a member of the bar for five years.

Mr. James Lebo: Sir, with great respect, we have a democratic tradition in our organization, much like in the rest of this country, in which we elect members to our governing council, who then set the policy. All our policies are voted upon in a majority way, and that remains the policy. Of course, there are people who do not agree with everything the CBA has done, but I can assure you, sir, that on this issue the CBA is consistent. The policy is consistent and has remained that way since 1994.

I'd like to let Mr. Foreman respond to some of the other issues you've raised.

Mr. Sean Foreman: I've had the chance to read the opinions that were given by Mr. Meehan, and with respect, I disagree that there's any inconsistency with the position the CBA has put forward. Mr. Meehan has responded to some very tightly worded questions that were put to him by a client, and he's responded with respect to the issue of the religious protections in a way that's very clear with the Supreme Court reference. He says the federal government has no jurisdiction to include within this federal legislation provisions to apply to religious protections.

However, he does confirm, as the Supreme Court reference does, that religious protections flow from the charter itself, from paragraph 2(a), and that no legislation in fact is really required to provide those protections. Those protections flow directly from the charter, and the Supreme Court was clear that there's no collision of rights, there's no hierarchy of rights, under the charter. Section 2 and section 15 coexist; they don't trump each other. The religious issues that have been raised by people who are concerned about the issue are resolved within the charter itself, so there is no impermissible collision, there is no hierarchy of rights, and the religious freedom component has been satisfied, certainly in the reference decision and within the charter itself.

• (1640)

[*Translation*]

The Chair: Thank you.

Mr. Marceau, of the Bloc québécois, it is now your turn.

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

Thank you very much to the witnesses who came to make their presentations, which, as a matter of fact, I found most interesting.

I will perhaps start with the imam. You suggested in your presentation that the protection of the freedom of religion is not explicit in Bill C-38.

I made a request to one of the witnesses who preceded you in appearing before the committee and who is here today in the room. He sent me a suggested amendment that I am studying with great interest and a positive outlook.

Would you be so kind as to forward to the committee, through our clerk, the suggested amendments that you would like to see made to Bill C-38 and which might appease some of the fears you have expressed with regard to freedom of religion? To my mind, this freedom is as important as the right to equality, which in my opinion encompasses the right of same-sex partners to marry.

[English]

Mr. Abdul Hai Patel: Thank you, honourable member, for your question.

I welcome the opportunity to submit the amendments properly worded. I have outlined some of the areas that require amendments, and I will certainly follow up. Is there a time limit I should submit...?

[Translation]

Mr. Richard Marceau: The committee will be winding up on June 15. You should therefore send us any amendments you have as quickly as possible in order for me to be able to study them and see to it that they are included in the bill.

[English]

Mr. Abdul Hai Patel: Yes, I will definitely do it as quickly as possible, within a few days.

[Translation]

Mr. Richard Marceau: Thank you very much, that is much appreciated.

Ms. Landolt, it is always a pleasure to see you. We have often had the opportunity to speak with one another. We are rarely in agreement, but our discussions always take place in a spirit of collaboration and mutual kindness, and this I much appreciate.

You stated earlier that homosexual marriages are more likely to end in divorce. Could you give me the statistics you base this statement upon? To your knowledge, how many gay marriages and divorces have there been in Canada since certain Canadian jurisdictions granted homosexual couples the right to marry?

[English]

Ms. Gwendolyn Landolt: In Canada we've only had this for two years.

In the Netherlands and in Belgium, which are the two countries that do have it, there has been a high incidence of divorce within the relationship. One of the reasons indicated by all studies—and again, it's all documented—is that same-sex couples stay together for a much shorter period of time than heterosexual couples. In fact, it averages out to one and a half years.

There have been 1,950 same-sex Canadian couples married so far in Canada, and that's only in the past two years. It would appear there will be a higher incidence of divorce, as there has been in Belgium and the Netherlands.

[Translation]

Mr. Richard Marceau: Am I to understand that the numbers you are quoting are not Canadian? Forgive me, but I have very little time for my questions.

[English]

Ms. Gwendolyn Landolt: We don't have any Canadian figures because we've only begun the process in Canada.

[Translation]

Mr. Richard Marceau: Very well. That is what I wanted to clarify. Thank you very much. If I am being somewhat pushy it is not through lack of respect, but simply because I unfortunately do not have very much time.

You stated earlier that there is already a trend away from marriage. How far back does that movement date?

• (1645)

[English]

Ms. Gwendolyn Landolt: A 15-year study was done by the Hoover Institute in the United States. They did a study of Scandinavia, Belgium, and Holland, and they had 15 years they could review for that study. They found that in those countries, as soon as you had a same-sex union, either same-sex marriage as in Belgium or same-sex civil union, heterosexual couples began to disregard marriage and move away. Obviously, in our day and age they are moving away, but that stems from changes in the concept of marriage, the recognition of it by society, and the benefits they would receive if they married.

[Translation]

Mr. Richard Marceau: I am trying to understand. You talk of a 15-year study, but the legalization of same-sex marriage only goes back a few years. It would therefore be the case that we started to see fewer marriages even before same-sex couples were granted permission to marry. I am not trying to put words in your mouth, but simply seeking to understand.

For example, in Quebec, where I live, there has been for decades now a trend away from marriage, if I may use that expression. More and more people are living in common law relationships. This movement, Madam Landolt, began years before same-sex couples were given the possibility to marry. I do not see a cause-effect relationship here. I would ask you to enlighten me in this regard.

[English]

Ms. Gwendolyn Landolt: You're correct that more people are living common law—14% of unions now in Canada are common law as opposed to legal marriage. You're correct in that, and it's certainly more pronounced in Quebec.

But they've had legalization of civil relationships of same-sex couples in the Scandinavian countries for many years. Legal marriage was accepted in the Netherlands in 2000-01, and they've had that five years' of experience. But the civil unions, which are equivalent to marriage in Scandinavia, have been around for many years in the Scandinavian countries.

What is found in those countries is that it has accelerated the move away from traditional marriage. People are moving anyway, but because they don't get the recognition, they don't get the same benefits, more and more people are moving away from marriage, and they're looking at the Scandinavian experience to say.... In Quebec, they're moving away, but for other reasons, I think, obviously, because you haven't had same-sex marriage there for a while.

There is a causal relationship, as you say, in those Scandinavian countries and in Belgium and in Holland, away from traditional marriage, with the result—and again our concern—that children are being born without a mother and a father committed through a legal marriage. We know from Statistics Canada, for example, and from many other studies, that this is detrimental to children. That's why we're saying let's take a look at this. Let's not exacerbate the problem.

[Translation]

Mr. Richard Marceau: Thank you. I would have one final question to ask, Mr. Chairman. It is a short question that calls for a yes or no answer.

In the opinion of the Canadian Bar Association, is clause 3, which according to the minister is declaratory, constitutionally speaking? Is it an encroachment on the jurisdiction of the provinces, or is it legal, in your opinion?

[English]

Mr. James Lebo: If I understood the substance of your question, you were asking whether the protection of religious freedom in the bill is constitutional. I say it is, because it reflects paragraph 2(a) of the charter, which is actually the originating document on this issue. That's where the protection stems from.

The Chair: Merci. Thank you.

Mr. Siksay, seven minutes, please.

Mr. Bill Siksay: Thank you, Mr. Chair, and thank you to the witnesses.

I do have to say that I am a little troubled by the starting point of some of our witnesses this afternoon and the statements they've made, especially in light of the fact that Parliament has had a very extensive debate, probably one of the most extensive debates on this issue in years, and that we have had approval in principle of this legislation at second reading. I think Parliament has spoken very clearly on this legislation at this point, and I would expect that someone as experienced in the parliamentary process as you, Ms. Landolt, would appreciate that this does mean something in the process here on Parliament Hill. So I am a little concerned about your comments, your beginning point at least.

I have a question for Imam Patel about the points you raised. It seems to me that a lot of them have to do with things that are the jurisdiction of the provinces and the jurisdiction of Ontario. Having

worked in the area of human rights law in Ontario for some time, and having lots of experience with that, I'm just wondering if you believe that the Ontario human rights act is flawed in some way when it comes to religious protection.

• (1650)

Mr. Abdul Hai Patel: No, the act itself is a separate thing. To me, personally, I always tell people that the Ontario Human Rights Code is one of the best, if not the best, in the world. It enshrines the rights and protects the rights of everyone. How it is implemented is another matter, because the tribunal fixes the penalty, ultimately, when the case goes to the tribunal.

I don't see any problem with the Ontario Human Rights Code, as far as the code itself, in dealing with the rights of individuals. In terms of religious accommodation, it also protects people, asking employers mainly to accommodate religious beliefs.

Now Bill C-38 is something beyond that in the sense that, to me, it doesn't cover that ground of protection in the code. When Bill C-38 becomes the law, it will compel everyone to comply with respect to it. There will be a clash, as I said, in its intersection with the Ontario Human Rights Code in terms of violation when any clergy or minister refuses a particular service, whether it is a baptismal ceremony or any other ceremonies of other faiths, in terms of where the line can be drawn. My contention is, is it limited to the place of worship? That needs to be defined. If somebody is outside the church, refusing them a burial, for example...it is also a part of the burial of any gay couple, for that matter.

There are a number of other areas that I cannot cover in the presentation, but since I've been asked to submit the amendment, I can define those areas in there for protection. But as far as your question is concerned, the code itself is correct to me. It protects the rights of every individual, but it does not protect the clergy if applied fairly. Any clergy refusing to perform a service will be in violation of the Ontario Human Rights Code. And marriage would be one of the services. That's my interpretation and how the tribunal could very well interpret it.

Mr. Bill Siksay: It seems to me that the Ontario government recently did an omnibus bill that tried to address some of the changes that were required in light of same-sex marriage. Did you or your organization or others raise these issues at that time, when the Ontario government was reviewing that legislation?

Mr. Abdul Hai Patel: Actually, Ontarians were taken aback. We were quite surprised that the government pushed that legislation so fast without consultation and without the knowledge of many people. So we had no say whatsoever in what was drafted. That doesn't cover in fact...it just more or less complements Bill C-38 in many respects.

Mr. Bill Siksay: Ms. Landolt, you talked about the number of marriages for gay and lesbian couples that have happened in Canada since the law was changed. You've been trying to draw a parallel to the declining rate of marriage overall in countries where it already existed. Has there been any decline in the number of marriages performed in Canada over the last two years?

Ms. Gwendolyn Landolt: Again, the situation in Canada is that we have only had this since June 2004. A year ago the Ontario Court of Appeal came down with the decision. Therefore, we have to look to other countries where they've had more experience. I think it was wrong of us not to look to the experience of other countries. That's why we can't tell at this point.

As I say, very few homosexual couples or same-sex couples have entered into marriage in Canada since that period of time.

Mr. Bill Siksay: Are the overall statistics not available yet on the number of marriages in that period?

Ms. Gwendolyn Landolt: Well, yes. You, yourself, must have heard the justice official testify. She said there were approximately 3,000 same-sex marriages performed, of which 65% were between Canadians. That would work out to approximately 1,950 having taken place.

Mr. Bill Siksay: That's where you're getting that number from.

Ms. Gwendolyn Landolt: That's where the number came from, from the testimony of the justice department.

Mr. Bill Siksay: But you haven't seen anything on overall statistics declining in Canada in that period.

Ms. Gwendolyn Landolt: Well, we haven't had time to do it. That's my point. We've had exactly a year, and there's no way. That's why it's essential to look to other countries.

Mr. Bill Siksay: I just wondered if you'd seen anything in Canada on it.

Ms. Gwendolyn Landolt: We have to look to other countries that have had the experience.

Mr. Bill Siksay: Mr. Foreman, you talked about how the CBA saw this legislation as protecting children of same-sex couples. I'm wondering if you could expand on that a little bit as to how you see that as important and what the legislation would do to improve the situation.

Mr. Sean Foreman: Yes, certainly.

I certainly agree that the Supreme Court of Canada hasn't necessarily had the chance to make a full decision on the issues. When you look at the appeal court decisions from the Ontario Court of Appeal and the British Columbia Court of Appeal, those unanimous decisions I think do provide guidance to this Parliament, to members on those issues.

As I said, huge amounts of resources, hundreds and hundreds of thousands of dollars of expert evidence were placed before the courts from all of the perspectives on these issues. The courts accepted and agreed that with respect to issues on children's rights or the benefits towards children, for one thing, there are many children who live in gay and lesbian families across this country, and not necessarily children who are created by procreative means, but children who come from blended families, which is an important consideration. Those children's rights and those children's interests are protected and enhanced by allowing their parents to enter into the institution of civil marriage.

Therefore, when you look at the evidence that was put forward in the analysis and the decisions of those courts, it provides guidance on that point. The unanimous decision of all of the courts that looked

at those issues was that it enhances the protection of same-sex families' and children's interests.

• (1655)

Mr. Bill Siksay: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you.

We'll now go to the Liberal Party. Mr. Savage, go ahead, please.

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

I appreciate the witnesses joining us today and taking the time to come in.

I want to ask a question, first of all, to Mrs. Landolt. You spoke quite a bit about the decline of marriage. You used the term at one point in time that one of the reasons marriage is declining is that people don't see the same benefits of getting married. What do you mean by "benefits"?

Ms. Gwendolyn Landolt: Well, benefits are both intrinsic and extrinsic, in the sense that you have benefits under the CPP, financial benefits. You also have the benefits of recognition. People who give birth to children and raise them are making an enormous sacrifice. They deprive themselves to raise children, which is essential for the future of the country. Doing so is no longer being recognized as making this enormous contribution. You're just treated the same as everybody else.

In the same-sex relationship, they don't make this.... They can have children brought into the union, but they themselves are not creating this. The reason society has always preserved marriage historically is to encourage the birth of children.

What we're finding is this amazing decline in population in Canada, as you know. One of the reasons they think this is happening is that marriage is no longer anything. It means nothing. It becomes open to everybody and the sacrifices are negated. People are not entering into the union.

Mr. Michael Savage: Don't you think that those people who are fighting for the right to have marriage must have that respect for the institution, but many others who have it automatically may not have it?

Ms. Gwendolyn Landolt: I can answer that by looking to the homosexual writers themselves. They say the reason they want marriage is that they want to change it. I can give you a quote that's in our brief, actually, where they say they want to change the whole meaning and purpose of marriage because they don't like what it is. For example, Gareth Kirkby, who is the editor of the homosexual newspaper *Xtra*, says:

In our culture we haven't created the same hierarchy as has heterosexual culture. We know that love has many faces, names, ages, places.... We know that a 30-year relationship is no better, no better, than a nine-week, a nine-minute fling - it's different, but not better.

We have other studies—

Mr. Michael Savage: Excuse me, I have a few minutes—

Ms. Gwendolyn Landolt: Other homosexuals...I think it's Mr. Eskridge who's saying they want to change marriage—

Mr. Michael Savage: I will make a point of picking those up.

Ms. Gwendolyn Landolt: —because it's different. And we're saying, hold on. What are the implications to Canadian society, and particularly to children?

• (1700)

Mr. Michael Savage: Let me ask you about children, because you did make the point about the importance of children. I think you made the distinction between making the children and raising the children.

Is that a distinction you made?

Ms. Gwendolyn Landolt: Well, I think the Supreme Court of Canada said in a case that it's the heterosexual couple who really create and raise the children. You have to put them together. Children obviously are abandoned. Children are adopted. But the vast majority of Canadians, according to the Supreme Court of Canada—Nesbit and Egan was the case—are born and raised by the biological parents, and that is why it's so culturally important to preserve that, to protect the children so they'll have a mother and a father and learn gender identity and have the input of both parents.

Mr. Michael Savage: Thank you. I do share your appreciation for the Supreme Court.

I want to ask you specifically, though, about a child I know. I'm the godfather of a child. I'm the father of two kids and I'm the godfather of some other children, one of whom is the child of a committed lesbian relationship in Toronto. She has a family like any other, except she has two mothers. They go to church. They go shopping. They go to movies. They play soccer. They do all the things that my kids do. They play on the street like my kids do.

Why shouldn't they be called a family, including having the right to have their parents in a marriage recognized by their country?

Ms. Gwendolyn Landolt: Except that the union of two lesbians is not the same as that of a man and a woman, and if you read our brief, you will see the studies. Children are different when they're raised by two of the same sex. The children have a different lifestyle. They have a different background. They have a different value system. And whether it's for better or worse, the children don't have the security and stability that they would in a traditional marriage. They're different.

Whatever a same-sex couple's relationship is, and they're perfectly entitled to it—they can do what they like, when they like, however they like—it's not the same as a union of a man and woman committed for life who are raising those children, and the children are different as a result.

Mr. Michael Savage: I can sense that you're somebody who cares about children and you want what's best for the children. There would be no better parents for the girl I'm talking about than the ones she has. I've seen it and I know it. It doesn't seem to me to make sense that the only exclusion to her parents being married is the way they were born—nothing to do with what they did in their lives, but with the way they were born.

Ms. Gwendolyn Landolt: If you have difficulty with understanding the differences, I would suggest that you should bring as witnesses children...and I'll tell you about one in particular, who was raised by a homosexual father. She was exposed to things that most

children aren't. Their relationships are different. The culture within a same-sex.... You're looking from the outside, but the children are different. When you're raised within that union, it's different.

Mr. Michael Savage: I think I'm looking from the inside. Do you know personally any children who have been raised by lesbian parents?

Ms. Gwendolyn Landolt: I do, yes, unfortunately, and I've seen the differences. I've seen that they don't have their gender identity. I've seen lots of things.

Mr. Michael Savage: That's not what I've seen.

Ms. Gwendolyn Landolt: I would like to say I've been on the board of the Children's Aid in Toronto for 11 years, and I have seen a great deal of the damage to the children. It's hurtful to think children are the innocent pawns in this.

Mr. Michael Savage: I agree. Would some of those children you came across in Children's Aid be from heterosexual marriages?

Ms. Gwendolyn Landolt: Yes, there are problems in heterosexual unions, no question. But in the same-sex union, there are a lot more. It's almost certain to happen in the same-sex union. The children are different. They don't have the same advantages. I saw the children and I know they're damaged.

Mr. Michael Savage: I would say the beauty of all children is that they're all different.

Ms. Gwendolyn Landolt: Yes, but the children can be damaged. Again, I would request that you look at our references. We've done a lot of work to try to see what is good for children, because that's our major concern. If you look at our brief and some of the references, you will share some of our concern.

Mr. Michael Savage: I'm going to look at it.

Thank you.

The Chair: Thank you.

We're going to the Conservatives.

Mr. Jean.

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

I'm going to start by telling a joke, and by identifying myself as a lawyer before I tell this joke. How many opinions can you get when you ask 100 lawyers? Answer: none, unless you pay them, and a minimum of 200 if you do.

My first question is to Mr. Foreman and Mr. Lebo. Are due process and the rule of law both things you believe in?

Mr. James Lebo: Of course.

•(1705)

Mr. Brian Jean: This regime I've been involved with here was unknown to me before. As a trial lawyer for 11 years in northern Alberta, I received pre-sentence reports well in advance of going to trial, bilateral custody assessments at least 30 days before going to trial, disclosures from the Crown three or four months before trial, and witness lists before trial.

I have received none of this for any of these meetings. If you believe in due process and the rule of law, don't come and sit on this committee, because in my opinion that's not what's happening. I'm receiving witness knowledge the day before and reports hours before we have to come. It's difficult to prepare, so you'll have to excuse me if my questions are not adequate or sufficiently researched.

My first question is, why has the CBA changed its position, from the one expressed in the Senate report of March 2003 report to the position contained in today's submission?

Mr. James Lebo: I'm sorry, sir, you'll have to refresh my memory about which submission you're speaking of.

Mr. Brian Jean: In the Senate report of 2003, the CBA said:

Thus, the CBA supported the Bill, which sought to confer these rights and responsibilities on same-sex couples and heterosexual common-law partners. This was to be accomplished by creating a definition of "common law partner", applicable to both opposite-sex and same-sex conjugal relationships (the term "spouse" would be reserved for married heterosexual couples).

Mr. James Lebo: You've given me a question I can't answer, because I don't know the context in which it was made. I can tell you, though, that I have been a member of our governing council since 1988, and our position on the elimination of discrimination on sexual orientation has remained the same since the first resolution, which I believe was in 1994.

I'd be happy to get back to you with a letter on that issue if you would like, sir.

Mr. Brian Jean: It's in the Senate report, and it's clear that you had two different definitions. I don't think anybody here wants to see discrimination continue. But you're using two different definitions, which is in essence the position of the Conservative Party. You advocated for it in 2000 and 2003, and it's the same thing the Conservative Party is advocating today. I'm wondering why you changed your position.

Mr. James Lebo: I don't know, sir, and I apologize. We're going to have to get back to you on that, but I can assure you today there is no question about what the CBA's position is on this bill, just as there was no question when we were before the Supreme Court last year.

Mr. Brian Jean: I would have to disagree with you there.

Next question. In that same report on page 6 you say, "To that end, the CBA identified the omissions in the MBOA (immigration, Evidence Act and spousal compellability)—this is the part I'm interested in—"marital exemption for age of consent under the Criminal Code) and called upon the government to quickly address those omissions."

I'm concerned about the exemption for age of consent for marriage under the Criminal Code. I would surmise that's it, or is that in some other reference?

Mr. Sean Foreman: I'm not familiar with the report you are referencing. I think perhaps you've referenced the MBOA, which is the Modernization of Benefits and Obligations Act. Maybe you're confusing the CBA position with respect to the equalization of benefits and obligations flowing from the equal recognition of common-law relationships versus our present submissions and consistent position with respect to the recognition of same-sex marriage.

I would put to you, sir, that they're two very different issues, and I don't think there's any inconsistency in those positions.

Mr. Brian Jean: I can table that report for you. It's a submission called *Marriage and the Legal Recognition of Same-sex Unions*, through the Canadian Bar Association, with the table of contents included. So I don't think the confusion is mine, sir.

Mr. Sean Foreman: I'd be happy to take a look at it.

Mr. Brian Jean: My next question is in relation to international law. In your report, on page 4, paragraph 3, you refer again to the fact that you thought international law in the global economy would be simpler. That's today's report, not the opinion you had three years ago.

I found that very confusing, having studied international law in Australia and understanding what their position is on same-sex unions and on marriage as well. I would suggest to you that an overwhelming number of countries have said that marriage is for heterosexual couples, but same-sex unions are available. I would suggest to you that they have specifically excluded same-sex couples from being able to marry in other countries.

As such, I would suggest that if we adopted this kind of approach in Canada, it would actually add more confusion and more difficulty for people who are immigrating. Of course, we're in a global economy now, so there would be more problems.

There are some 20 or 23 countries, I think, that have taken the position the Conservative Party has, compared to two that have allowed same-sex marriages. I'd like to hear your comments on international integration, which you've referred to on page 4.

•(1710)

Mr. James Lebo: One thing I will say is that we have the delight of being masters in our own house. I would suggest this Parliament will govern this country according to our Constitution, and our Constitution is clear on this issue.

If a same-sex couple goes to another country, they presumably have to live under the regime of that country, in the same way that any of us travelling abroad have to deal with that.

In my respectful position, the issue is whether we follow the Charter of Rights and Freedoms, and that underlines our position throughout this.

Mr. Sean Foreman: I'd like to add to that, if I may. I would point out that Spain recently legislated same-sex marriage, but not through the courts.

We have a situation in the U.S. with a growing recognition within states, such as the Goodridge decision from Massachusetts, and other jurisdictions in the States where challenges are continuing. It's an equally contentious issue there, but I think that has an application with respect to international recognition and mutuality.

Mr. Brian Jean: Indeed, you've heard here—

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

Mr. Brian Jean: Thank you.

The Chair: You've run out of time, by over two minutes.

We'll go to the Liberals.

Mr. Boudria.

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

So that we can be very clear on where we're at in the legislative process, and so there's no confusion, the bill has received second reading approval. Our owner's manual, if I can call it that, the *House of Commons Procedure and Practice*, by Marleau and Montpetit, on page 628, says that at second reading:

Motion debatable, amendable, and votable. Discussion focussed on the principle and object of the bill.

We've now adopted the bill in principle. It's not a matter of whether we're in favour of the principle of the bill. The House has decided that and voted twice: one was to do the reverse, which was defeated; and one was to do the principle, which the House accepted.

Of course, there's a reference to a legislative committee, which is what this is. The mandate of the legislative committee and its powers, again, is to report the bill with or without amendment. The committee is not empowered to present a report containing substantive recommendations concerning the bill. In other words, we can only produce amendments. We can't produce a report and say that, by the way, we should deal with such and such. That's not even in order for us. It's the amendments, if necessary.

My questions are on amendments.

Imam, we're looking forward to any amendments you could offer that would assist us in perfecting the language of the bill to offer religious protection. I, for one, am very concerned about this. I want that to be as strong as possible. Thank you for offering that.

If I can turn to our other witnesses of the bar, what is your opinion of the language 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.

Is that sufficient protection? Have you looked at that? Do you think it could be worded better to offer greater protection, or is it okay the way it is?

Mr. James Lebo: We're quite content with this, sir, because we feel it reflects paragraph 2(a) of the charter adequately.

Hon. Don Boudria: Let me ask the same witness, do you base this on response number six of the Supreme Court with respect to question 3, when it said "...we conclude that the guarantee of freedom of religion in the Charter affords religious officials protection against being compelled by the state to perform marriages

between two persons of the same sex contrary to their religious beliefs"?

Is this what you're basing yourself on to arrive at that assessment? Or does it in any way influence your belief that it's covered?

• (1715)

Mr. James Lebo: Certainly that's part of it, sir, because in fact that was the very point we advocated before the Supreme Court and is what the Supreme Court found.

Hon. Don Boudria: Okay.

Mr. Sean Foreman: Could I answer that also?

Hon. Don Boudria: Well, of course, sir.

Mr. Sean Foreman: The Supreme Court, in paragraph 59 of the decision, went on to also state that protection extends to the compulsory use of sacred places for the celebration of such marriages and being compelled to otherwise assist in the celebration of same-sex marriages, within its discussion of how robust the religious protections under the charter are. So the language that's contained in Bill C-38 with respect to religious protection, I would submit, is not intended to legislate the protection; it merely reflects the existing protection that flows from the charter.

Hon. Don Boudria: Okay.

Do I have time for another?

The Chair: Yes, sir.

Hon. Don Boudria: Thank you.

I want to ask, is the REAL Women of Canada part of what is known as the Defend Marriage Coalition?

Ms. Gwendolyn Landolt: Are we a part of the Defend Marriage Coalition? Yes, we are.

Hon. Don Boudria: Are you aware of that organization taking over websites of members of Parliament?

Ms. Gwendolyn Landolt: They told me they had websites of both sides, Conservatives and Liberals, on this issue, as far as I understand. I didn't know anything about that. But why couldn't they, I suppose, if they wanted to, since both parties are involved? I wouldn't think it would be a problem, would it?

Hon. Don Boudria: So you're aware that they have been doing this?

Ms. Gwendolyn Landolt: I have nothing to do with it personally, but I understand that they have websites for some Liberals and for some Conservatives.

Hon. Don Boudria: It's not what I'm referring to. I'm talking about the domain names.

Ms. Gwendolyn Landolt: The what?

Hon. Don Boudria: If you click donboudria.ca on your Internet, you end up getting the site of this coalition that you say you're a member of.

Ms. Gwendolyn Landolt: Yes.

Hon. Don Boudria: Are you aware of that?

Ms. Gwendolyn Landolt: I haven't looked at the websites. I understand they had websites for both parties, yes.

What is the problem?

Hon. Don Boudria: That's not the question I was asking. I was asking if your organization was aware that the coalition to which you belong has accessed domain names of members of Parliament, and I think you've said yes.

Thank you.

Ms. Diane Watts (Researcher, REAL Women of Canada): No, I don't think the answer—

Ms. Gwendolyn Landolt: Just a minute. What?

[*Translation*]

The Chair: Thank you, Mr. Boudria.

[*English*]

Ms. Diane Watts: The answer wasn't yes.

Ms. Gwendolyn Landolt: The answer wasn't yes.

Ms. Diane Watts: We're not aware of that.

Hon. Don Boudria: Well, this is to be clarified then.

If you click on your website, donboudria.ca, the website that I've paid for for years, it has now been overtaken or cybersquatted by a gentleman from Toronto, who's transferred it or sold it to an organization known as the Defend Marriage Coalition.

Now, if you go to my parliamentary website and go to my Don Boudria website—and there's a link—it tells you that this is the organization, it says things about me, and then there is a fund-raising thing at the bottom of it.

You were not aware of that?

Ms. Diane Watts: No.

Ms. Gwendolyn Landolt: No, not that.

Hon. Don Boudria: So it is your coalition that's doing this, and you're not aware of it?

Ms. Gwendolyn Landolt: I knew there were some websites, but I had no idea what they were. We were never told. We're just part of the coalition, and those are details we weren't involved with.

Hon. Don Boudria: Thank you.

[*Translation*]

The Chair: Thank you. We now move to the Bloc québécois.

Mr. Ménard, you have five minutes.

Mr. Réal Ménard: Thank you, Mr. Chairman. With your permission, I would like to put one or two questions to my friends from REAL Women of Canada. I have taken the liberty of calling them my friends, but I do not wish to commit any linguistic abuses. We are on both sides familiar with our mutual sensitivities.

You made a very far-reaching statement. Allow me to invite you to add some nuances to it. One can be for or against marriage. In a democracy, citizens have the full right to support or not support a bill and to have ethical and moral values such that they may wish to defend the status quo. That is in no way a problem for me.

However, I have some difficulty following you when you seem to be drawing upon studies—I am anxious to see your document—that suggest that what psychologists call psychogenesis, the development

of a child living in a homosexual family, would be different, and I am not speaking here of ethics, morality or the environment. If you truly believe that, then there is quite a problem of intellectual rigour and honesty. That you are against marriage is not a problem for me; that you are angry with the Bloc or with the Liberals, that you are jamming our fax machines, that is part of democracy. As representatives elected by the people, we can accept that.

But do you sincerely believe, in all honesty and rigour, that a child living in a homosexual family will be different from children raised in heterosexual families from the psychogenesis point of view? I am speaking here of the stages of his or her development: the age at which the child will walk alone, the age at which a child will urinate, his or her ability to tie his or her shoe laces, his or her motor skills, linguistic skills, ability to understand math, to feel love for the first time. I simply wish to understand that part of your intervention.

• (1720)

[*English*]

Ms. Gwendolyn Landolt: The answer is—

[*Translation*]

Mr. Réal Ménard: If you know the name of a psychologist who defends that point of view, then I hope you will give it to us. I believe the Canadian Association for Psychology is slated to appear before us next week. I here call upon your rigour and your intellectual honesty.

[*English*]

Ms. Gwendolyn Landolt: You're asking me whether children raised in a homosexual or same-sex relationship would be different from other children. The answer is absolutely, yes, they will be very different, and it's because they were raised differently. There's a different culture involved: they don't have the gender identity and they don't have the role models. There are many differences. If you look at our references on how same-sex marriages are different from a traditional marriage, these differences are what spill over onto the children.

[*Translation*]

Mr. Réal Ménard: No, that is not what I am talking about.

[*English*]

I'm not talking about that.

[*Translation*]

I am talking about psychogenesis, the development of the child. You maintain that with regard to the stages a child goes through—I am not talking about the parents—you have scientific references. You and I are intelligent people; we understand the meaning of words. With regard to psychogenesis—the age at which we tie up our shoes, go to the bathroom alone, are first able to understand a mathematical operation—, do you sincerely believe that the brain of a child raised in a homosexual family is different? That is what you are telling the committee. You have the right to say that, but I simply wish to understand if that is truly what you believe.

[English]

Ms. Gwendolyn Landolt: Yes, their behaviour patterns are different and their sexuality is different, as there's more inclination to be of same-sex orientation. The other thing they find is that there's more interference sexually with children who are raised in a same-sex union than in a traditional union. That is changing the development of the children, and their gender identity as individuals changes. All of those are changed.

Mr. Réal Ménard: Who said that? Give me one reference.

[Translation]

Give me a reference on your list that maintains such a point of view.

[English]

Ms. Diane Watts: We have two pages of references.

Ms. Gwendolyn Landolt: I've got them on page 23. Do you have our brief?

A voice: No, we don't.

Ms. Gwendolyn Landolt: We had it translated.

I can refer you to pages 23 and 24, where we have all of the references dealing with how children are different. There's a reference to them, and you can look them up yourself if you like. You'll find there are expectations of the parents towards children. There's an Australian study that comes to mind right now showing that children raised with same-sex couples are different, in that their values are different and their sexuality is not as defined. There are so many different categories: their sociability is different; their sense of themselves and their own self-esteem is different.

But I wish you would look at that and see it, because this is crucial, not to you or me, but to the children yet unborn and the children who are being raised today.

[Translation]

Mr. Réal Ménard: But do you...

The Chair: No, I am sorry, Mr. Ménard.

Mr. Réal Ménard: Forgive me, Mr. Chairman.

[English]

The Chair: We will now go to the Liberal Party.

Hon. Paul Harold Macklin: Thank you. Seeing that Mr. Brown has been very patient and has not had an opportunity to ask a question in two hours, I think it's appropriate that I defer to him and give him a chance.

The Chair: Fine.

Mr. Brown of the Conservative Party.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you, Mr. Chair, and thank you, Mr. Macklin. I will do this quickly because I know we're just about out of time.

My first question is for the CBA. Do you receive any funding from the federal government?

Mr. James Lebo: As far as I am aware, sir, no. Our activities are based on our membership fees.

Mr. Gord Brown: Mrs. Landolt, does REAL Women receive any funding from the federal government?

• (1725)

Ms. Gwendolyn Landolt: Not a penny.

Mr. Gord Brown: I might as well keep on going—

Mr. Abdul Hai Patel: No funding.

Mr. Gord Brown: Thank you.

One of my biggest concerns at this point in history with this bill is, of course, the protection of religious freedoms. I am keenly interested, and I know our representative from the Islamic council is going to come up with some potential amendments.

Off the top of your head, what kinds of things might you be proposing? At this point, as we're hearing, this bill is through, in principle, and the work of this committee is to hopefully find some amendments that might improve the legislation. So fire away.

Mr. Abdul Hai Patel: I mentioned the part about services. In Ontario, in particular, the Human Rights Code stipulates that refusal of service based on sexual orientation is against the law, against the Human Rights Code. As I see it, if any imam, any clergy in the mosque, or any temple, for that matter, whether it's Hindu or Sikh, or anybody, if they refuse the marriage ceremony, that would be classified as a service; therefore, to me, it is in violation of the Human Rights Code.

Where the charter kicks in is not clear, but if such a case is taken to the Ontario Human Rights Commission, I am sure it will go to the tribunal, and the tribunal will find the person guilty because it's in violation with regard to the service.

There are other examples where the religious freedom is curtailed. I can give you one example, a case that I presided over in my tenure as a commissioner, where a Muslim restaurant owner refused to serve a blind person who walked in with a dog. For a Muslim, the dog's saliva is considered unclean and not acceptable, but the blind person needs to have the dog in the restaurant. She was humiliated, insulted, and finally the service was delayed to such an extent that she left.

When the case came before the commission, it consulted a number of religious leaders. The late imam in Ottawa gave the best answer to me, which I fully agreed with and supported, that the rights of individuals, of a blind person, override any prejudice against dogs, or anything, for that matter. The blind person's rights supercede all other rights.

So in such cases, like here, where somebody is refused service, whether it's a restaurant, or a banquet hall, for that matter, in particular the Knights of Columbus being one example.... As I said, if a banquet hall has a package deal or a minister is hired to perform the service and he says, "No, I don't want to bless the child of a homosexual", when it's a baptism, or any ceremony, for that matter.... There are such ceremonies in other faiths as well, marriage included.

Mr. Gord Brown: I appreciate that, but what I'm trying to get at is, what sorts of proposals can you bring forward to accurately protect and reflect protection for religious institutions?

This is one of my biggest problems with this bill. At this point, I can't find a way in which we are going to be able to do that, so I'm keenly interested in how you are going to propose that we do that.

Mr. Abdul Hai Patel: Since the onus or the ball is thrown back in my court to find the right language for the amendment, I will not be able to say that right now, but we'll certainly look into it.

I thought the parliamentary committee would take this further for amendment, but I also welcome the opportunity for further input in this matter.

Mr. Gord Brown: Okay. Thank you.

I'll throw it back to our friends from the CBA. Maybe they have some ideas on this.

Mr. James Lebo: Our position, sir, is that we don't believe any amendments are required to the bill.

Mr. Gord Brown: Okay. We're probably coming down to the last minute.

Mrs. Landolt, maybe you have some ideas on this.

Ms. Gwendolyn Landolt: Yes. Since you're dealing with a federal legislation, you've got to deal with federal law.

First of all, my learned friends, I'm a member of the CBA too. They know the Supreme Court said that civil rights, religious rights, are strictly provincial jurisdiction. So you're limited as to what you can do. As an example, the Income Tax Act is federal legislation to protect charitable organizations and religions if they choose not to carry out same-sex marriages. What about the question of charities that do not accept same-sex marriages? They should be protected under the Income Tax Act.

The Canadian Human Rights Act, which is federal jurisdiction, should be amended to protect people's freedom of opinion and freedom of expression on the question of same-sex marriage. Many of us object to it, and yet I've been called all sorts of names because I have a particular position. I'd like some protection under the federal Human Rights Act to protect my views and my opinion in Canada. You have to look to federal legislation only; that's the only thing you can do yourselves.

Certainly, I know, for example, at the provincial level, which my learned friend here is talking about, we had questions about service with regard to adoption and with regard to foster parents. Because this law came in, and because it's a service under the Ontario act, the ripple effect was that the Children's Aid Society that I was with was compelled to put innocent children into a same-sex relationship.

There are so many complications, but as the federal government, obviously you can only deal with federal legislation. The Canadian Human Rights Act and the Income Tax Act are two possible changes you should look at.

• (1730)

Mr. Gord Brown: Okay. Thank you very much.

The Chair: Thank you very much. We are running out of time. We've run out of time, as a matter of fact.

Thank you to the witnesses for appearing in front of this legislative committee this afternoon. We appreciate your cooperation and we appreciate your help.

For those of you who are interested, the next meeting of the committee is in 26 minutes, at 6 o'clock.

For now, the committee is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.