



House of Commons
CANADA

Legislative Committee on Bill C-38

CC38 • NUMBER 013 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Monday, June 6, 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

Monday, June 6, 2005

•(1810)

[English]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)):
Welcome to the legislative committee on Bill C-38.

[Translation]

Welcome to this meeting of the Legislative Committee on Bill C-38.

[English]

The meeting was scheduled for 6 o'clock, so we apologize for the 12-minute delay. Our previous meeting ended at 5:35 and we decided we needed to eat something. Unfortunately, there was a glitch and we didn't get to a table until 5:50. So again I apologize for the delay and any inconvenience. We will complete this meeting at 8:10.

I want to welcome the witnesses.

[Translation]

I'd like to welcome the witnesses.

[English]

I'm sure you are aware of the way we proceed at this legislative committee. We have opening statements by witnesses of ten minutes each. Then we go into a round of questions and answers of seven minutes. Then the additional rounds are for five minutes, questions and answers included.

So let's get started. The order for this evening will be Mr. Joseph Ben-Ami, as an individual, then the Canadian Unitarian Council, and then the Roman Catholic Diocese of Calgary, represented by Bishop Fred Henry.

Let's start with Mr. Ben-Ami.

Mr. Joseph Ben-Ami (As an Individual): Thank you very much, Mr. Chairman.

I note that in the notice of meeting I'm identified as a private citizen. Of course, I'm happy and proud to wear that label, but I'm also here today on behalf of the Institute for Canadian Values, which is a faith-based public policy think tank located here in Ottawa. One of the goals of our organization is to dispel the myth that Canadians of faith are unqualified to hold high public office or even to participate in a meaningful and respected manner in the debate over public policy simply because the philosophical and intellectual framework in which they operate happens to be at odds with the prevailing secular zeitgeist in our society.

This is a project that I've only just undertaken, and as I think it's perhaps relevant to the proceedings of this committee, I'd like to remind members, many of whom I know fairly well, that until recently I was the head of government relations and international affairs for B'nai B'rith Canada, which is the oldest Jewish human rights organization in this country. I mention this only to establish a priori my credentials as a defender of human rights. It's something that I'm compelled to do, given what I regard to be the unprecedented campaign of vilification that has been directed by proponents of this bill against its opponents, particularly its religious opponents.

Let me state from the outset that religious objections to the legal redefinition of marriage are not based solely on God's will. Those that portray it as such are being, in my opinion, extraordinarily simple-minded.

If I could just go back for a moment or two to first principles, one of the main contributions of the Judeo-Christian heritage in our society is the idea that law exists in some form independent of and antecedent to the establishment of civil society. It's true that many of us attribute this law to God, but it's equally true that many of those who historically rejected divine revelation as the source of this law nevertheless recognized that it must be transcendent in nature and immutable; otherwise having an enduring civil society would not be possible. It's the wholesale and reckless abandonment of our fidelity to or even comprehension of this natural law that troubles us so much. This is the chief reason I'm here before you today. Whether one believes in the divine creation of humanity or a distinctly non-divine natural law, it is here and only here that we derive a doctrine of fundamental human rights that are the foundation of liberty and democracy in our world.

Time doesn't permit us to go into any great detail on this subject, so let me just reiterate this premise for the sake of clarity before discussing the impact of Bill C-38 on it and its implications for the defence of human rights in this country in the future.

Fundamental human rights are not a gift granted by a benevolent state to an adoring population. On the contrary, they predate the existence of the state. Their recognition is in fact a necessary precondition to the establishment of the democratic state. No constitution, not even our Charter of Rights and Freedoms, can bestow fundamental human rights on a free society. The most the constitution can do is to articulate those rights and set out the rules by which the actions of the state are constrained in order to protect those fundamental rights.

Mr. Chairman, it must be said that marriage is not simply a descriptive relationship between two human beings. It is, if I may be permitted to borrow a term used by my Catholic friends, a sacrament, the blessing bestowed by God upon that relationship. It is a uniquely religious institution, a symbol of divinity. To the extent that this is so, it's impossible to argue that entering into the institution of marriage itself is a fundamental human right, nor indeed does the objective evidence support the argument that it is. There is no benefit that accrues to married couples that is presently denied to same-sex or opposite-sex common-law couples that cannot be extended to the latter without redefining marriage. That being so, what possible justification can there be for redefining marriage other than that society, through marriage, does not presently affirm the lifestyle choice for these individuals? In fact, Mr. Chairman, same-sex marriage is a social policy masquerading as a rights policy.

• (1815)

Honest men and women of goodwill can and do argue the pros and cons of this policy, and that's fine, but to defend it on the basis of it being a fundamental human right, such an argument makes a mockery of the very term "fundamental human rights". This is why I spent a few minutes at the beginning of my presentation scratching the surface of the theoretical defence of human rights.

The argument that one group has a fundamental or any right to appropriate unto its members the symbols of another group as a manifestation of equality between the two is profoundly corrupt. Such an argument does incalculable damage to the prestige and integrity of our Charter of Rights and Freedoms as the essential expression in this country of fundamental rights. It brings the whole doctrine of human rights into severe disrepute.

In other words, the relentless drive to entrench same-sex marriage undermines the very foundational arguments upon which the basic rights of all Canadians are based, because if everything is a fundamental human right, then nothing is.

This may seem like a small and even semantic matter to members of this committee, but I assure you, as someone who's been in the trenches for a number of years, it's not, for absent a strong theoretical basis for human rights, we're left with nothing more than the charter for their defence. Of course, it's precisely this charter argument, not natural law, that Minister Cotler relied on during his presentation to you a few weeks ago. Although most Canadians place their trust in the Charter of Rights and Freedoms, I remind you all that, as we know, the charter can be amended.

One of the things that I confess really confounds me about this whole debate is that proponents of Bill C-38 actually agree that same-sex marriage is not a fundamental human right, because if it truly were, they wouldn't be able to argue that the bill before us does not infringe on religious liberties of Canadians. If same-sex marriage were a fundamental human right, we'd be obliged to impose it on religious groups. This is just a small illustration of how dangerously muddled all of our thinking has become on these issues.

Of course, it's only in such an absurd intellectual environment that members of Parliament can continue to maintain the deception, or shall I call it the "self-deception", that Bill C-38 protects religious freedom. The evidence that this is not so is now so extensive that one

has to be wilfully blind to deny that there is a real and growing problem.

I realize that the rules generally oblige me to propose if I'm going to make any proposals to change this bill, but they would be amendments that would address some of the issues that I and others have raised, without altering the substance. So at the risk of being ruled out of order, I'm just going to make this simple observation and conclude by saying that, in my view, there are no redeeming aspects of this proposed piece of legislation. It is deeply flawed, and in my view, if it's enacted, it will do great harm to the cause of fundamental rights in this country.

Thank you, Mr. Chairman.

• (1820)

The Chair: Thank you.

We'll now move to the Canadian Unitarian Council, Ms. Bowen or Mr. Kopke.

Ms. Elizabeth Bowen (Past President, Canadian Unitarian Council): Thank you, Mr. Chairman. My name is Elizabeth Bowen and I am past president of the Canadian Unitarian Council. I am accompanied this evening by Reverend Brian Kopke, the minister of the First Unitarian Congregation of Ottawa. We appreciate this opportunity to speak to you.

The Canadian Unitarian Council is a national religious body that represents all Unitarian and universalist congregations in Canada. We are part of a worldwide movement and one of the founders of the International Council of Unitarians and Universalists, whose members span six continents.

The lives and actions of Unitarians are guided by a set of seven principles. Two of our principles affirm the inherent worth and dignity of all persons and urge us to work for justice, equity, and compassion in human relations.

The Canadian Unitarian Council strongly supports the passage of Bill C-38. For us, the right of two people to marry regardless of their sexual orientation is a human right as guaranteed in the Charter of Rights and Freedoms. And we do not think that heterosexual marriages have anything to fear when two men or two women wish to marry as an expression of their love and their commitment to care for and to support one another.

Bill C-38, the marriage bill, the marriage act, is fair and balanced legislation. Implementation of the act will guarantee religious freedom of those opposed to and those in favour of same-sex marriage. The Canadian Unitarian Council supports the right of clergy of any faith opposed to equal marriage to refuse to perform same-sex marriages. The right to refuse is fully protected by the bill. At the same time, Unitarians want the religious freedom to celebrate those same-sex marriages we feel to be appropriate for our members and friends, and this right is also protected by the act.

Many opposed to equal marriage have implied that all religions are on their side. On the contrary, faiths across the country are dismayed when the religious view is appropriated by strident voices that stand in opposition to this human right. In April of this year, these faiths formed the Religious Coalition for Equal Marriage Rights and issued a powerful statement upholding the rights of same-sex couples to marry. In part, this statement reads:

Bill C-38 respects diversity and tolerance and grants religious freedom to clergy and religious groups to make their own choice whether to perform ceremonies equally for all loving adult couples. Given that there are religious groups who sincerely believe it is right to offer marriage to same-sex couples, the government must not support the imposition of conservative religious views that restrict marriage to only opposite-sex couples.

We support the right of clergy and religious groups to celebrate legally binding same-sex religious marriages, if they so choose. We are proud to witness to the growing number of religious communities and clergy in Canada working to ensure that lesbians and gay men are fully included and supported in their choices to form loving, lasting partnerships, build families, and contribute to Canadian society.

So who are the members of this coalition? They include the United Church of Canada; the Canadian Unitarian Council; the Canadian Friends Service Committee; Canadian Rabbis for Equal Marriage; the Muslim Canadian Congress; Church of the Holy Trinity (Anglican) in Toronto; the Apostolic Society of Franciscan Communities—Canada; and Saint Padre Pio Congregational Catholic Community in Toronto; and also the Metropolitan Community Churches in Canada; Ahavat Olam Synagogue in Vancouver; the World Sikh Organization; and individual members of Buddhist, Catholic, first nations, Hindu, and Mennonite religious communities.

The Canadian Unitarian Council is proud to stand with these religious communities who believe that anyone who wishes to participate in a civil same-sex marriage recognized by law should have the right to do so. We see this as a matter of individual freedom.

Reverend Kopke will now speak on the effect of Bill C-38 on our Unitarian faith and our right to practice our religious beliefs.

• (1825)

The Reverend Brian Kopke (First Unitarian Congregation of Ottawa, Canadian Unitarian Council):

Mr. Chairman, I'm Reverend Brian Kopke, senior minister at First Unitarian Congregation here in Ottawa. I'll be speaking about several areas related to Bill C-38.

The first is related to the rights of Unitarians to practise their religious faith in a way that is not outside the law. Unitarians believe that we are all God's children, no matter what our skin colour, mental or physical ability, place of birth, gender, age, or sexual preference. This is part of our faith. We also believe that no God sets conditions on the participation of people in life. God loves us all equally. This is also part of our faith.

In the past, we have been unable to marry gay and lesbian couples. This has been an infringement upon our acting out our belief in the acceptance of all people—an infringement imposed by a majority of people in our culture.

As a minority, the right of Unitarians to practise their religion has not always been protected here in Canada. As a church, we have offered gay and lesbian couples holy unions, sanctified by the church, but with no recognition, by the province or under the charter,

as a wedding. It is sad to operate outside the law, not illegally, but outside the law's embrace.

I have performed well over 200 holy unions in my 35 years as a Unitarian minister. I treat these couples the same as I do heterosexual couples. They all put together their own wedding service. They all receive some pre-marital counselling. Through the years, I have received many cards from gay and lesbian couples who recall their union service and the feeling of acceptance it brought to their lives—clearly not accepted by their province or by this nation.

It is our belief that any God would call us to bring all people into the circle of acceptance and love. Holy unions and supporting the passage of Bill C-38 are part of that call.

In June 2003 I performed my first legal lesbian wedding, and in July it was followed by my first gay wedding. I cannot express to you the flood of emotions I felt as these couples were able to feel for the first time that they were truly accepted by Canadian society. This was mixed with my own feelings of deep joy that I, as a Unitarian, was finally allowed to practise my own religion more fully.

In addition, let me say that I have found gay and lesbian couples to be wonderful parents, responsible contributors to the school communities of their children, and wonderful teachers in our own church school. I find their families filled with love and tenderness, good family values, and a strong acceptance of multiculturalism in this nation.

The second item is related to the definition of marriage. Canada has a developing definition of marriage over the years. It has changed over the years. At one time in this country, in a province, it was illegal for a Chinese man to marry a white woman. That is not a law any longer, of course. But just as that narrow and prejudice-filled law went by the board, it is time for Bill C-38 to be passed.

Thirdly, I want to say a few words about sacred religious texts. Sacred texts such as the Bible or the Koran—wonderful, inspired works of history, poetry, and narrative—become an issue in the debate only when someone believes that they are the word of God. Such a belief leads to certain interpretations. There are no sections of our sacred texts that have only one interpretation by great scholars. So which interpretation is right?

I believe these texts are written by people. I believe there are ideas in these texts that reflect the people of the time in which the texts were written. To side with one understanding of words, especially a literal understanding, which denies textual criticism, archaeology, cultural and political influences of the times, is to act out of an individual faith. That faith should not be allowed to infringe upon the practices of other faiths with narrowly written laws.

Finally, selections from Genesis or Leviticus in the Old Testament that are interpreted as laws against homosexuality are not interpreted this way by Unitarians. We are not literalists. In no way does Bill C-38 require any person to do something that is against his or her faith. Rather, it makes Canada more accepting, not only of gay and lesbian people, but it also allows Unitarians and others to more fully practise their own faith in Canada.

By redefining marriage, Bill C-38 achieves what all law in a multicultural nation should do, and that is to be written broadly enough to include all citizens.

The Chair: You have one minute.

Mr. Brian Kopke: There was hysteria when women were given the vote. There was hysteria when blacks were given the vote. There was hysteria when Chinese men were allowed to marry white women. Alas, all hysteria has died down, and we live together as one. And it works.

Bill C-38 continues the trend and makes Canada a bit closer to the dream of a multicultural nation.

Thank you.

• (1830)

The Chair: Thank you.

Now for the Roman Catholic Diocese of Calgary, Bishop Henry.

The Most Reverend Fred Henry (Bishop, Roman Catholic Diocese of Calgary): Thank you very much, Mr. Chairman.

The Roman Catholic Diocese of Calgary has currently about 350,000 Roman Catholics. Calgary is the fastest growing city in Canada, Cochrane the fastest growing town, and Chestermere the fastest growing village. Therefore, I think it's probably not a stretch to say that the diocese is probably the fastest growing diocese in Canada also. However, I'm grateful that we don't have a yearly census, because the CCCB works its assessment basis on the last census. So, fortunately, it's going to take them a while to catch up to us.

I would like to speak about a number of issues. I want to begin by setting the table by calling reference to a quote that was made by Pierre Pettigrew, foreign affairs minister, when he recently quipped, "I find that the separation of church and state is one of the most beautiful inventions of modern times". He went on to add that the church is obligated to remain silent on the issue of same-sex unions, as the government and the churches should not get involved in each other's affairs.

It is significant that no apology or retraction, to my knowledge, was ever offered for his offensive and ill-informed views. The whole concept of the separation of church and state is relatively recent, dating back to the Constitution of the State of Virginia, which was written by Thomas Jefferson. It also dates back to the slightly later Constitution of the United States, where the statement was made to the effect that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The First Amendment says nothing concerning the various churches' positions; it simply limits the Government of the United States from establishing one or the other of them as the official religion.

Canada does not have an equivalent statement, neither in the British North America Act nor in the Constitution Act as repatriated. What Canada does guarantee is freedom of religion. This is found both in the parliamentary act and in the Charter of Rights and Freedoms. Article 2 of the charter states, "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion." There is no statement on the separation of church and state in either of these basic documents.

The right to religious freedom is central to the current debate about the reinvention of marriage. I want to point to a growing spirit of intolerance in Canada and an inability to think critically.

Number one, on June 15, 2004, I received a harassing telephone call from Terry De March from Revenue Canada. His telephone number is 941-1647. He called as a result of a complaint lodged by someone objecting to another pastoral letter in which I attempted to clear up some moral confusion engendered by the Prime Minister. In much of the secular media, Mr. Martin was portrayed as a devout Catholic, even though his clarified positions re abortion and same-sex unions constituted a scandal within the Catholic community and reflected a fundamental moral incoherence.

Number two, in my response to my January 2005 pastoral letter on the subject of same-sex unions, which was printed in the secular press, I received a number of messages that I would classify as hate mail. I'll give you one example, from Billy, who said, "You are a sick, narrow-minded, disgusting excuse for a human being. Child molesters like you deserve to die."

Thirdly, two individuals have recently filed a complaint against the Roman Catholic Diocese of Calgary and me on the grounds of sexual orientation discrimination in the area of services refused, in terms of goods and services, and in the area of publication notices, signs, and statements, based on my January 2005 pastoral letter in which I refuted the standard arguments used to support same-sex unions as the equivalent of traditional marriage.

These complaints are an attempt to intimidate and to silence me and are without any foundation in fact. As a matter of fact, the lodging of these complaints constitutes a violation of my rights of freedom of expression and freedom of religion guaranteed by the Charter of Rights and Freedoms.

The recent Supreme Court decision bows in the direction of religious freedom. However, it adds a disturbing qualifier to its decision, namely, the statement that, "Absent unique circumstances with respect to which the Court will not speculate, the guarantee of religious freedom in s. 2(a) of the Charter is broad enough to protect religious officials..."

• (1835)

When you read this carefully, you don't have to be a lawyer to recognize an open door. Particular circumstances might lead to some future court legitimately trying to force religious officials to perform these ceremonies against their conscience, though the justice system declined to speculate on what those circumstances might be. It's disquieting that the court would even raise the possibility.

Bill C-38 not only does not close the door; as a matter of fact, it fails in a number of particular ways to support religious freedom.

One, it fails to recognize, protect, and reaffirm marriage as the union of a man and a woman, which the Supreme Court of Canada did not suggest was contrary to the Charter of Rights and Freedoms, nor did it suggest that a redefinition of marriage was necessary to conform to the charter.

Two, it fails to affirm cooperation with the provincial and territorial governments to enact the necessary legislation and regulations to ensure full protection for freedom of conscience and religion so Canadians are not compelled to act contrary to their conscience and religion.

Three, it fails to affirm cooperation with the provincial and territorial governments to ensure all leaders and members of faith groups are free everywhere in Canada to teach and preach on marriage and also on homosexuality, as is consistent with their conscience and religion.

Four, it fails to affirm cooperation with provincial and territorial governments to ensure that in addition to sacred places, all facilities owned or rented by an organization that is identified with a particular faith group are protected from compulsory use and preparations for or celebrations related to marriage ceremonies contrary to that faith.

Five, it fails to affirm cooperation with provincial and territorial governments to ensure all civil as well as religious officials who witness marriages in Canada in every province and territory are protected from being compelled to assist when these are contrary to their conscience and religion.

Six, it fails to safeguard faith groups that do not accept the proposed redefinition of marriage from being penalized with respect to their charitable status.

Mr. Réal Ménard (Hochelaga, BQ): You're going too fast there. Could you slow down, please?

The Chair: The reason we're asking you not to speak so fast is that there might be some problems in the translation. Mr. Ménard is listening to the French translation. We'll give you a little bit more time.

• (1840)

Mr. Réal Ménard: I don't want to miss anything.

Some hon. members: Oh, oh!

Most Rev. Fred Henry: Thank you very much.

Bill C-38 invokes freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms, but it's disturbing that there will not be a truly free vote on the bill. Apparently, party solidarity takes precedence over rights guaranteed in the charter. This is not democracy's finest hour.

Justice Minister Cotler has been quoted as saying "A right is a right is a right". Although I'm not a lawyer, but rather a philosopher and theologian, I would point out that this simple approach ignores two key facts. First, ordinary dictionary definitions of rights have a variety of options, and second, there are vast differences between varied notions of rights: merely asserted, conventional, legal, and natural. Governments may euphemistically call mass destruction of civilians "collateral damage", but such definitions misuse language. Definitions of marriage can be misused as well.

Varied uses and notions of rights reflect essential conceptual distinctions. Asserting that I have the right to fly the Concorde to Paris does not establish the right. Legally, I have no right to a university degree unless I meet certain university senate requirements. Claiming a natural right to equality in income with Supreme Court justices does not establish the right. Rights are of various kinds, and the application of racial models for same-sex rights claims conflicts in many ways with logical uses of analogies.

Claims of a right to same-sex marriage are not the slam dunk Mr. Cotler thinks they are. The so-called marriage act, as understood in ordinary language, refers to the unique act of sexual intimacy involving intercourse between a man and a woman. In spite of Clinton-esque interpretations of sexual acts, the ordinary usage remains entrenched in language. The so-called marriage act is not possible in same-sex relations. The acts in these relations are vastly different in origin, in real experience, and in goals.

The radical redefinition affects every order of human life from uses of logic to healthy moral and cultural life. This radical cultural shift accounts for the resistance of the majority of Canadians to redefinition of marriage on both religious and rational grounds. It's a mystery to the majority of Canadians as to why some parliamentarians just don't seem to get it.

Thank you very much.

The Chair: Thank you. We will now proceed with the first round, *le premier tour de questions et commentaires*. We will start with the Conservatives.

Mr. Kenney, seven minutes.

Mr. Jason Kenney (Calgary Southeast, CPC): Thank you.

My first question is for Dr. Kopke and Ms. Bowen. I believe your submission is that access for same-sex couples to marriage constitutes a fundamental human right. Is that accurate?

Mr. Brian Kopke: It constitutes a right that should be under the charter in Canada.

Mr. Jason Kenney: So it's a fundamental human right.

Mr. Brian Kopke: I'm not necessarily going to go with a fundamental human right, because—

Mr. Jason Kenney: So is it or is it not a fundamental human right?

Mr. Brian Kopke: I'm not going to answer that, because that whole argument—

Mr. Jason Kenney: Do you have an opinion on that, Ms. Bowen?

Ms. Elizabeth Bowen: My view is that it is a human right, period.

Mr. Jason Kenney: All right. It's a human right, so those who are opposed to extending marriage to same-sex couples would seek to deny a human right. Is that your position?

Ms. Elizabeth Bowen: Yes, it is.

Mr. Jason Kenney: All right. Why, then, would you be in favour of allowing certain social institutions—say, churches that maintain an exclusive heterosexual understanding of marriage—to deny a human right? Insofar as the right to grant marriage licences constitutes a function of the state that is performed by certain churches, why should they be given a privilege to perform a state function if they are discriminating and violating basic human rights?

Mr. Brian Kopke: The charter clearly states that among the rights we have is the right to religion and conscience, and it would fall under the charter in those areas, conscience and what your religion states.

• (1845)

Mr. Jason Kenney: So do you think that charter protection for right of conscience should include protection for social institutions that promote racism?

Mr. Brian Kopke: Absolutely not.

Mr. Jason Kenney: Do you think there is anything analogous between racism and the denial of basic human rights for same-sex couples, in your point of view?

Mr. Brian Kopke: I think there's a big difference between promoting racism and recognizing that it exists in our society. There's a big difference between—

Mr. Jason Kenney: All right, let's just take a hypothetical case. I understand there's an organization called the Aryan Nations Church. If they were to apply for charitable tax status and they refused to marry people of different ethnic backgrounds, do you think they should be granted tax status?

Mr. Brian Kopke: That's up to Revenue Canada.

Mr. Jason Kenney: I'm asking your opinion.

Mr. Brian Kopke: I personally do not believe they should be granted tax status.

Mr. Jason Kenney: So why should churches that are prepared to, in your view, violate fundamental rights be given tax status, which is a state benefit? Should they be?

Mr. Brian Kopke: I'll go back to your previous question. The Aryan Nations group is really a political group. It's not a religious group.

Mr. Jason Kenney: No, but why should churches such as the Catholic Church, which refused to marry same-sex couples, be given a state benefit in the form of charitable tax status?

Mr. Brian Kopke: They're acting within the charter, expressing their religious rights and their conscience.

Mr. Jason Kenney: Ms. Bowen, do you think they should be given charitable tax status?

Ms. Elizabeth Bowen: At the moment, because of the changes in the provincial laws, there are religious communities, religious churches, that are marrying same-sex couples, and they have maintained their charitable status. So—

Mr. Jason Kenney: That's a different issue.

Ms. Elizabeth Bowen: No. To me, it's the same.

Mr. Jason Kenney: Okay. I'd like to pass to Bishop Henry.

Bishop, you mentioned in your submission that you had received a call from a certain Terry De March from the Canada Customs and Revenue Agency. I believe that was in June of last year.

Most Rev. Fred Henry: Yes, it was.

Mr. Jason Kenney: Could you please describe for us that call and what preceded it?

Most Rev. Fred Henry: First of all, when you get a call from Revenue Canada, you start to shake in your boots, so it was one of those things that went to the top of the pile really quickly. I phoned him back the same day, I believe it was June 15, and he reminded me very forcefully from the beginning that I wasn't to engage in partisan politics, pointing out that my actions were in contravention of the Canada Elections Act and implying that my actions jeopardized my charitable tax status.

I pointed out to him that if he'd read the pastoral letter very carefully, I hadn't told anyone how to vote, that my letter was a pastoral one to the people of my diocese and was inserted in bulletins and read from the pulpit. It happened to be picked up by the media and reprinted, but I had simply been writing to clear up the moral confusion that was generated by the Prime Minister and the media. I asked him if pastoral letters were now outlawed; he refused to answer that particular question.

He then talked about perception and said that some people may perceive.... I said, I can't control the perceptions of all people in Canada, but I have to assume that they can think, and can think critically and evaluate, and surely to God they can understand that I'm not telling anybody how to vote here.

Then he said, well, are you going to take down the pastoral letter from your website? I said, no, why should I take it down from my website? He didn't answer that either. Then he said, are you planning on doing anything else? I said, I find that question very strange, but no, I'm not contemplating doing anything else. Then he said, I'm going to write a report for my superior; you may hear back from us again in the short term.

That was the end of the conversation. I assume that things didn't go the way he wanted. My interpretation was that he thought that Revenue Canada coming down and calling me to task would mean that I would beat my breast and say I was sorry and fold my tent and go away. When he found out that I wouldn't, and the conversation didn't go the way he wanted, he was upset. However, I think he felt that his purpose was served: I was warned, I was threatened. But since that time, I have heard nothing directly from him.

Mr. Jason Kenney: For the record, Bishop, you said you felt threatened by this call. How so?

Most Rev. Fred Henry: Yes, I did. Well, I think in the first instance it was clearly implied to me, and he suggested, that I had done something wrong, that I had contravened the Elections Act. I was familiar with the precepts and the content of that law, and I felt I was fully within my right as a bishop to teach my people and to clear up moral confusion.

Mr. Jason Kenney: Do you think he was implying that the charitable status of your diocese depended potentially on your conforming your religious expression to his interpretation of the charities act?

•(1850)

Most Rev. Fred Henry: Yes, is the short answer.

Mr. Jason Kenney: Bishop, clearly you're not somebody to fold your tent. If you were just a pastor of a small independent, perhaps a protestant, church and you received a similar call for something you had expressed to your congregation, and the financial stability of your church depended on that tax status, do you think you might have felt even more pressure in that kind of situation than you did as bishop of a large and fairly prosperous diocese?

Most Rev. Fred Henry: No question; several ministers have told me precisely that.

Mr. Jason Kenney: Do you know others who have received similar calls?

Most Rev. Fred Henry: No. Most of them have been intimidated. Based on what has happened to me and it becoming public, most of them are a little bit gun shy right now.

[*Translation*]

The Chair: We'll now go to Mr. Ménard for the Bloc Québécois.

Mr. Réal Ménard: Thank you.

[*English*]

I'm going to speak in French.

[*Translation*]

I'd like to begin by directing my comments to Monsignor Henry. I've heard a great deal about you. It's a pleasure to be able to discuss this bill in person with you. You have many staunch supporters among committee members. However, you would be wrong to count me among them.

Deep down, do you believe that Canada has a State religion? Earlier, you had some harsh words for the Prime Minister and for the Minister of Foreign Affairs. You're entitled, just like all Canadians are, regardless of their religious affiliation, to your opinions and to your views on men and women in public office. However, the debate on same-sex marriage and the position taken by Catholics demands at the outset that you state whether or not you believe Canada has a State religion and if so, whether you think some believers should enjoy a favoured position with the nation's lawmakers.

[*English*]

Most Rev. Fred Henry:

Thank you. That's a good question.

Obviously, I don't think there is a state religion. Nor am I in favour of a theocracy, like they have in Iran. However, what has happened right now is that we have gone to the opposite pole. There is a stream of anti-religious bias within, I'm afraid, the halls of Parliament and in society in general. We don't exclude a Freudian psychiatrist and tell him to leave his Freudian traits outside when he enters into public debate. You don't tell a trade unionist to leave out his thinking. You don't tell a CIBC bank manager. I don't want to be told I can't participate because I happen to be a religious believer.

You'll notice that I have yet to quote sacred scripture in anything I've said today. I have been talking from the vantage point of a citizen who also happens to be a believer. I want to talk about reason.

I want to talk about the state of affairs in our country. I want to talk about the nature of marriage. I'm quite prepared to bracket a religious text and teaching of the church for the purposes of discussion.

[*Translation*]

Mr. Réal Ménard: I have a second question, if you have no objections.

You realize full well that the bill now before us has nothing to do with religious marriage; it came about as a result of a consultative ruling which did not, admittedly, bind the government to a Supreme Court reference. It has nothing whatsoever to do with religious marriage.

Canada does not have an official State religion. For the sake of equality, do all governments not have an obligation to uphold equality by eliminating discrimination?

I have to admit that I'm having a bit of trouble following your argument this evening. You agree that there is no State religion in this country. However, if the government grants homosexuals the right to get married, this would, in your view, violate religious principles.

I can't quite get a handle on some aspects of your argument, because we're talking here about civil marriages, not religious marriages. No member of any specific religious community in Canada will be forced to marry homosexuals in a religious ceremony.

With all due respect, your argument smacks a little of religious interventionism. Are you not trying to impose your views on the lay community and on politicians? Politics cannot be driven by religious opinion or by some particular view of the world. Equality must be the primary consideration, as entrenched by various charters and human rights codes.

Putting it another way, if you consider marriage to be a civil right—and civil rights is the issue here—are you not appealing through your arguments to an audience that holds somewhat extreme views?

•(1855)

[*English*]

Most Rev. Fred Henry: No, I don't think I'm being excessive. If it makes you any more comfortable, I'll take my collar off. I'm just going to talk about marriage. I don't believe that religious and civil marriage are in opposition. What we're talking about is one fundamental reality, marriage as we know it, which pre-dates this country, this Constitution, and all of us. It's irrelevant whether or not I happen to be a religious person. All I want to talk about is marriage itself.

Now, I happen to be both a minister of the state, in terms of having a civil licence to perform marriages, and a religious minister. I'm quite prepared to reflect upon the nature of marriage itself. I don't have to keep talking about marriage as a sacrament. I'm a citizen here. As a citizen, I object to an attempt to reinvent a fundamental social institution of society in the manner in which we're proceeding right now.

[Translation]

Mr. Réal Ménard: If you're prepared to remove your collar, I'll remove my tie.

[English]

Most Rev. Fred Henry: We'll exchange. I'll give you my collar.

Mr. Réal Ménard: No, no. You don't understand.

Some hon. members: Oh, oh!

Most Rev. Fred Henry: No, it's interesting. You wouldn't take mine, but I'll take yours. I like your tie.

Mr. Réal Ménard: I am a secularist, don't forget.

[Translation]

Seriously though, you talk about the sanctity of marriage and about preserving and upholding the current interpretation of the institution of marriage.

[English]

Most Rev. Fred Henry: I haven't talked about that here.

[Translation]

Mr. Réal Ménard: However, you refer to marriage as a social institution, whereas that is not the case. Your position as a Catholic is not necessarily shared by other religions. You value marriage not as a social institution, but for its religious nature. If marriage is a social, and therefore lay, institution which must conform to the principle of equality, then it's our role to ensure that marriage is accessible to everyone. What connection do you draw between the religious nature and the social nature of marriage?

[English]

Most Rev. Fred Henry:

Well, I think it's a natural fit. First of all, we're starting with nature and natural law. We're talking about a fundamental institution that serves two purposes. One, it involves the gender complementarity of the participants in this union. Second, there's a procreative dimension or an openness to new life. That I understand to be fundamental, and so far, I haven't used any religious terminology whatsoever.

As a religious person, I would add an overlay to that particular reality and call it a sacramental union in virtue of it being a situation, any bond, that is sanctified by God himself. But for the purposes of this table, I don't have to do that. Let's just talk about the institution itself. That's all I'm prepared to do.

When I use all my arguments that I brought forth and the six or seven weaknesses with respect to Bill C-38, I'm doing so because supposedly everybody keeps saying, oh, yes, but we're guaranteeing that you will not have to perform, as a Roman Catholic, same-sex marriages. I'm saying I don't care what the government has to do there; I'm not going to do it, period, even if it means surrendering my civil licence. I'm prepared to go that far.

However, for someone simply to say that you shouldn't have anything to say with respect to the nature of marriage because you happen to be religious, I'm going to say, excuse me, this is a false understanding of the separation of church and state that the foreign minister, unfortunately, didn't take a course in when he was doing his

course in political science. I venture to say there are probably a few others in the halls of Parliament who haven't passed Political Science 020. I say that as a former university professor.

[Translation]

The Chair: Thank you.

[English]

I will go to the NDP.

Mr. Siksay, seven minutes.

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

Thank you to all the witnesses for your testimony here tonight.

I want to begin with Ms. Bowen and Mr. Kopke. I want to thank you for the long history of the Unitarian Church on this issue. When I was a young gay man struggling to come to terms with my sexuality, I remember hearing an interview with Richard North and Chris Vogel back in 1974 on *As It Happens*. In fact, I went to the CBC website and that interview is actually still on there in their archives. They tried to get a marriage licence in Manitoba back in 1974 and were denied, but they met with the folks from the Unitarian congregation there and were married in that congregation back in 1974.

That example meant so much to me, because I'd grown up with all the usual misinformation that that kind of commitment was not going to be possible for me as a gay man and that I was condemned, somehow, to brief, questionable relationships, and certainly no stability, in terms of a personal relationship. Chris and Richard's example, and the Unitarian congregation's example, meant a whole lot to me and really pointed to another possibility for my life. I want to thank you very much for that example.

Mr. Kopke, you mentioned that you've done over 200 holy unions and marriage ceremonies for gay and lesbian couples. Do those couples bring something different to an understanding of marriage? Are they living out their married lives differently than heterosexual couples? We hear that somehow this is changing our understanding of marriage. I'm wondering if the values you see in those relationships are similar to the ones you see in heterosexual couples you've married.

● (1900)

Mr. Brian Kopke: Well, actually, they are changing the values, but I think in a very positive way.

What happens is that heterosexuals generally have their parents as their images, their role models. They bring those role models from two different families to the marriage. Those are role models who are out there, living in front of them.

Gay men and lesbian women make up their own models. When they do that, they do a lot of soul searching and tend to do what a lot of us have done and say, you know, my parents did this and that, and I'm not going to do that; I'm going to do it a different way. They bring I think a deeper sense of respect for the partner. I think they bring a tenderness to the marriage relationship that I don't always see in heterosexual relationships. I think one of the things they bring is a knowledge that it's a very special thing that carries a special responsibility with it, because in fact people are watching.

My experience with the couples I've known who had holy unions 10 years, 15 years, 20 years ago—and most of the ones I know are still together—is that they're still living out a relationship that is forging new ground. It's ground that actually a lot of heterosexual couples who live close to them are looking at and saying, gee, their relationship is really much closer and much more filled with living out of family values than ours is, because we got sucked into the culture.

So I applaud what's happening in those relationships.

Mr. Bill Siksay: I wonder if I may ask Ms. Bowen and Mr. Kopke again, has the Unitarian Church, or have some of the churches, ever been contacted by Canada Customs and Revenue Agency—Revenue Canada—about participation in partisan politics, or with other concerns?

Ms. Elizabeth Bowen: Not to my knowledge, no, and I have served on the Canadian Unitarian Council board of directors for seven years, including the years passed as president. We have charitable status, of course.

Mr. Brian Kopke: I'll answer that a little bit differently. A number of years ago, though, some of the new Unitarian groups that were coming in that didn't have ministers were given a hard time over charitable status. To a person, they felt it was because sometimes Unitarians don't believe in God, and because of that particular belief they were being discriminated against.

Mr. Bill Siksay: But there has been contact with CCRA, or Revenue Canada.

Bishop Henry, I appreciate your experience of dealing with Revenue Canada back during the federal election. When the United Church was here, they testified that they had also received a phone call during that period from Revenue Canada. When I asked similar questions of them, I was told that this happens regularly, that they saw this as part of their regular dialogue with Revenue Canada, or CCRA, about their charitable status and how it operates. I was told they didn't see anything particularly threatening or intimidating about the call, that it was actually a friendly call and one that was built out of a relationship they had with CCRA previously.

Had you had any contact with CCRA or Revenue Canada previously with regard to these kinds of issues?

Most Rev. Fred Henry: No, I hadn't.

•(1905)

Mr. Bill Siksay: Can I ask how long you've been bishop of the diocese?

Most Rev. Fred Henry: Nineteen years.

Mr. Bill Siksay: Would there be another officer of the diocese who would deal more regularly with Revenue Canada, rather than you?

Most Rev. Fred Henry: No, most of that kind of stuff is sufficiently important that it ends up on my desk.

Mr. Bill Siksay: I know from my own volunteer work with the United Church that a number of years ago Revenue Canada was doing an audit of a lot of clergy because of the special provisions that exist for clergy in the Income Tax Act. I remember it was an inconvenience for a lot of people. It wasn't seen particularly as intimidation or a threat from Revenue Canada, but it was contact between ministers of the church and Revenue Canada. Has that kind of thing happened for priests in the diocese?

Most Rev. Fred Henry: It's happened to some priests, yes. If I were to be totally honest with you, I fully expected to be audited this year, based on the telephone call I got back in June. But I don't think I was.

Mr. Bill Siksay: That hasn't happened yet?

Most Rev. Fred Henry: Not yet.

Mr. Bill Siksay: Can I ask about the complaints that have been made against you? Where are they, at this point? Who's made them? I don't mean names particularly, but are they individuals who have made the complaints? Where do they stand? Are they going forward? Have they been heard already? Has there been a judgment in them?

Most Rev. Fred Henry: You're referring to the human rights...?

Mr. Bill Siksay: Yes.

Most Rev. Fred Henry: There have been two complaints, lodged, I believe, by individuals. I simply have received a copy of the complaint form, which is like a three-page questionnaire that's been filled in. It's passed on to me and asks "How do you respond?" You are given 21 days to respond. My lawyer and I have responded by compiling two telephone books of materials, based on speeches I've given and all the rest of that sort of thing, and submitting it to them.

I have also done a television program with one of the complainants. Based on clarification of what I said in my pastoral letter regarding the word "coercion", it appears as if he is ready to drop the complaint. The other person is not as open, apparently, to that thing, so that one is likely to proceed.

Mr. Bill Siksay: But there's no indication yet whether it is going to go forward or not? It hasn't gone into hearings or anything like that?

Most Rev. Fred Henry: No, it hasn't reached that stage.

Mr. Bill Siksay: Is this under the Alberta human rights act?

Most Rev. Fred Henry: That's right, under Alberta human rights.

The Chair: Thank you, Mr. Siksay.

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

The Chair: We'll now go to the Liberals.

Mr. Macklin, the parliamentary secretary.

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

Let me just follow along on the general tenor of charities and charitable status, because I think it is something that has had its profile raised significantly in this process.

I guess at this point I can conclude that both of you—"both" representing you, Bishop Henry, and the Unitarian Church Council—have not heard of anyone else who has either been phoned or has actually had their charitable status revoked for speaking out on this or any other controversial issue, such as abortion. Is that fair?

Most Rev. Fred Henry: I'm not exactly sure how to answer that. As a minister of religion, no, I don't know of anybody who has. But I know some other charitable groups who have voiced opinions based on moral principles and have had their charitable number revoked.

Hon. Paul Harold Macklin: Now, in your case, at the moment are you forming the opinion, subject to future events, that this is an isolated incident, based on your experience with Revenue Canada?

Most Rev. Fred Henry: I really don't know. I don't know what goes on inside Revenue Canada, but I tend to think personally that the individual who phoned me made a mistake. I suspect Revenue Canada would like this thing to disappear as quickly as possible. If it proceeded to a next stage, I think the only thing that would ensue would be embarrassment for them. I'm quite capable of defending my pastoral letter as not being in contravention of the Elections Act, and I don't think Revenue Canada wants that kind of discussion to take place.

My guess—and I might be totally wrong—is that a mistake was made. It's over and done with, and let's get on with things.

Hon. Paul Harold Macklin: With respect to this area—because it is a very broad area, when we talk about registered charities and their capacity to participate in society—are both of you agreed that in fact there should be some limitation on what registered charities can do in terms of their ability to speak out, especially because in a sense they're representing their donors? I ask that to both of you, Bishop Henry and the Canadian Unitarian Council.

Most Rev. Fred Henry: Well, I think it's a delicate area we have to deal with. First of all, from a religious vantage point, we firmly believe our religion and faith should fit together and faith should permeate everything we say and do, so in a sense there is nothing that is outside the parameters of being fused by gospel values.

It seems to me to be rather strange that we live in a country in which, during the high point of some of our debates on moral issues, the Canada Elections Act is being used to muzzle the voices of the churches at this particular stage. I think there's something incongruous here and something that's out of sync.

At the same time, I'm not interested in being involved in partisan politics. My God, I have enough to do without trying to do your job.

• (1910)

Hon. Paul Harold Macklin: And from the Unitarian Council?

Mr. Brian Kopke: I think it's important to recognize that in the Judeo-Christian tradition on which our laws are based there is a prophetic voice, and it's that prophetic voice the churches act out of.

That voice allows for clear debate but not for getting involved in the elections, and I think that's where the line is drawn. The prophetic voice is what creates a lot of the dialogue in the nation. There has to be dialogue as we go into bills like this, and this dialogue is very important.

Hon. Paul Harold Macklin: I'm following up on that. Do you believe, then, religious charities should have special protections for their religious freedom on an issue? If so, how far should that go? Again, that's to both of you, Bishop Henry and the Unitarian Council.

Mr. Brian Kopke: Insofar as English common law is built on the history of interpretation through the years, I really think English common law and Canada have done pretty well on that. They've allowed a huge amount of debate, and seldom has the line been drawn, except when people clearly cross the line. So I'm pretty happy with the way things have gone. There is a lot of debate.

Most Rev. Fred Henry: Mr. De March's telephone call, especially when he asked me whether I contemplated doing anything else, just sufficiently angered me that I said I hadn't been thinking about it but I was going to think about it. Consequently, I wrote an article entitled "Election 2004: Discernment and Responsibility" for one of our newspapers, *The Calgary Sun*, and proceeded to talk about some key principles of moral and social teaching.

These function like a lens through which to examine public policy and programs, such as respect for life, support for marriage and family life, the preferential option for the poor, the common good, and so on. Basically, I was borrowing from much of the material that was produced by the Canadian Conference of Catholic Bishops. I thought the people in my diocese have a right to try to look at things through the lens of their moral principles in terms of trying to evaluate the various platforms and the candidates who had presented themselves to run for public office, but I didn't endorse anybody.

Hon. Paul Harold Macklin: You are a proponent, obviously, of registered charities being able to spend their revenues on promoting their religious belief. Would you limit that to being based on the holy text upon which that religious organization relies?

Most Rev. Fred Henry: When you talk about religious belief, I don't think that respect for life, support for marriage and family life, the preferential option for the poor, and the common good are religious issues. I think they're human issues. As a result, I can't see why a group, because it happens to be rooted in faith, should be excluded from the debate itself. It doesn't make any sense to me.

Again, you don't tell a Freudian psychologist...you don't tell a CIBC corporate manager to bracket their corporate philosophy prior to entering the public forum. Why should I, or a charitable institution, be asked to bracket myself before I comment on an issue?

We come at it from different vantage points, but that's part of who we are. That's part of our being. As citizens of Canada, I thought that was one of our charter rights.

Hon. Paul Harold Macklin: From the Unitarian Council...

Mr. Brian Kopke: Faith communities ought to be able to speak out of their faith. The best statements about social policy are rooted in our own traditions in our texts. That goes back to the type of statement that Joseph Ben-Ami made, which gets into the philosophy and things that pre-exist what we now have. These debates are absolutely necessary in the long run, because without them we end up with a society that floats around and doesn't give us any sense of stability.

• (1915)

Hon. Paul Harold Macklin: Thank you.

The Chair: We'll go to the Conservatives, Mr. Toews.

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

I want to make note that some of our colleagues who are not regular members of the committee are here as well—Mr. Jeff Watson and Mr. Pat O'Brian. I welcome them as observers. Paul Szabo is sitting in the front row. He wasn't around the table. He's certainly welcome to come to the table as well.

I'm concerned about this issue of the Revenue Canada official, Terry De March, making these kinds of statements. I'm concerned not only about this perceived threat against a bishop of the Roman Catholic Church, but also about the fact that this individual was trying to enforce the Elections Act, which is not an act that Revenue Canada should be enforcing. I may well be making a motion, if we can get unanimous consent, to have this individual here, because I think he has a lot of explaining to do.

My specific concern, though, is directed at the comments of the Unitarian Church, that this act is somehow balanced and that religious freedoms are protected. We heard a constitutional expert today, a law professor, who said that by trying to frame this as a constitutional requirement in the preamble, we were clothing a policy as a constitutional requirement. He said this is not a constitutional requirement, and that it was regrettable that the governing party would try to shape this debate as though it were a constitutional imperative.

The second point—and I would like you to comment on both these points—is that Ms. Bowen said that religious freedoms are protected in this act. If this is the case—and she was referring to section 3—then section 3 must be unconstitutional. The Supreme Court of Canada, in its decision, said that a virtually identical provision was unconstitutional, if it tried to protect religious freedom in a substantial or declaratory way. So it concerns me even more that Ms. Bowen is saying that religious freedoms are protected by this section. If this section actually protects religious freedoms, then according to the Supreme Court of Canada, it's unconstitutional.

I hope your interpretation is wrong, because it concerns me gravely. It's all part of what the government is trying to do—to dress up this skeleton in emperor's clothes. There really is no protection of religious freedom, and it's trying to dress a policy issue as a constitutional one.

For the Unitarian Church now to come here and offer this legal opinion gives me a lot of concern. I'm wondering if you could expand on your legal opinion about this act and how you think it protects religious freedoms.

If Mr. Kopke is giving the answers, he can speak.

Ms. Elizabeth Bowen: No. I just said to him I am not a lawyer, so it makes it very difficult for me to engage in a conversation with you and refer to the testimony of someone who is a lawyer. But I am looking at the section that I think you refer to.

Mr. Vic Toews: It's section 3, which the Supreme Court said was unconstitutional in the reference last year.

That concerns me. You come here as a faith organization and then dress up your faith beliefs in a legal context. I'm concerned about that. If there is a basis for your legal opinion, please present it. If there is no basis for that legal opinion, please state that so we can move on to other testimony.

Mr. Brian Kopke: We could have brought a lawyer. We did not bring a lawyer. Normally in Canadian society, when you're pinned down like this, you have the right to have a lawyer with you, and we don't have that. So I guess you can move on.

Mr. Vic Toews: I'm not saying you should have a lawyer. I'm just concerned when you venture into the legal area and make statements regarding law and constitutional law, which are clearly wrong.

Now, Bishop Henry, there is the issue of something that my colleague, Mr. Kenney, mentioned. You're the bishop of the Roman Catholic Church. The Roman Catholic Church is a very big organization.

I come from a relatively small Protestant group. Right now that Protestant group is facing challenges because it will not rent a facility to a homosexual choir. It is now facing these kinds of disputes in front of the Manitoba Human Rights Commission. Again, we're seeing these kinds of developments right across this country.

My fear is that once we change the definition of marriage as a matter of law right across this country, what are now apparently exceptional circumstances will escalate because there will be a legal, constitutional basis for saying that those who oppose same-sex marriage on ethical grounds are the equivalent of racists from the deep south in the 1860s. That's what my concern is here. I know the Unitarian Church skirted around that issue, but if there is no hierarchy of rights, if same-sex marriages are right the same way that equality of races is right, how then can we distinguish these rights? That's my concern. Could you elaborate perhaps on that, Bishop Henry?

• (1920)

Most Rev. Fred Henry: We're in a mess right now because we have a bill in front of us that supposedly guarantees religious freedoms, but sufficient dialogue has not taken place between the various jurisdictions concerned with marriage, namely the provinces and the territories. We're not all on the same page.

If this bill passes, I think all of us are going to see a proliferation of court cases. I know I for one am probably going to end up before many judicial bodies and tribunals and so on. This is something that I regard as so fundamental that no matter what form Bill C-38 takes, if it passes, to my mind it will be just like opening Pandora's box. I've already said there are four issues anyway.

Mr. Vic Toews: I'm just saying that already the commissions are doing it. The courts are also doing it.

The Chair: Mr. Toews, please.

We're going to go back to the Liberals. Mrs. Neville, go ahead, please.

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

Let me begin by thanking you all for coming here this evening. Let me say to you, Mrs. Bowen, that I too am not a lawyer. I've been sitting and listening to a whole host of legal opinions. What I'm learning in this process, and what I'm aware of, is that there are many differing legal opinions on this. As we saw with the constitutional experts, 134 took one position and 32 took another position. So you are as entitled to make your comments, based on the information, as I am here today. I think it's reasonable participation for all of us.

I'm struck by a number of things. Mr. Kopke and Ms. Bowen, I'm struck by the fact that, as you mentioned, the Unitarian Church now has the ability to perform same-sex marriages in a certain number of jurisdictions. What's happening in the jurisdictions where this has not passed? And then I have another question.

Ms. Elizabeth Bowen: People are coming from those provinces into provinces where marriages are considered legal.

Ms. Anita Neville: And is that a significant number? Do you have any sense of that?

Ms. Elizabeth Bowen: I have no number. Maybe Reverend Kopke does. I do know that a lot of people have come from the United States as well as from other provinces to be married in Ontario.

Ms. Anita Neville: Within the Unitarian community?

•(1925)

Ms. Elizabeth Bowen: Yes.

Ms. Anita Neville: As I'm listening to the two faith groups, I'm struck by the fact that the Unitarian community is finding the law liberating, if I can use that word, in allowing you to perform your religious rights and to expand your religious association.

Bishop Henry, I'm listening to you and you're finding it, in my words, obstructionist and inappropriate for you.

I guess what I would ask each of you is this. How do you see some potential reconciliation of the government's desire to honour the individual human rights of all Canadians with your own faith-based beliefs?

Most Rev. Fred Henry: Well, I think there are a number of things that could be done.

One, I would hope the government would decide to define the traditional understanding of marriage as a union of a man and a woman to the exclusion of all others; and not to go in the direction of talking about some kind of analogous marriage such as civil unions, but look for those social rights deemed to be denied to members of the gay and lesbian community under an umbrella such as adult interdependent relationships.

I think that desexualizes it, and it puts it within a context where it also takes into account, say, my niece, who is currently committed to sacrificing her own life to look after grandma. Inheritance rights ought to be accorded to her, visiting rights ought to be acknowledged

when she goes to the hospital, and so on, and she shouldn't be barred from doing so.

If there are other rights that members of the gay and lesbian community feel are being denied to them right now, I would like them to clearly specify what those are. I think those rights can be dealt with and protected and enshrined in law, without reinventing marriage itself as a social institution.

My best hope is that there would be a reaffirmation of traditional marriage and then you as a body of legislators would look at the whole question of adult interdependent relationships.

Ms. Anita Neville: Basically, I hear that as no reconciliation between—

Most Rev. Fred Henry: You're right. If you're asking me to accept a watered-down understanding of the institution of marriage, that's not going to happen.

Ms. Anita Neville: Reverend Kopke, can you comment on it?

Mr. Brian Kopke: I think it's a long, slow, and deliberate process, and it's going to require a huge amount of talking, not only among faith communities, but also among Canadians across this land. We saw it certainly back when women were given the vote, when blacks were given the vote, etc. Things were just as messed up and vociferous at that time as they are now. Yet we've all come together as a nation, and a stronger nation.

I believe that's what will happen. I have faith in Canada. I have faith in the faith communities in Canada being able to embrace what the future is going to bring.

I think the reason marriage probably became the vehicle for this discussion was because...whether it's inheritance, or retirement benefits, or being part of a family health plan, they are all tied to marriage.

Nevertheless, there is also discrimination in Canada against gay and lesbian people, and I think we've seen those barriers slowly dropping over the last 10 years.

Coming at this from the point of view of marriage is one way of making sure those barriers do drop, and they should drop.

[Translation]

The Chair: *Merci.*

Now, back to the Bloc Québécois.

Mr. Ménard.

Mr. Réal Ménard: I would just like to point out, Mr. Chairman, that not one of the witnesses we've heard this evening has presented a legal opinion on the scope of clause 3. Earlier, a witness was criticized, somewhat too harshly I might add, for not presenting one. However, he was not alone. A person doesn't have to be an expert to hold an enlightened view of this issue. All we can hope for is that people are not prejudiced. However, no legal expertise is required to express the opinion that the bill protects freedom of religion.

I'd like to exchange some views with the representatives of the United Church, whose testimony was very refreshing. The position they espouse seeks to reconcile values such as generosity, commitment and tolerance. It's regrettable, in my view, that certain spokespersons for the Catholic Church have a somewhat different discourse. No doubt this explains when people in some parts of the world are deserting the Roman Catholic Church.

That being said, it is important to recognize legal precedents and Supreme Court rulings on the subject. In Canada, there have been 15 relevant rulings. Maybe it would be worthwhile to have our researcher dig them up for us before we conclude our proceedings. Last semester, I took a course on public freedoms, and on freedom of religion in particular, at the University of Ottawa.

Clause 3 of the bill clearly states the following:

It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

The reference in this provision is to officials of religious, not lay, groups. I think a person would have to be operating from a position of bad faith to think that this guarantee is inadequate. This provision safeguards religious beliefs associated with the right of freedom of religion. I remind you that when the Supreme Court and other courts ruled on the question of freedom of religion, jurisdiction wasn't an issue. Do you recall, for example, the rulings in Quebec on the carrying of the kripa? Thirty years ago, when the courts ruled on the observance of Sunday as a day of rest, the question did not arise as to whether this was a federal, or provincial, matter. The courts held that people's religious beliefs must be respected, and that jurisdiction wasn't an issue.

I wholeheartedly respect the right of Catholics to reject homosexuality. The crux of the debate is that there are men and women in the Church who reject the right of homosexuals to exist and to form families. People are entitled to their religious beliefs, but they cannot ask legislators to subscribe to these views. If in fact Canada has no State religion, then the only real value that must transcend all political parties is the right to equality. It's a myth that equality exists when a homosexual male cannot get married.

I'd like to ask you—and maybe Monsignor Henry would like to venture a response as well—if you have any serious concerns about the scope of clause 3. I'm relying completely on your analysis. One doesn't have to be a law student to understand the scope of this provision. What weight do you ascribe to clause 3, from a practical standpoint? As a minister, how do you view clause 3? I'm not asking for a legal opinion. The committee can always request one if it wants, Mr. Chairman, but I'm asking the question from the standpoint of what's actually going on.

• (1930)

[English]

Mr. Brian Kopke: Every officiant for a marriage has the right now to refuse to do any marriage they want, based on what their faith is. I have people who come to me because they are divorced and their priest or their minister simply will not marry anybody who is divorced. Are we going to throw divorces out and redo that? No, we're not.

I don't see any difference between that and what's going on here with gay and lesbian marriages. They have the right to say no; it's very clear. I think there understandably is a fear in relation to this. I understand it, but I'm going to trust the courts on this. I know that not everybody wants to trust the courts. If the courts turned around and tried to make Catholics marry gays and lesbians, I'd be on the picket line with the Catholics.

[Translation]

Mr. Réal Ménard: You haven't said anything this evening, Mr. Ben-Ami. Would you care to comment on clause 3?

[English]

Mr. Joseph Ben-Ami: Thank you very much. I was beginning to think I had taken a vow of silence, which is not really part of my religious beliefs.

By the way, for the record, I'm prepared to trade hats with you too.

I think one of the fundamental flaws of that particular clause is that it addresses itself specifically to religious officials, and I don't think anyone throughout this debate has seriously expressed a concern that religious officials—that is to say, representatives of a particular religious group—are going to be compelled to perform same-sex marriages. I don't think that has ever been a realistic concern.

The real problem is, what about individuals—and I'm sure you have heard or will be hearing from witnesses who are marriage commissioners or who are involved in the solemnization of civil marriage—who refuse to participate in this because it offends their religious convictions? The clause itself doesn't purport to protect them at all.

What about religious institutions that feel they don't want to make their facilities available to same-sex couples because it would be a violation of the religious standards of that organization? They aren't protected by this clause either. So the first thing is that the clause as it's written doesn't even purport to protect broad religious freedom.

The second thing—and Mr. Toews mentioned it earlier—is that all of this is a nonsensical debate because the Supreme Court has already said that particular clause is unconstitutional. So the only purpose of putting it into this bill, the only explanation, is to engage in some kind of subterfuge to fool Canadians who may be concerned legitimately about religious freedoms into thinking—they're not going to delve deeply into the subject because they're not lawyers, etc., and I'm not a lawyer either—when they see the clause, “Oh, the Prime Minister is right, the government is right, they protect religious freedoms”.

• (1935)

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

We're going back to the Liberals.

Mr. Macklin, please.

Hon. Paul Harold Macklin: Thank you very much.

As we look at this issue, to a great extent the question at the end of the day is the protection of freedom of religion in all its forms. I guess the question then becomes, what forms should we be trying to protect, and how far do you extend that protection?

The Supreme Court 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. I seem to be hearing, at least from you, Bishop Henry, that that's likely not broad enough for you to be satisfied as a religious leader that your faith will actually be protected in all its forms.

Again, we are an inquiry, we are trying to find out, so what do you believe we should be doing in order to help you gain the protection you believe you ought to have? We spoke earlier about the Income Tax Act and its implications. What other protections would you like to see implemented that we could look at?

Most Rev. Fred Henry: I think one of the major issues already spelled out in the Charter of Rights and Freedoms is "freedom of religion and conscience" in paragraph 2(a). I would suggest that it might be more appropriate and easier to work if you started with a conscience dimension, because there are an awful lot of people who, for example, may be marriage commissioners and may not have any religious beliefs right now, but who in conscience are having a problem with this proposed legislation. It's like you're not taking conscience seriously, in the same manner that sometimes a doctor or a nurse may have a conscience problem with participating in abortion, or a pharmacist may have a conscience problem with respect to prescribing certain medications. Nobody right now in government is really dealing with a conscience issue and freeing those people up from these conflictual situations. Even within our own Liberal Party, I know there are some members of the cabinet who have a conscience problem because of party solidarity, and you are seemingly prepared to forget about conscience. I think that's wrong; I don't think that's a Canadian principle. I think we have to flesh that out and spell it out more.

In the larger realm, of course, I've already suggested what I think you ought to do in terms of reaffirmation of the traditional definition of marriage, and also in looking seriously at any rights that the gay and lesbian community think they are not being accorded, and looking towards development of adult interdependent relationships as a vehicle for doing so. My whole stance is not predicated on being anti-homosexual or anti-gay. As strange as it may seem to think this, it's predicated on being pro traditional marriage, and on basically one thing that we haven't even talked about here—children.

Despite all the glowing things my confreres at the end of the table have said about children in these same-sex relationships, I'm still very much concerned about them, because all the evidence I read from all of the studies that have been done to date is that children thrive best in terms of nurture when there are gender complementarity situations. Of course, not every marriage of different sexes works out very well, and I think sometimes our children are being victimized. But in this whole redefinition of marriage, it seems to me that the people we're forgetting most are the children. I think that's too bad.

• (1940)

Hon. Paul Harold Macklin: We had Professor Cere with us today, who was suggesting that maybe what we should be looking at as one possible way of, shall we say, incorporating the thought process of those who support heterosexual marriage would be to amend the preamble, such that we could at least give them a sense of

feeling a part of this defining process, and that we don't diminish in any way a heterosexual relationship, but rather in fact recognize that it is part of this concept of civil marriage.

Do you think that would be helpful?

Most Rev. Fred Henry: Doing anything at this stage I regard as helpful, but how helpful, I'm not sure. My experience—mostly in the education area, dealing with the education acts in the provinces of Alberta and Ontario—is that the preamble is the weakest part of the bill. You can put all kinds of stuff and tinker around in there, but the meat and the potatoes come later on. If you're really serious about doing something about religious protection and freedom of conscience for everybody, you've got to deal with the meat and the potatoes, not just the preamble.

Hon. Paul Harold Macklin: But I think his point was that the question was one of engagement. In other words, we don't want to make it seem as if those within our broader community who believe that heterosexual marriage is "the" way one should view marriage should be excluded from this process of melding the two together in this particular bill.

I guess the question becomes, is this going to be helpful, or would it be helpful, or not? Your position is...?

Most Rev. Fred Henry: You're watering things down so much. I'm trying to find an analogy, but it would be like saying, is it okay to play golf using your opposite hand with only a wedge, dragging around a ball and chain, and expect to be able to shoot under 80? The answer is no, it's not helpful at all. If you really want to do something about marriage, then you're going to have to look at a serious rewrite of this whole bill. It's fundamentally flawed. I've given you seven things that are wrong with the bill, which are not just my things, but are basically legal points from lawyers.

The Chair: Thank you.

Back to the NDP. Mr. Siksay.

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

Bishop Henry, civil marriage has been around for a while. It's been possible to be married by a marriage commissioner or a justice of the peace and not be married by a priest or a minister. Has civil marriage, as it has existed in our society, met Catholic standards?

Most Rev. Fred Henry: Usually we have some more requirements than are simply required by the registry office. For example, I think the state of affairs right now in Canada, and in almost all the provinces and territories, is that it's probably easier to get a marriage licence than a driver's licence. That's not true in the Catholic Church.

Mr. Bill Siksay: So civil marriage, for instance, hasn't made it a requirement that the ability to procreate be present among the couples being married?

Most Rev. Fred Henry: No.

Mr. Bill Siksay: So we've had a situation for some years where there is in fact a different civil standard, or perhaps even a different definition of civil marriage, than there is for religious marriages.

• (1945)

Most Rev. Fred Henry: There's always been the understanding, until relatively recently—I thought we were more or less united—about the nature of marriage itself as always having that openness to or that possibility of human life. What I see this bill doing is striking that down and saying, forget about it, what we really are interested in are just committed relationships.

Mr. Bill Siksay: But that hasn't necessarily been the case with, say, a couple beyond procreation age.

Most Rev. Fred Henry: No, but the difference is that there is at least in principle, by reason of the gender complementarity, the remote possibility, even at an advanced age, of such conception occurring. In same-sex unions you're dealing with a biological impossibility, unless you're going to get very esoteric and very technological and you're going to talk about in vitro fertilization or some form of transferral into the womb of a partner.

Mr. Bill Siksay: We might want to talk about that, but it might also frighten a lot of people who are older and think they're beyond childbearing age to consider that possibility.

You raised the issue of conscience a little while ago, and I don't want to be argumentative, but is conscience a Catholic principle as well?

Most Rev. Fred Henry: Again, I don't think you're going to be able to put the Catholic label on anything really that I've said here. I specifically decided not to talk about sacramentality. I haven't quoted scripture, not one verse. I'm simply saying, let's look at this from the vantage point of philosophy, reason, and natural law.

Mr. Bill Siksay: I guess my question was more whether you can be a devout Catholic and still support same-sex marriage. Are there any dissenting Catholic voices?

Most Rev. Fred Henry: There are some who call themselves Catholic, but then it gets to be questionable as to whether they ought to go parading under that label of devout Catholic. For example, if they were in my diocese and they were a public official, they would be refused communion.

Mr. Bill Siksay: So you would take action to do that?

Most Rev. Fred Henry: Absolutely.

Mr. Bill Siksay: Do you do that on other issues as well?

Most Rev. Fred Henry: Yes, there are some issues where if you're a notorious public sinner you're refused communion also.

Mr. Bill Siksay: Can you give me some examples of what those would be?

Most Rev. Fred Henry: I have told some people, for example, who have acknowledged that they are in abusive relationships that they are not to receive communion until these matters have been dealt with forthright.

Mr. Bill Siksay: Bishop Henry, have you ever been taken to court to force you to provide a religious service to someone? For instance, if there were people you had denied ordination, have they taken you to the courts to force you to ordain them? Could a Catholic woman, for instance, who thought she might have some claim on the priesthood do that? Has that ever been attempted?

Most Rev. Fred Henry: No, it's never been attempted, to my knowledge. Not for me anyway; maybe somebody else, but not me.

Mr. Bill Siksay: Nowhere that you know of, eh?

Most Rev. Fred Henry: No, nothing comes to mind.

Mr. Bill Siksay: Have divorced people ever gone to court to force a Catholic priest to marry them, to your knowledge?

Most Rev. Fred Henry: No.

Mr. Bill Siksay: Do you have any sense as to why that might not have happened, given that people seem ready to take advantage of legal remedies?

Most Rev. Fred Henry: I think it's pretty clear cut. We don't believe in divorce and remarriage. If there is a valid marriage in the first place, you're only out, if you want to even talk about it as being out, if you request a declaration of nullity that no marriage existed in the first place, or no marriage can take place.

Mr. Bill Siksay: So if it's really clear cut in that circumstance, why do you feel it's not so clear cut in the circumstance of same-sex marriage?

Most Rev. Fred Henry: Very clearly, it's not a marriage. There is no gender complementarity and there's no openness to life.

Mr. Bill Siksay: But in terms of protection for the Catholic Church's religious freedom to deny doing that, why do you not have the same confidence there?

Most Rev. Fred Henry: I think I do right now, but by virtue of what the Supreme Court has said, with its open door, the nature of this legislation, which talks an awful lot about religious freedom, can't deliver. This is smoke and mirrors.

Mr. Bill Siksay: But there's no evidence that this religious freedom hasn't existed already and doesn't exist now in other circumstances that may have—

Most Rev. Fred Henry: Yes, there are some instances. For example, the gay couple in British Columbia that is taking the Knights of Columbus to court because they don't want to rent their facility to a gay and lesbian couple for marriage purposes, and so on.

Mr. Bill Siksay: It's not the same as a religious official providing a religious service, though.

Most Rev. Fred Henry: You'll notice that the Alberta human rights complaint is lodged as discrimination based on services and so on, and also publication, so it's not just one.

Mr. Bill Siksay: But we don't even know if it's going ahead yet either.

Most Rev. Fred Henry: Listen, if it's lodged and I have to hire a lawyer, it's engaged at this particular stage, because it's been accepted.

Mr. Bill Siksay: All right. To your understanding there's been no example where the church has been forced to marry someone to admit them to the Eucharist, to bury them, any of those kinds of things by the courts?

Most Rev. Fred Henry: No, but you're setting the stage for it to happen, and that's what I think you have to understand, that if this becomes law, Bill C-38 as it's written, that is going to happen.

Mr. Bill Siksay: Why did the protections that currently exist disappear with this bill?

Most Rev. Fred Henry: Because you're seeking to blow open the Charter of Rights and Freedoms by reading in, based on some of the decisions of the Supreme Court and also by the action of some judges with respect to inventing or changing common law, and also now by reason of this particular bill.... As a result of that sort of thing, I think we're into a changed social reality that is hostile to religious belief.

• (1950)

The Chair: Thank you.

Back to the Liberals.

Mr. Macklin.

Hon. Paul Harold Macklin: I'm prepared to allow Mr. O'Brien one round of questioning, if that's appropriate with everyone.

The Chair: If the committee has no objection....

Agreed?

Mr. Réal Ménard: Of course.

The Chair: Mr. O'Brien, five minutes.

Mr. Pat O'Brien (London—Fanshawe, Ind.): Thank you very much, Mr. Chairman, and to my former colleague, still colleague in the House, Mr. Macklin, thank you for that. I didn't really anticipate questions, but now that I have the opportunity, I certainly will avail myself.

And I'd like to speak to a man I'm proud to say is an old friend, and our families were close in days past, Bishop Henry. We're proud he's a native Londoner, and I want to get that commercial in for the city of London. Now he's proudly a Calgarian, we know.

Bishop, as a former Catholic educator yourself, in the strictest sense of the word, and now as the bishop of the Calgary diocese, what are the concerns that you have heard, or that you may have yourself, around the issue of the potential for a restriction of Catholic teachers and the Catholic curriculum vis-à-vis homosexuality and Catholic teaching?

Most Rev. Fred Henry: I can speak from my experience with Alberta most recently, because they have recently issued a new health curriculum guideline for the province and similarly a CALM program, which is a career and life management program. Those have been formulated within the context of a secularist philosophy within the Ministry of Learning or the Ministry of Education. There was no significant Catholic input into either of those documents, and yet we are regarded as a public school system within the province of Alberta.

So right now we are faced with trying to either baptize documents that come out of the ministries of learning or education in terms of curriculum.... Obviously, with respect to issues on the question of homosexuality, abortion, and some of the other life issues, we have mega-problems. Yet while we are in a position of being a public school system acknowledged by the government, able to meet

government standards, we are not given the wherewithal or the resources in order to be able to write our own programs and curriculum.

Mr. Pat O'Brien: Thank you very much.

Reverend Kopke and Ms. Bowen, I happen to disagree with you that this is a human right, and I've been very forthright about that. I understand the different opinions on that, but I wonder, can you point to any country in the world, or any national or international court or tribunal, that's made a ruling, as you say, that this is a human right? I'd be happy to have any example you're aware of.

Mr. Brian Kopke: If Canada passes this legislation, it would only be the third country in the world to legalize—

Mr. Pat O'Brien: Maybe I didn't phrase my question well. I'm looking for any example you have of an international court or tribunal, or a national court, that has ruled consistent with your opinion that you think this is a human right, because of course the Supreme Court of Canada has not so ruled. Do you know of any court that has?

Mr. Brian Kopke: I don't believe that in any of these three countries it has gone to that point in the courts.

Mr. Pat O'Brien: All right. Thank you very much.

I'll leave it there, Mr. Chairman. My next one would be too long, I think.

The Chair: Thank you.

Mr. Pat O'Brien: Thank you.

The Chair: Now we're going back to the Conservatives. I understand it's Mr. Kenney.

Mr. Vic Toews: I just want to raise the issue I raised before—the 8 o'clock time limit—on a point of order.

The Chair: You're on a point of order?

Mr. Vic Toews: On a point of order.

My concern is that the bishop has stated something about a Revenue Canada official, this Terry De March. I think it would be appropriate for this committee, if we don't want to hear from that individual directly, at least to give him the bishop's testimony and ask him to send us a response by a certain time, because I think this is a concern.

I would ask for unanimous consent, first of all, to have him come here.

The Chair: Mr. Toews, you would need unanimous consent if we're going to do it tonight. Do you want to do it now?

Mr. Vic Toews: I'd rather do it right now.

The Chair: Okay. Is there unanimous consent?

No, I'm sorry, there isn't, so we're back—

Mr. Vic Toews: Mr. Macklin says no.

The Chair: We're back to Mr. Kenney.

You have five minutes, Mr. Kenney.

● (1955)

[*Translation*]

Mr. Jason Kenney: Thank you, Mr. Chairman.

I'd like to give Monsignor Henry an opportunity to respond to one of Mr. Ménard's comments. I believe he just said that some Catholics think homosexuals do not have the right to exist.

That's news to me. Monsignor, have you ever heard a Catholic say that homosexuals did not have the right to exist? Is that the position of the Catholic Church? Does the Catholic Church not defend the dignity of all human beings, including homosexuals?

[*English*]

Most Rev. Fred Henry: The short answer is, of course, yes. I think my own track record indicates that as a social justice activist in a great many areas, I've also been very outspoken on the whole question of legitimate rights of members of the gay community in terms of human rights. I have challenged anyone who has raised issues that I've thought...even from simple jokes to positions with respect to the rights of members of the gay community with respect to housing and all the rest of that kind of stuff. So I don't really find myself as....

Well, it's somewhat ironic. Here I am, and supposedly among my own I'm thought about as one of those loose cannons in terms of social justice, and yet I'm being very clear on this one and am regarded as being anti-social justice. I don't know how you put this together. Maybe it's just this particular issue or whatever, but I don't find the labels particularly helpful.

If I find any Roman Catholic who does not adhere to the section of the catechism numbered 2358, which says that discrimination against homosexuals is unjust and is not to be tolerated, then I have to challenge them and not allow such behaviour to go on within the church.

Mr. Jason Kenney: Thank you.

It might comfort Mr. Siksay from the NDP, Your Grace, to know that one nickname the media has given you in the past—if I may—is “Red Fred”. Is that not correct?

Most Rev. Fred Henry: Yes, Ted Byfield gave me that one when I got a little too far to the left on some social issues.

Mr. Jason Kenney: Your Grace, Mr. Siksay was doubtful whether any institution of the church could have its privileges jeopardized by the adoption of this legislation. Are you aware that it's already the case that a facility belonging to a parish council of the Knights of Columbus in the archdiocese of Vancouver is facing some form of legal challenge because of its refusal to rent its facilities to a same-sex couple for the celebration of the solemnization of their marriage?

Most Rev. Fred Henry: Yes, I believe I mentioned that in my comments to him.

Mr. Jason Kenney: And with respect to education, some say the Catholic school system is protected under the Constitution. Mr. Ben-Ami perhaps could comment on this as well. Is it not true that there are independent schools that don't have the protection of the Constitution per se for religious purposes?

For instance, my father was headmaster of an independent school that is not in the Catholic separate system but has a Catholic identity. Would it not be possible, if not likely, that the adoption of this bill would increase the possibility that such schools would be challenged—at least their partial public funding would be challenged—if they were to refuse to teach that heterosexual and homosexual marriages were morally equivalent? Wouldn't that jeopardize public funding of schools like that, in your view?

Mr. Joseph Ben-Ami: Unquestionably, for private schools that would be an issue. From the Ontario perspective, we have a problem with any kind of public funding in private schools. There is some, though, through the health department that would be an issue. I would be far more concerned, Mr. Kenney, with the problem of religious students attending public school and being compelled to buy into the moral view being taught by that school. That's a far more troubling thing.

I take a view contrary to Bishop Henry's statements about there not being a state religion. It's my view that there is a state religion, and it's secularism. The whole notion of separation of church and state is a simplistic way of approaching that whole problem. There's no question that there are going to be instances where religious students are forced either to compromise or abandon their religious principles, simply to fit into the so-called public school system.

● (2000)

Mr. Jason Kenney: Mr. Kopke, you refused to state clearly whether you believe that the denial of same-sex marriage was analogous to racism. But twice you've offered the example of society making it illegal to discriminate, in marriage, on the basis of race. Do you or do you not believe that the denial of access to marriage on the grounds of sexual orientation is analogous to the denial of marriage on the grounds of race or ethnicity?

Mr. Brian Kopke: I think there are some similarities.

The Chair: Mr. Macklin.

Hon. Paul Harold Macklin: No questions, Mr. Chair.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you.

I have two quick questions for you, Mr. Kopke.

I don't deny that the Church acknowledges the dignity of homosexuals. Let me qualify my comment. Certain movements within the Roman Catholic Church love homosexuals provided they practise abstinence, and their unwillingness to recognize same-sex marriage amounts to a rejection of homosexual relations. Unfortunately, this has nothing to do with human dignity. The issue is intrinsically linked with the very nature of homosexuals.

You Church has opted to advocate openness. You began by referring to universal values. Do you not feel that your logic is seriously flawed when you claim to accept homosexuals, but in the same breath reject their loving commitment to each other or their right to avail themselves of an important lay institution, namely marriage? Do you not see a major contradiction here?

[English]

Mr. Brian Kopke: There is a contradiction, but I have to remember that every law that requires major changes in Canada has been part of a process. Sometimes these processes take generations. The changes don't come easily. I think what will happen is that over a period of time, generation after generation, people are going to see that respecting gay and lesbian people as married couples poses no threat to family values or religions.

[Translation]

Mr. Réal Ménard: Yes.

Some researchers have developed the concept of institutionalized homophobia. How would you qualify the actions of a political party—any political party—the elected representatives of which have, on seven occasions, voted down the rights of homosexuals?

Consider the example of the political party that voted against Allan Rock's amendment to the Canadian Human Rights Act, that voted against Anne McLellan's benefits legislation, that voted against the bill recognizing social benefits in the public service, and that voted against a 1999 NDP motion respecting hate crimes.

On seven separate occasions, a party has collectively denied the rights of a group, specifically homosexuals. From the standpoint of empirical research, do you agree with some researchers who see these votes as displays of institutionalized homophobia?

I spoke theoretically, so as not to hurt anyone. You know how sensitive I am, Mr. Chairman, and I'd like everyone to be the same.

[English]

Mr. Brian Kopke: I would say most Unitarians would have a problem with that party.

[Translation]

Mr. Réal Ménard: And Canadians as well, in my view.

Thank you, Mr. Chairman.

• (2005)

[English]

The Chair: Mr. Siksay.

Mr. Bill Siksay: Bishop Henry, Mr. Kenney asked you about the Knights of Columbus hall in Coquitlam, B.C. I think he implied there was a solemnization of marriage. It was just a wedding reception, is that right? It wasn't an actual wedding ceremony as such. Is that your understanding as well?

Most Rev. Fred Henry: I'm not sure of whether or not the plan was to use the hall for the solemnization. I don't know that.

Mr. Bill Siksay: My understanding is it was a reception. That's not sacramental in terms of Catholic tradition, is it?

Most Rev. Fred Henry: No, it's not. We believe in parties, but not that far, no.

Mr. Bill Siksay: Bishop Henry, do you know if that particular Knights of Columbus hall is a free-standing facility?

Most Rev. Fred Henry: No, I don't know.

Mr. Bill Siksay: Do you know what their policy has been on rentals? Would they rent to people who don't conform to Catholic policies or doctrine so the couple could be married?

Most Rev. Fred Henry: I have no idea what their policies are at all.

Mr. Bill Siksay: You don't know what their history has been with regard to that.

Most Rev. Fred Henry: No.

Mr. Bill Siksay: So there are lots of unanswered questions about that particular situation.

Most Rev. Fred Henry: That's right, and you might add another one: were they set up?

Mr. Bill Siksay: Why would we assume that?

Most Rev. Fred Henry: Well, I just think it's a fair question. You're asking about their policies. I'm looking at it from the other vantage point and saying, is this a convenient way for, say, someone in a gay or lesbian kind of relationship to challenge the church and get some kind of ruling through a lower court?

Mr. Bill Siksay: So you don't think it would be reasonable, if you lived in Coquitlam and saw a sign outside of a facility saying "Banquet Hall for Rent", to check that out if you were—

Most Rev. Fred Henry: No. You might go to the legion or you might try another hall. Why try the Knights of Columbus when you know what their stand is in general on marriage?

Mr. Bill Siksay: Maybe they didn't. Not everybody knows the Knights of Columbus. As a good Protestant boy, I'm not really familiar with them myself, so there you go.

Most Rev. Fred Henry: Well, look into them, Bill. They're good for you.

Some hon. members: Oh, oh!

Mr. Bill Siksay: I wouldn't be that suspicious of people's motivation at that point in their lives, I don't think.

Anyway, thank you, Mr. Chair.

The Chair: Thank you.

Let me thank the witnesses for appearing in front of the committee this evening. We know some of you travelled far. We appreciate your cooperation. It was an interesting evening, and thank you again.

The next meeting, as you well know, is tomorrow afternoon at 3:30 p.m.

The meeting 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 Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » 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.