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Chair

Mr. Marcel Proulx

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• (1530)

[English]

The Chair (Mr. Marcel Proulx (Hull—Aylmer, Lib.)): Order, please.

[Translation]

Good afternoon, ladies and gentlemen. Welcome to this meeting of the Legislative Committee on Bill C-38.

[English]

We have witnesses today.

[Translation]

We have with us today Nicole Dufour and Eva Petras, from the Quebec Bar.

[English]

From the Defend Marriage Coalition, we have Mr. Roy Beyer and Dr. Mr. Charles McVety.

[Translation]

We also have with us Kevin Kisilowsky and David Novak, who are making individual presentations.

[English]

Welcome to all witnesses.

I'm sure you are aware of the way this committee functions, in the sense that each group of witnesses has a time of ten minutes for an opening presentation, then we go to rounds of questions and comments for seven minutes. After the first round, we then shift to rounds of five minutes, with questions, comments, and answers included.

[Translation]

This meeting will last two hours. The committee will therefore adjourn at 5:30 p.m.

[English]

Let's get started.

[Translation]

We will start with the Quebec Bar. I will now give the floor to either Ms. Dufour or Ms. Petras.

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good afternoon. My name is Nicole Dufour and I am lawyer in the Research and Legislation Service of the Quebec Bar. With me today is Eva Petras. The *bâtonnière*, the

president of the bar, Madeleine Lemieux, wishes to apologize. Because of an unfortunate complication, she was unable to be here today.

Before turning the floor over to my colleague, Ms. Petras, I would like to make a few very brief biographical comments about her. She has been working mainly in the area of family law for over 20 years. She was the Chair of the Liaison Committee of the Superior Court of Quebec in the area of family law for a number of years. She has also been a member of the Family Law Committee of the Quebec Bar for several years and was involved in the work done on Bill C-38. She will therefore be making the presentation on behalf of the Bar.

Ms. Eva Petras (Lawyer, Barreau du Québec): Good afternoon, Mr. Chairman, ladies and gentlemen members of the committee.

I would like to state that the Quebec Bar Association sent in its opinion on the bill to the Minister of Justice in March 2005. We supported the bill. I would like to refer to this position, which is to adopt the solution put forward by the government, not only because it is the simplest one from a legal point of view, but also because it removes all potential legal challenges based on the Charter. It is also the most comprehensive solution as regards its effects.

In our contemporary society, homosexual couples increasingly want public recognition of their commitment to each other, just as married couples of opposite genders do. This solution meets their expectations. In social and legal terms, we have arrived at this level of understanding. The development of our society has meant that the ideal of equality in this area is accepted. Since civil marriage retains all its legal effect, contrary to the previous civil union solution or other solutions, it could suffice in the absence of religious marriage. In addition, religious officials will not be required to officiate at marriages of same-sex couples if this is not in accordance with their moral or religious beliefs. In Quebec, a similar provision has been included in the Civil Code of Quebec—article 367—under the reform that came into effect in January 1994.

The Quebec Bar Association has not taken a stand on the provision regarding the officials, because of the Supreme Court decision on the civil marriage reference. In our Civil Code, we do include this protection to give ministers of the cloth the freedom of choice.

That is a summary of the Quebec Bar's position. Thank you for your attention.

• (1535)

The Chair: Thank you.

Ms. Eva Petras: Thank you.

[English]

The Chair: Merci.

We'll go to Mr. Kisilowsky now. You have ten minutes, sir.

Mr. Kevin Kisilowsky (As an Individual): Members of the committee, thank you for taking this time to hear me speak about Bill C-38.

It is my sincerest hope and desire that you will not just pay lip service to my concerns, but that you will truly consider the things that I as a Canadian citizen feel are not just important to me but to the overall majority of people who share those same concerns.

I speak to you today not only as a fourth-generation Canadian, but as a human being whose life has been transformed by Jesus Christ, the living God. He is the way, the truth, and the life. He has lived in me for the past eight years of my 35 years here on earth. His presence is the sole explanation for whatever is praiseworthy and all that I do in this life.

That is more than just a statement about me. It is a claim to truth. It is a claim that may contradict your own. Yet on this one thing I believe we all must agree, and that is the right to do what I have just done, to state my faith and live it without fear of repercussion or to have that right removed from me altogether. This is first human right. In the words of author and speaker Chuck Colson, "Religious liberty is the essence of human dignity".

I stand here before you today as a Canadian citizen who is personally experiencing those very rights being stripped away. There have been those who have said that Bill C-38 will not have any effect on religious rights and freedoms, yet if we are to observe the provinces that have legalized same-sex marriages on their own accord, we see first-hand the effects these laws are already having on the Canadian people—not only people of religious faith but those with a moral conscience regarding this issue.

Let us not forget that freedom of conscience is also to be protected under the Charter of Rights and Freedoms. If the seven provinces and one territory that have gone this route are to be an example of the precedent of what is to come, then we are one step closer to a social communistic state.

As a marriage commissioner in the province of Manitoba, I say with confidence that I have served well. On September 16, 2004, one unelected Court of Queen's Bench judge with one opinion—his own—decided to legalize same-sex marriage in Manitoba. I was then told, in a very dictatorial fashion, by the governmental agency, Vital Statistics, that if I was opposed to performing same-sex marriages, I was to resign.

As a Christian, I could not perform these types of ceremonies, as they violated my deeply held religious convictions. The provincial government in Manitoba dug their heels in on this issue and made a clear display of their intolerance and bigotry towards those with either moral or religious convictions by not offering any form of accommodation to marriage commissioners with a conscience regarding this issue. Other provinces, such as British Columbia and New Brunswick, have at least offered some form of tolerance by accommodating their commissioners with the option to opt out of these types of ceremonies. Manitoba simply tried to dismiss us. I

have refused to resign, and I have filed a complaint with the Manitoba Human Rights Commission with regard to this issue. The outcome is still pending.

This is exactly why Bill C-38 will fail to protect freedom of religion as well as freedom of conscience in Canada. The federal government is already proving that. The Charter of Rights and Freedoms was designed to protect every Canadian citizen, from the east coast to the west coast, against religious discrimination and intolerance—not only as denominational bodies but as individuals.

My freedom of religion is already being attacked by the provincial government of Manitoba through threat of removal of my licence to marry others. What was my Prime Minister's response to this kind of blatant discrimination? He stated that it was provincial jurisdiction and the federal government could not intervene. He was wrong.

The Charter of Rights and Freedoms exists for this very reason. Regardless of what a province has put into law, the federal government has an obligatory duty to all Canadians to step in and override a provincial government's jurisdiction where the rights and the will of the people are being oppressed and violated.

The Prime Minister has not taken such action. If he has no teeth now, this bill will certainly not protect Canadians. If the federal Government of Canada is not willing to step in when the people's religious freedoms are being violated, then I ask the committee, what good is your precious charter?

I have seen many of you in the media holding that charter close to your chest and making same-sex marriage a rights issue. I tend to agree, but not for the reasons that some of you have given. The bill only continues to violate the rights of Canadians with a moral conscience and/or religious conviction. Why is this federal government so bent on stripping away my religious rights and freedoms only to hand them over to a small group of people who have never lost their rights in the first place?

● (1540)

If the members of Parliament in this committee are so big on Canadian human rights, then I challenge the members of this committee today: put the charter where your mouth is and start defending and protecting the rights of the Canadian people with religious conviction or moral conscience, for that is your duty as elected members of Parliament.

Even federal justice minister Irwin Cotler has gone on record saying that we cannot allow equality rights to trump religious rights. If the present federal government is already displaying its own unwillingness to step in and help out Canadians today who are having their religious rights violated in their home provinces, then there is nothing about Bill C-38 that can be put into writing that would assure Canada's Christian, Catholic, Sikh, Muslim, Hindu, Jehovah's Witness, or Mormon communities that this government and this law will protect them.

I would like to ask the committee this: If Bill C-38 were to come into law and the three remaining provinces that have not recognized same-sex marriage were to continue their stand, will the federal government continue its typical rhetoric that this is a case of provincial jurisdiction? I have a very good hunch that the Prime Minister will suddenly find his teeth and go on and on about the oppression of the rights of the people.

If you are unwilling to protect religious rights and freedoms, as well as the rights of those who want to exercise their freedom of conscience today, by not invoking the charter where the provinces have discriminated against the right to religious freedoms, then it is a guarantee to the citizens of Canada that you will not protect them, should this law pass. And if you are not willing to protect us today or tomorrow, when you are still ramming this agenda of forced acceptance down the throats of Canadians, then take the charter and burn it, as it either applies to all of us or none of us, not just when it suits your own hidden agendas.

My final challenge to this committee and the members of Parliament is will you go to bat for me and my fellow Canadians who are already having their own individual right to freedom of conscience violated and discriminated against? Will you defend my own individual religious rights and freedoms that are guaranteed protection under the charter? Will you protect Canadians from the tyranny and dictatorial style of some of our provincial governments?

The fact that two out of the four federal parties represented in this room have not even been allowed to exercise their own fundamental human right of freedom of conscience when it comes to this bill, but have been told that they can only vote in favour of it, demonstrates to the nation that if you are unwilling to allow basic charter freedoms in the House of Commons when it comes to voting on contentious issues, then you most certainly will not be extending them to individual Canadians.

So far, the current federal government has given me every reason to believe that religious rights and freedoms—the right to one's own opinion, values, morals, and freedom of conscience—are about to become a thing of the past. I believe this bill ensures just that. It is because of this that Bill C-38 must not pass; it does not protect individual Canadians with religious conviction or moral conscience.

Remember, committee members, Canadians are watching and listening very closely.

I thank you.

• (1545)

The Chair: Mr. Novak, ten minutes, sir.

Rabbi David Novak (University of Toronto, As an Individual): *Mesdames et messieurs*, my name is David Novak. I am an ordained rabbi, a member of the Association of Traditional Rabbis, and I am the coordinator of that organization's panel of inquiry on Jewish law. I hold a PhD in philosophy from Georgetown University. Since 1997 I have been the J. Richard and Dorothy Shiff chair of Jewish studies at the University of Toronto, as professor of the study of religion and professor of philosophy. From 1997 to 2002 I directed the Jewish studies program at the University of Toronto. I am the author of thirteen books and have edited four books in the fields of theology, ethics, and political and legal theory. Before immigrating to Canada,

I was the Edgar M. Bronfman professor of modern Judaic studies at the University of Virginia from 1989 to 1997. I have been a proud Canadian citizen since 2001.

I address the issue of same-sex marriage as a Canadian citizen concerned with the moral climate of my adopted country. For that reason I publicly express my opposition to the institution of same-sex marriage proposed by Bill C-38 in the spirit of free debate that so characterizes our constitutional democracy. My views are consistent with the normative Jewish tradition and they are, I believe, held by a large number of Canadian Jews whose Jewish identity is religiously constituted.

Marriage in the Jewish tradition can be viewed in two ways. In a strictly religious sense, the Jewish tradition is only interested in what constitutes a marriage between two bona fide Jews. That is what the Jewish tradition calls *giddushin*, or sacred marriage. The Jewish tradition also recognizes marriage as a universal human institution that began with the very first humans and continues among humankind thereafter. Jewish marriage does not cancel the norms that apply to what might be called universal marriage. It simply adds some further requirements for the adherents of Judaism.

Among the essentials of universal marriage that remain intact for Jews is the restriction of marriage to a union between a woman and a man. On this point, Judaism has much in common with almost all the other traditions that make up this truly multicultural society. That is why Jews see the registration of their religiously defined marriages as civil marriage as well, to be fully consistent with their being Jewish citizens of Canada.

In this universal definition of "marriage", the commandment "Be fruitful and multiply" applies to all humans. This commandment is discovered through human experience and is known by human reason. It does not require affirmation of the historical revelation of any particular religious tradition. Human beings can only be procreated by some sort of sexual union between a woman and a man. In the overwhelming number of cases, that union is an act of bodily intercourse between a consenting woman and a consenting man. Furthermore, the commandment is not just to conceive children, but for the heterosexual couple to form a lasting union designed to build a family in which the raising of children is its main, although not exclusive, purpose. The birth and rearing of children by both their natural parents is in the best interest of society. That is why heterosexual marriage deserves the approval and encouragement of secular society. Now more than ever, considering among other things the seriously low birth rate of Canadians, our political institutions should be actively distinguishing the type of marriage that obviously is best able to provide the type of familial identity desired by the great majority of Canadians.

It seems that this limitation of sexuality to the procreative union of a woman and a man is the reason for the disapproval of homosexual unions in many of the cultures from which Canadian citizens come. One must answer two counter-examples: the first concerning the permission of marriage to men and women beyond the child-bearing years; the second concerning the insemination of lesbian women who live in unions with other lesbian women.

As for the first counter-example, it is impossible to determine just who is fertile and who is not. Based on the principle *de minimis non curat lex*, that laws are not made for unusual situations, we assume that the vast majority of women and men entering marriage are fertile and do desire to have children. Hence, we provide marriage for all men and women who are mentally capable of marital union without further investigation.

As for the second counter-example, the lesbian couple themselves do not procreate a child no matter how much they may want to do this together. Instead, a lesbian woman is inseminated from semen donated or sold by someone who is clearly a man biologically. Jewish tradition considers this type of conception to be immoral because it excuses a father from taking any responsibility for the children resulting from his sexual relationship with the child's mother, even if that relationship was only based on masturbation. It excuses the father from the responsibility of even having to identify himself to his child. Minimally, a child has the right to know who are his or her biological parents. Maximally, he or she has the right to care by both of these biological parents.

• (1550)

Allowing two women to marry and engage a third party to enable one of them to be a mother willfully destroys the natural right of children to the responsibility of both their parents, and it destroys the natural duty of both parents to any children they have enabled to be born.

The same holds true for two men who engage a woman to bear the child one of them has fathered. Indeed, Canadian courts are now dealing with the rights of adopted children to at least know who their birth parents are, which reflects this concern as well.

At most one can say that religious traditions like Judaism and Christianity and Islam and others have preserved and protected a natural—meaning human nature—institution they inherited but did not invent. Since civil marriage is clearly copied after the model of natural procreative marriage, which has been preserved by many religious traditions, members of religious traditions like Judaism, in my case, have a right to insist that the state not radically redefine an institution that the state, even more than these religious traditions themselves, did not itself invent.

The interests of the state in marriage should be confined to concern for the birth and rearing of children. Jewish tradition affirms that the best possible conditions for the birth and rearing of children are founded in a family rooted in a permanent marital union between male and female parents. Therefore, we need to continue to privilege marriage as traditionally understood in Canada and indeed throughout much of the world.

The state should have no more interest in intentionally non-procreative unions than it has in other human associations like friendship. Most people would consider it to be politically inappropriate if lifelong friends of whatever sex were required or even encouraged to register their relationship with the state.

Obviously, though, friends can designate other friends, even in lieu of their families, to hold power of attorney over their affairs or inherit property, etc., if they so choose. However, to officially

recognize same-sex friendships as marriages is the equivalent of requiring a licence for privacy, sexual or otherwise.

Finally, if the traditional exclusion of same-sex couples from marriage is to be regarded as immoral, then Jews, Christians, and Muslims, among others, who forbid same-sex marriages will very likely be looked upon as enemies of the state and the values it seems to be promoting. If that happens, the religious liberty exercised by many Canadians in questions of marriage and family will be regarded as a form of socially unacceptable prejudice that will be detrimental to the type of multicultural society we now have in Canada, a society of which we are proud and want to extend into the indefinite future.

Thank you for your attention.

The Chair: Thank you.

We will now move to Mr. Beyer or Dr. McVety of the group Defend Marriage Coalition.

Mr. Roy Beyer (Operations Director, Defend Marriage Coalition): Thank you very much, Mr. Chairman.

Just to briefly introduce myself, I'm Roy Beyer, the operations director of the Defend Marriage Coalition, and I have with me Dr. Charles McVety, the senior director of the Defend Marriage Coalition and also the president of the Canada Christian College, who is going to be presenting as well.

Before I begin formally in my presentation, we'd just like to respectfully but strongly protest the ongoing participation of Mr. Boudria. I'd like to explain myself with this: we've been asked here this afternoon to testify—

The Chair: Excuse me, sir. You're out of order.

The members of this committee have been decided by the different parties. You have been invited to be a witness to this committee and present your views, and I would ask you to do so, sir.

Thank you.

Mr. Roy Beyer: May I ask a quick question on that, Mr. Chairman? Was our letter submitted to the committee, and did the committee members see that letter? We asked that this issue be dealt with at committee level.

The Chair: No, sir. I am not aware of such a letter, and I would strongly recommend that you make your presentation, because time is running, Mr. Beyer.

Mr. Roy Beyer: Thank you very much, Mr. Chairman.

Again, we do have concerns, of course, not just in terms of the substance, but also in terms of the process of this bill, as it's moved through Parliament.

The flaw with Bill C-38, first of all, in terms of substance, is that it seeks to redefine an institution that has deep, deep roots in tradition and history and in all major world religions. It creates an unnecessary cultural conflict. I say “unnecessary” because other nations in the world who are credible and have wonderful track records on human rights have wrestled with the same question of how to extend the legitimate rights of homosexuals while at the same time respecting rights to religious freedom. This is exactly the kind of conflict we now have before us.

The fact is this government did have an option. The French government, for example, has extended rights and benefits and civil unions to same-sex couples while at the same time protecting religious freedoms. It's frustrating to see that Canada is not seeking creative solutions to this very serious issue. Of course, that's the substance—and Dr. McVety will speak more to that question.

In terms of process, we're also troubled, because the process creates a credibility gap with the Canadian public. You have a committee to hear from the public, but instead of having a justice committee, we have a special committee, allowing the Prime Minister to stack his committee with people who will cooperate with his agenda. That at least is the perception of many Canadians. A Liberal member of Parliament had to threaten withdrawing from the government in order to get something that even remotely resembles a public hearing. Why would you not automatically allow a public hearing?

Then, of course, there had to be special arrangements made, special work done by certain members of this committee, to allow people like myself and other pro-marriage people to make presentations before the committee, even after the promise was made for a public hearing. Some pro-marriage witnesses were given less than 24 hours' notice to come here to make presentations. It's difficult not to be cynical.

Again, we are here in the faint hope or expectation that something we say will penetrate the conscience of committee members and others, that somehow there will be consideration of the concerns you're hearing this afternoon, including from other witnesses.

Another matter that's objectionable to us in terms of process is the fact that this committee, after hearing some 65 witnesses, proposes to submit a report to Parliament the next day. Of course, there are rumours and talk about amendments. The Liberals are talking about amendments as well, which we call the “Hail Mary” amendments, not based on conviction or principle, but on political expedience. Again, there are rumours of pro-marriage Liberals considering walking away from the party unless the process becomes something that even resembles a fair one.

The process is so important. You're hearing from Canadians on issues that really do matter. This religious freedom issue is a fundamental issue. I would strongly urge the committee, rather than rushing and pushing this thing through, to give this serious consideration in terms of meaningful amendments that will actually address the issues of marriage commissioners being fired and school teachers being suspended. The interplay between provincial and federal jurisdiction on this matter is complicated. This cannot be rushed through in two weeks. We urge the committee to take the time to do the proper job.

Thank you.

• (1555)

Mr. Charles McVety (Senior Director, Defend Marriage Coalition): As the senior director of the Defend Marriage Coalition, I'm here to petition you, as the committee, to look at this legislation and look at the impact it is going to have on the people of Canada.

As a member of the clergy, I'm here representing many clergymen who are part of this great Defend Marriage Coalition—Christians, Jews, Muslims, Sikhs, and Hindus—people of all faiths who are very worried about the marginalization of themselves and people of faith right across this country in this democracy. We're worried that this legislation is going to subvert the first and most fundamental human right—that is, freedom of religion. The state has no right to enter into the domain of religion and redefine an institution that is held so dear to our hearts.

If this bill does become law, remember that the law is universal. It is for everyone in the country; it is not just for a special interest. This law will be imposed on every single member of our society. We see this as clever legislation that attempts to ghettoize people of faith. We see this legislation as an attack on our freedom. We see this legislation as an attack on our right to participate in democracy.

Currently we are already under attack, even though this has not even become law. I am the president of Canada Christian College. The Liberal Party discussed this at their caucus meeting and they came out with an attack on the charitable registration of our institution. If this becomes law, recognize the fact that under charity law, a charity cannot engage in activities to change the law. It is not the law yet, so charities can engage in these activities. But if it becomes law, charities will certainly be subverted.

Other members of the clergy are already being attacked. You've already heard from Bishop Fred Henry. You've already heard from a teacher, Chris Kempling. You've already heard from marriage commissioners. People in this country are being marginalized and delegitimized.

Just recently, a member of this committee, Don Boudria, attacked me personally and attacked the Defend Marriage Coalition and attacked everyone in this coalition when he stated on national television, “I guess if you're on the side of God, laws don't apply”, as if we are some type of unlawful group. Well, I'm here to tell the committee that we are the 66% of this nation that objects to this law. We ask you to look at the religious freedoms that we are afforded under the Charter of Rights and Freedoms.

Even the justice minister, who is world-renowned for defending human rights, today once again admitted that this Parliament cannot protect people of faith in this country from this draconian law. Mainstream Canada will not tolerate this. Mainstream Canada will not tolerate being marginalized, delegitimized. I urge you, as a committee, to take into account the fact that mainstream Canadians, Canadians of faith, will be marginalized by this legislation.

Thank you.

• (1600)

The Chair: Thank you.

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

Mr. Moore, you have seven minutes, sir.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to all the witnesses.

I have a question for Dr. McVety about some of the support you have and what you've been hearing as Canadians become involved in this debate over the definition of marriage.

It's been interesting. It hasn't taken very long, in my opinion, for the impact on everyday Canadians to be felt. I think Mr. Kisolowsky is a terrific example of that, of someone who, because of their faith, is being pushed to the margins of society, perhaps.

And we've had a couple of other marriage commissioners here who are, I think, the first casualties in this move to change the definition of "marriage", because they are most obviously the first impacted. There is concern, of course, that other people will be impacted.

I am aware of this, and I don't know how organized it is, but I do know there have been people calling even for you, as you are involved with the Canada Christian College.... Now because of your involvement with Defend Marriage Coalition, there are threats against you.

We had Bishop Fred Henry who gave testimony. He's from Calgary. For speaking out on the definition of "marriage" and for speaking in support of his faith, the Catholic faith, he received a call from Canada Customs and Revenue Agency, basically threatening his charitable status.

So there is a real concern, because we know that's so important and that faith communities have played an important role in our multicultural, multi-faith society.

Can you talk a bit about the types of Canadians who are getting engaged, from coast to coast, and also about what fears you're hearing on the impact this could have on their lives?

Mr. Charles McVety: First I'd like to talk about the students, graduates, and churches that are related to Canada Christian College, because that's who I'm most familiar with. We have 1,100 students. We're one of the largest theological seminaries in the country of Canada.

They come to me with fear and trembling, not because of me, but because of this law, because they know that if you're against the law, if this bill becomes law, then you are no doubt going to be marginalized. When you go to apply to be a chaplain, when you go to apply to be a marriage commissioner, even when you go into your own congregation and preach, they are very worried that this is going to put them in harm's way, as it has me.

I abhor this attack on the students of the college, the faculty, and all those who depend on the institution, because I believe it's a draconian measure to try to marginalize us, and that's how we see this law.

We are hearing from people of all faiths. We have had marriage rallies across the country, and if you've been at any of those marriage

rallies, you see they're attended by large numbers of Sikhs, Hindus, Muslims, Jews, and Christians of all denominations—Catholics and Evangelicals—and they get up there and express their fear that they will be marginalized if this bill becomes law. It's already happening and it's not even law yet. We are hearing it far and wide, right across the country.

We urge you to reconsider the impact that this legislation will have on our society.

• (1605)

Mr. Rob Moore: Thank you, Dr. McVety.

Dr. Novak, I know you've studied world religions. Could you comment a bit on what I believe is the universality of the traditional definition of marriage? We know there have been two countries that have changed the definition in law, but my understanding is they're the only two in the world, and other than that, this is a definition that's basically been universally applied.

So it should come as no surprise to those who want to change the definition of marriage that Canadians would rightly be opposed, for one, and that it could impact on them. And I'm hearing what you're saying about marginalizing people and about ghettoizing people and about maybe having a chilling effect on people being able to freely express their faith out of fear of some repercussion by the state.

Dr. Novak, could you comment on the international context of the traditional definition of "marriage"?

Rabbi David Novak: What we've heard from a wide variety of Canadians representing all kinds of cultures, some not even specifically religious, is that marriage is an institution religious traditions recognize as having preceded their emergence in the world. In the Jewish tradition, marriage begins with Adam and Eve. The Jewish religion didn't begin until Moses received the Torah at Mount Sinai. So this is considered to be an agreement made along cultural lines. It's not something accidental; it's considered to be endemic to human nature.

Interestingly, one thing that's raised is the fact that some societies have polygamy—a man has more than one wife. Polygamy was never mandated by Judaism, and was permitted in ancient times. Yet in the year 1000, most of the Jewish communities of Europe voluntarily banned polygamy. It was considered to be inconsistent with a universal consensus, at least in Europe, of what constituted a marriage—namely, a relationship between one man and one woman. The Jewish tradition does not claim to have invented marriage. It's an institution that it believed it inherited from the very creation of humankind itself.

Obviously, Jewish marriage means certain things over and above what universal marriage means, as is the case with other religions as well. But there's a remarkable consensus based both on comparative anthropology, what goes on in various different cultures, and on the fact that different cultures have affirmed marriage to be essential to created human nature. That's why you see a broad coalition of people. This is not a political coalition. This is not just a bunch of people getting together for some political issue; this is based on a very deep commonality that cuts across cultural divides.

•(1610)

[Translation]

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

Mr. Ménard.

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

[English]

I'm going to speak in French.

[Translation]

I too would like to welcome you to the committee today.

I regret that comments made by some witnesses may have misled people. I am pleased that we live in a society where there is no state religion. In my view, democracy is not compatible with a state religion. I hope that each and every one of you will acknowledge that there cannot be a state religion in Canada. A person's intense, if not incandescent, religious convictions must benefit from absolute, inalienable protection.

What I find troubling in your testimony, with the exception of the comments made by the Quebec Bar, is that you want to impose your vision of the world, which is most deserving and worthy of respect, when this is not possible in a secular society. I am trying to understand how your freedoms...

I am a homosexual man. You say that you are marginalized and ostracized, and that you fear for your physical integrity. Let me tell you that homosexuals could also testify about their marginalization and ostracism. But that is not what we are discussing here today.

I would like you to make an effort to imagine that love is no different whether it involves two men or two women. Some people want to get married because they believe in the same values as you. They believe in the values of commitment, solidarity within a couple and loyalty.

The bill before us, which will probably be passed, whether you agree or not, is not about religious marriage. You have your right to promote your world view and to expect others to respect it. No one wants to cause you any difficulties in this regard, but you are mixing things up in this debate. We are not talking about religious marriage here, but rather civil marriage.

As a citizen of a secular society with no state religion, I maintain that the right this government is about to give me, a homosexual person, takes nothing away from you and that your religious freedoms, enshrined in section 3 of the bill, are not threatened. I would like to discuss this argument with you in a spirit of friendship, fraternity and compassion.

We will start with you, Mr. McVety, then we will go to Mr. Kisilowsky.

[English]

Mr. Charles McVety: Well, on a number of points I fully agree with you. I agree that we do not have a state religion. I believe we should not have a state religion. In fact, we need to be freed from the tyranny of a state religion.

But what we have here is the state defining a religious institution. That religious institution is called marriage. "Marriage" has been a religious word for thousands of years, and now the state, all of a sudden, wants to define a marriage institution. What's next? Are they going to redefine baptism and communion and other institutions that are part of the church?

The second point you made that I fully agree with is that I believe you, as a homosexual, should have every right that I, as a heterosexual, have; but I do not believe this is about rights. This is about institutions, and not everyone is admitted to the identical institution. France looked at this and saw a civil union as the institution. Why should people who want to get married redefine a religious term? The state should have no power to do so, and I—

•(1615)

[Translation]

Mr. Réal Ménard: We are not talking about religious marriage. Your interpretation of the world, your religious world view is your own, and people are free in that regard. However, we are not talking about religious marriage here. We are talking about civil marriage, which is to be performed by state officials, by public officials. In Canada, no religious marriage will be performed against anyone's will. We are not talking about religious marriage. Do you understand that? We are talking about civil marriage. Civil marriage is a secular institution.

[English]

Mr. Charles McVety: Marriage is marriage. Remember, the law is universal; it's for everyone. And when you redefine marriage, you redefine it for everyone.

You say that this should not marginalize us. Well, whenever you're against the law, offside the law, outside the law, an outlaw, you are certainly marginalized. We do not believe marriage should be redefined, and if this becomes law, you know and I know that we will be marginalized.

[Translation]

Mr. Réal Ménard: Let us hear what Kevin has to say.

[English]

Mr. Kevin Kisilowsky: With respect to how this bill will blanket the rights, what I can't seem to get my mind around is why nobody seems to see that my rights have already been taken from me by provincial governments.

On September 15, 2004, I was a qualified marriage commissioner. On September 16 they were telling me to resign when, because of my religious rights and freedoms, I said I cannot accommodate homosexual couples. So my rights are already being stripped away, and this bill hasn't even been passed.

[Translation]

Mr. Réal Ménard: Mr. Kisilowsky, I think you experienced a situation in Manitoba as a public official. Your experience was not as a religious official. Of course, the job of public official is to enforce the law. That is a different debate.

Can any of you give us an example of a clergyman, either Baptist or Lutheran, who was concerned because of his or her stand on marriage? A clergyman is not a public official.

Personally, I would not be able to sleep well if I knew that people were worried on account of their religious convictions. Public officials cannot define themselves as clergymen or women. You are not a clergyman.

When people want a civil marriage in a secular institution, this cannot affect your religious convictions, unless you are a minister of the cloth. Perhaps you are. That is a different debate.

[*English*]

Mr. Kevin Kisilowsky: In response to that, I guess there are different provincial laws, of course, but marriage commissioners in Manitoba are actually allowed to use discretion. That is written in our instructions to marriage commissioners in policy guides. If we meet with a heterosexual couple, for example—and I'm sure we've all met couples like this, where you almost wonder why they're together—and they can't get along for three minutes in a room, it says that if for whatever reason we feel uncomfortable in that setting, we are allowed to use our discretion. Simply, there are 600 other commissioners, and if they want to marry you, that's their obligation.

It's like applying for a car licence—anybody can apply for a marriage commissioner's licence. I'm not paid by the government. I have no benefits, no gold-plated pension; I've got nothing. It's just a licence so I can marry. And I do use it for my ministry, because I am not an ordained reverend or pastor or clergy of any kind. When I applied for this, of course, same sex was not law.

Now, if I'm allowed to use discretion with heterosexual couples, why does the provincial government seem to think that they can force me to a point where I have to marry homosexuals, but I can use discretion with heterosexuals? That is a double standard. It is a contradiction in terms, and it is a violation of my Christian faith. I should not be denied a licence because of it. There are examples in British Columbia and New Brunswick where they are now providing opt-out clauses for commissioners who have a religious conviction. I think that's only fair.

We allow physicians, for example, to have a moral conscience on the abortion issue. They don't even have to have a religious conviction. They can be atheists who simply believe the scientific view that life begins at conception. They do not have to perform that procedure, and they're not threatened with losing their licence. For my own personal religious rights and freedoms, that's the only thing I am asking for. And I don't think that's a lot, because I think there are only two of us commissioners in Manitoba who have said we cannot do this, and asked to be accommodated. It has been very militant.

Thank you.

• (1620)

The Chair: We now move to the NDP. Mr. Siksay, seven minutes, sir.

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

Thank you to all the witnesses for appearing this afternoon.

Mr. Kisilowsky, I wonder if you can explain to me the current status of your complaint with the Manitoba Human Rights Commission.

Mr. Kevin Kisilowsky: The current status right now, where it's at, well, it's under investigation. The investigation is wrapping up. There still has to be a board review; it has to go before the board of commissioners. Right now we're adjourning it, so there won't be any outcome until probably the end of summer.

Mr. Bill Siksay: So there's been no decision on it at this point?

Mr. Kevin Kisilowsky: No decision. An investigator—if you're familiar with it—can make a recommendation, but the board has the ultimate decision, so they can override it, whatever.

Mr. Bill Siksay: In your statement, though, you seem convinced that the Manitoba Human Rights Act was going to fail to protect you, and I wonder what your conviction is based on, especially when we don't have a decision in your case yet.

Mr. Kevin Kisilowsky: It's difficult to speak of because of the confidentiality of the case, why I don't feel it's.... In some of the discussions—I won't bring in who and what—there's been an insinuation.... What tends to happen is that they're discussing same-sex discrimination, and that seems to come into my complaint a lot. I keep going back and saying that is not germane to my complaint. My complaint is violation of my religious rights and freedoms. I'm not taking issue with the gay community; I'm taking issue with the government taking away my licence because of my Christian conviction. So you kind of have this tug of war. You have a governmental agency that is leaning towards the politically correct response, and then of course I'm saying we have to keep on track here.

It has been a battle through my complaint. I've had to kick-start this commission all the way through to follow through on things, so it's been a real headache.

Mr. Bill Siksay: Have you had any experience with complaints before the Manitoba Human Rights Commission before?

Mr. Kevin Kisilowsky: Never in my life.

Mr. Bill Siksay: So you don't know—

Mr. Kevin Kisilowsky: And I never honestly thought I'd be sitting here one day.

Mr. Bill Siksay: But you don't know if this is a normative kind of timeline or process for them in terms of investigating complaints, the kinds of delays that you face, that kind of thing?

Mr. Kevin Kisilowsky: You know, through word of mouth, different cases, you hear some can take six months; others can take years. So who knows.

Mr. Bill Siksay: A few minutes ago, I think you described your work as a marriage commissioner as your “ministry”. Is that the way you perceive your work?

Mr. Kevin Kisilowsky: I use the licence for my ministry. That does not mean if I took a phone call from a completely strange couple who said “We would like to use your services”.... I'd meet with the couple first, no matter what.

So, no, I haven't said “ministry”, only that my intention when I applied for my licence.... I made it very clear to the vital statistics department what my intention was. I said I was involved in a ministry. I'm an evangelical missionary; however, I have no clergy status. I would like to be able to marry people within that realm, just because I get requests for it. I said that's the intent behind it, but I've never said no, I will refuse everyone else outside of that. I understand where that comes from.

Mr. Bill Siksay: When you say you're an evangelical missionary, is that how you make your living primarily?

Mr. Kevin Kisilowsky: No, that's volunteer.

Mr. Bill Siksay: You have other work that you do.

Mr. Kevin Kisilowsky: Yes.

Mr. Bill Siksay: Mr. McVety, you mentioned that your organization was made up of clergymen, among other people. Are there any clergywomen that are part of your organizations?

Mr. Charles McVety: Yes, absolutely, many.

Mr. Bill Siksay: Did those women have to go to court to be ordained? Because I would suspect that most of the religious traditions had a policy at one time of never ordaining women, and that they changed their position on that issue. Did any of those women have to go to the court to be ordained as ministers in those denominations?

Mr. Charles McVety: No, absolutely not.

Mr. Bill Siksay: Do you know of any clergy that have been forced by the courts to provide religious services to someone their religious organization had turned down—to bury them or ordain them or to give them communion?

• (1625)

Mr. Charles McVety: Yes, absolutely.

Mr. Bill Siksay: Can you tell me about that?

Mr. Charles McVety: We of course have the Catholic Church. There was the Catholic school that was forced to accept—

Mr. Bill Siksay: No. I'm talking about churches or religious officials and strictly religious rights—the things that might happen in a church on a Sunday morning or at a special occasion in a sanctuary of a church, for instance.

Mr. Charles McVety: No, I'm not talking about in the sanctuary, but I'm talking about in education there certainly has been that.

Mr. Bill Siksay: But there has been nothing strictly in terms of the functioning of the religious institution itself, rather than of a related organization like a school or something like that?

Mr. Charles McVety: You cannot draw those lines. Religion is religion. It's everything from education to Sunday morning worship.

Mr. Bill Siksay: I know, but I'm just trying to understand if in terms of strictly religious functions there's been anything like that happen. I don't know of any and I just want to know if you had.

Mr. Charles McVety: No, I'm not personally aware of any except the recent attacks on Bishop Fred Henry and a number of other officials across the country.

Mr. Bill Siksay: Okay. I'm sorry, I don't know your school.

Mr. Charles McVety: Canada Christian College.

Mr. Bill Siksay: And it has charitable status from CCRA?

Mr. Charles McVety: Yes, it does.

Mr. Bill Siksay: Can you tell me what charitable status means in terms of how CCRA defines that? There are certain requirements that I think you have to follow, especially in terms of partisan political activity and that kind of thing. Do you know what the actual requirements are there?

Mr. Charles McVety: The political section of Revenue Canada is quite lengthy, so I don't think I could recite it. But certainly charities are welcomed into the political arena by Revenue Canada. There are some limitations.

Mr. Bill Siksay: Do you know what those are? Can you tell us what those are?

Mr. Charles McVety: The limitations are numerous. I didn't bring my papers here.

Mr. Bill Siksay: Have any of the organizations related to your group actually had their charitable status taken away?

Mr. Charles McVety: Over this issue?

Mr. Bill Siksay: Over this issue first.

Mr. Charles McVety: No, not over this issue, but certainly over the issue of abortion. Revenue Canada has argued that any charity that fights against abortion is attempting to change the law and therefore will have its charitable status removed. But in the case of charities that are for abortion, and even charities that get public funds, they say they're fine because they're not trying to change the law.

One of the fears here is if this becomes law then any organization that doesn't agree with it and then acts in defence of marriage could then be challenged.

Mr. Bill Siksay: When you were discussing with one of the other members earlier, and you were talking about marriage being essentially a religious word, I think was the term you used, or religious idea—

Mr. Charles McVety: Yes.

Mr. Bill Siksay: When two atheists come together and get married civilly, what do we call it in our society, or what do they call it?

Mr. Charles McVety: Of course it's referred to as a marriage.

Mr. Bill Siksay: Would you not agree that it's a marriage?

Mr. Charles McVety: In my religion I would not consider it a marriage, but in society we would consider it a marriage, and they have not defiled the term marriage.

Mr. Bill Siksay: Civilly, there is room in your tradition for recognizing this as a marriage?

Mr. Charles McVety: Sure.

Mr. Bill Siksay: There's a different standard in your tradition and in society when it comes to that kind of a marriage?

Mr. Charles McVety: Yes, absolutely.

The Chair: We go to the Liberal side. Monsieur Boudria.

Hon. Don Boudria (Glengarry—Prescott—Russell, Lib.): Merci, monsieur le président.

I've heard a lot about people under attack, and I think I know what it feels like after today.

The first proposition I want to address is this business of “marriage is marriage is marriage”. I want to challenge that. In my religion and that of my colleague here, the definition of marriage is vastly different. For instance, I've been married for 34 years. Since I'd been previously divorced, I wouldn't have been able to marry in the Catholic Church, which happens to be my faith.

Our definition within our churches is different. Under the civil definition, it didn't matter whether I had been previously married and divorced, even though I'm a Roman Catholic. So I don't agree that it's the same definition for everyone and that marriage is marriage.

•(1630)

[Translation]

I would like to ask Ms. Dufour and Ms. Petras a question about the amendments. This is a legislative committee. Contrary to what you have heard, this is not a special committee. There are two types of parliamentary committees to which bills are referred: standing committees and legislative committees. This bill was referred to a legislative committee. That means our mandate is to hear witnesses and to ask them to make technical recommendations to improve the bill.

Do you think that religious protection and individual protection are defined well enough in the bill? My question is to the two lawyers. Do you have any recommendations for us to improve the bill, particularly clause 3?

Ms. Eva Petras: Mr. Boudria, the mandate of the Quebec Bar is not to make recommendations regarding amendments to the bill.

We have not taken any position on clause 3 of the bill specifically, because we believe the protection contained in this clause is similar to that contained in article 367 of the Quebec Civil Code, which states:

367. No minister of religion may be compelled to solemnize a marriage to which there is any impediment according to his religion and to the discipline of the religious society to which he belongs.

We thought this protection contained in the Civil Code of Quebec was similar to the one contained in clause 3. It does provide protection and a guarantee of religious equality under the Charter. That is why we made no proposals or comments on this clause, particularly since the Supreme Court of Canada did rule on this issue in the reference.

Does that answer your question?

[English]

Hon. Don Boudria: Merci.

My next question is to Mr. Kisilowsky. We had a witness yesterday who raised an issue similar to the one you've raised. One of the things raised before this committee was whether there might

be a better way of defining some of what my colleague has called “reasonable accommodations”. We would do this by way of amendments. That's our mandate—to offer technical amendments to the bill. In other words, if a provision offends the religion convictions of people appointed to make civil marriages, perhaps the provision could be “grandfathered”. That's the expression that was used yesterday, even though the witness was a woman.

I see it a little bit like Mr. Ménard. If someone is appointed to that function after the bill is passed, he or she knows what the conditions are at that point. But from what I gather, your condition is not that. You had a particular condition whereby you assumed certain religious liberties that were, in your view, changed after your started to practise your profession. Would some guarantee to those already functioning in that position be helpful?

Mr. Kevin Kisilowsky: First of all, I've read about some of the amendments today, and with all due respect, they don't hold much water with me.

Hon. Don Boudria: With respect, we don't have any amendments yet.

Mr. Kevin Kisilowsky: No. I'm referring to what Mr. Cotler said in the press about these specific amendments. However, he couldn't step in on provincial jurisdiction anyway, so amendments really don't mean a lot.

When it comes to grandfather clauses, I agree to the extent where you've said if this is already passed in law and then someone comes along, certainly their case is far weaker.

I held a commissioner's licence before it was law in Manitoba. I think it's also very unfair to commissioners I've spoken to who have had their licences for over 20 years, who opposed this and are now being told, after 20 years of marrying people, they have to hand in their licence.

Is it possible to grandfather? Yes, I think it's possible. On the other hand, we also have to look at the two provinces that I cited, where they have a double list.

The majority of commissioners are willing to perform that service. In my case, I'm only aware of one other commissioner who has filed a human rights complaint, and that's only because he told me. I don't know if there are any others. I don't see why we cannot have an opt-out list, or an opt-out clause, whatever you want to call it, for those who desire to marry, such as in my case, where my ministry does not belong to any church or organization but is simply a reach-out ministry. I require a licence to marry for that.

•(1635)

Hon. Don Boudria: What you're saying actually goes further, I think, than what I'm saying. I see there being three different thresholds—and of course we don't have any of these amendments before us. One is what's in the bill now; the second is this grandfather principle; and the third, which you're offering, is kind of an opt-out principle—

Mr. Kevin Kisilowsky: Yes.

Hon. Don Boudria: —which is a much higher threshold.

I don't know if I can agree with that, because once we have determined how this is administered from here on in, we can't say it's administered from here on in "except". That's a little....

Anyway, I get what you're saying. In other words, if I can summarize, one is better than what you have now, and the other one would be better yet.

[*Translation*]

The Chair: Thank you, Mr. Boudria.

Hon. Don Boudria: That is fine. I will come back on the next round.

The Chair: That is all you had?

Hon. Don Boudria: Thank you, sir.

[*English*]

The Chair: We're moving back to the Conservative Party. We are now into rounds of five minutes for questions and comments.

Mr. Jean.

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

I appreciate all the witnesses coming today to present. I especially appreciate Ms. Petras providing this brief. I think it's the third or fourth brief I've received at the committee out of the 30 or 40 witnesses I've heard from. I'm still waiting for the other 30 or 35 reports from the other witnesses, which are in translation. Once they're there, I'm sure we'll have an opportunity to read them before this bill gets a report.

My first question is actually for Dr. McVety. I'm going to follow up on Mr. Siksay's line of questioning.

Do you believe, sir, that it is an infringement upon your religious rights to allow homosexuals to use the term "marriage"?

Mr. Charles McVety: I believe it's an infringement on freedom of religion, which is a human right, for the state to redefine marriage.

Mr. Brian Jean: Why?

Mr. Charles McVety: Because this is a religious term, and the last I saw, the state had no purview in redefining religious terms.

As I said earlier, it can't redefine "baptism". It can't redefine "communion". It can't redefine "marriage" or any other religious institution.

Mr. Brian Jean: But obviously, in this case, the state has adopted a religious term and has used it for centuries—

Mr. Charles McVety: Yes.

Mr. Brian Jean: —for civil marriages. You don't have a problem with non-believers using that name, but you do seem to have a problem with homosexuals using the name, and I'm in a quandary as to why.

Mr. Charles McVety: No, I have a problem with the state legislating a redefinition of "marriage". Homosexuals have used the term "marriage" for many years, but now, all of a sudden, the state has decided that they are going to write legislation and redefine it, which is very scary.

In fact, I think what I'm hearing is that there is only religious freedom for celebrants and not for the clergy, not for marriage commissioners. The last I read, the Charter of Rights and Freedoms is not only for celebrants; it's for all citizens of Canada.

Mr. Brian Jean: Thank you, Doctor.

Dr. Novak, I was very impressed with your résumé. I'm sure I didn't get most of it. There are many books, you're an author, you're obviously a great scholar.

I'm curious, sir, if any of your expertise deals with the social ramifications, or would give you qualifications to give us an opinion on what you think the social ramifications or other ramifications would be of expanding the definition of marriage as is proposed by this legislation.

● (1640)

Rabbi David Novak: It's really not my area of expertise. It would be more for somebody who worked in the area of sociology. I have worked primarily in terms of the history of legal institutions and religious institutions. There are some disagreements. I don't require an essentially religious definition of marriage.

The interest of the secular state in marriage, as far as I see it in terms of social ramifications, is that this is the way—the union of a man and woman—in which children are brought into this world. Therefore, the state's recognition of an institution that it did not create, as is religions' recognition of an institution that they did not create, is primarily because this is the best way of bringing children into the world and raising them. The whole thing is about children.

Mr. Brian Jean: Your concern is in relation to children.

Rabbi David Novak: That is correct. And that is why the state's interest in marriage should only be in an institution that brings a man and a woman together for the primary but not exclusive reason—there are other reasons—of bringing children into the world and raising them.

I think the social ramifications are quite important. I just returned from a trip to western Europe, where in a nation like the Netherlands, which I believe has adopted same-sex marriage, there is a shockingly low birth rate. Therefore, we need to, in effect, continue to privilege this institution.

In answer to Monsieur Ménard's question, this is not an imposition of religion on a secular society at all. This is a secular society's recognition of an institution that it did not create. Now, the fact that religious people, for the most part, have a great interest in preserving this institution is because religious people have incorporated this secular value and developed it in ways that don't require the state to enforce.

Mr. Brian Jean: So what you're saying, in essence, in your opinion, is that if we had no immigration, or let's say for instance that the whole world was trying to adopt the same secular laws that we're trying to adopt here, we would have a negative birth rate in the world.

Rabbi David Novak: It would have a tremendous effect on the birth rate. And I'm certainly not opposed to immigration. I'm an immigrant to this country myself. But I think that this is important, inasmuch as it reflects that the state has an interest in procreation, not only the birthing of children, but the raising of children. If you were to ask children—and this is coming out even in questions of adopted children knowing their biological parents—the overwhelming number of children would say they would like to be raised by the man and the woman who are responsible for their coming into the world. This is very much a children's rights issue.

Mr. Brian Jean: Thank you.

The Chair: Thank you.

We will now go back to the Liberals.

Mr. Savage, for five minutes.

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

Welcome to all of our witnesses today.

Mr. Kisilowsky and Mr. Novak, Mr. Beyer and Mr. McVety— whoever wishes to respond to this—you've talked a lot about the term “people of faith” and “people with moral convictions”. Among the people who have appeared before us in support of the bill, or who will appear before us, is the United Church—the Moderator of the United Church has been a big proponent of it—members of the Sikh community, Muslims, rabbis, the Unitarian Church. We all talked to lots of people of faith.

I'm a person of faith. I've certainly talked to a great many Catholics who are supportive of this, and a great many Catholics who aren't. But it doesn't seem to me that there is a differentiation, that people of faith would only oppose the bill. I just wonder, in light of the terminology, do you believe that true people of faith can support this bill?

I'll start maybe with Mr. Kisilowsky.

Mr. Kevin Kisilowsky: First of all, we are a multi-faith country. I would say that there are many who have no faith at all who don't support this bill. We have atheists and yes we have homosexuals who don't support this bill. However, are there faiths that do? Yes. I'm not sure what relevance that has. I would probably debate with some of those churches if it came to opening the Scriptures and I would say, well, you can't cherry-pick what you like and what you don't like. Some of those churches that would support this bill would tell you that homosexuality is all about God's love and what not, and I would point out to them that homosexuality is in the Bible right beside adultery. So you can't just pick and choose what you like and what you don't like.

That would be my view, my value, my opinion. I take the word of God literally, so if there are faiths that support it, there are, but there are also non-faiths that don't support it.

•(1645)

Mr. Michael Savage: And you don't dispute that people of faith can support Bill C-38. You wouldn't dispute their faith.

Mr. Kevin Kisilowsky: No. I'm not here to debate that.

Mr. Michael Savage: Mr. Novak.

Sorry, I just want to get an answer from other witnesses.

Rabbi David Novak: There are two factors here, and I would distinguish that. I think once again this illustrates how even people sitting around this table who come to the same practical conclusion come from very different perspectives.

I would distinguish a moral argument from a religious argument. In terms of a religious argument, I can only speak of Judaism. I would defy rabbis speaking to this committee as rabbis who are endorsing same-sex marriage. I would like them to cite one authoritative source in the entire Jewish tradition to support their view. So that's simply a question of adequacy in terms of the sources of one's tradition.

As for a moral argument, I don't dispute that people who are in favour of same-sex marriage have strong moral convictions—quite the contrary. Based upon what one would call rational notions of morality—that there are rational moral norms—I think I could enter into an argument with such people as to whether this can be argued for using ethical reasoning.

Obviously there's a relation between religion and morality, but I think that one can separate religious reasoning from moral reasoning, at least at the level of argumentation and reasoning. In a secular context, where, as Mr. Ménard quite rightly stated, there is no state church, I think I could engage in a moral reasoning that is not.... My definition of “secular” is not deduced from any historical revelation. I think we could have a very fruitful discussion of that here, or elsewhere.

Mr. Michael Savage: I'd like to have a fruitful discussion on somebody else's time, but I appreciate that.

Mr. Roy Beyer: There is certainly disagreement even within most religious traditions, but every world religion agrees historically, and even today, on the definition of “marriage” as being between one man and one woman. When you have a cultural historical consensus like this, then again I point to what they have come up with in terms of a solution in France, and I say this is an answer to the problem we have here in Canada. You're taking something that is very specifically defined, where there's a consensus of agreement, and forcing, in the name of secularization, the people of faith to accept a redefinition of a word that is precious to them.

I use the illustration of Christmas. We live in a secular society, and thankfully we don't have secular fundamentalists forcing us to stop using the word “Christmas”. In a pluralistic society we allow for the Christmas celebration. We also allow for the Hanukkah celebration.

My Jewish friend and I would disagree very strongly on who the person of Jesus is. In a pluralistic society we respect one another's convictions; we don't seek to impose one over the other. I would say that if we went after a solution where we respected the definition of “marriage”, where we did not seek to redefine “marriage”, and extended benefits using the words “civil union” you would solve a lot of the problems that have been created by these lower-court rulings.

Mr. Michael Savage: I asked Dr. McVety, but since I'm out of time, I have to get a little.... One of the most impressive pieces I've seen—I've mentioned this before—was from Dr. Short, who is the Moderator of the United Church. He emphasized that in his view this bill does not represent an abandonment of faith but an embracement of faith. If you strictly interpret the Scriptures, they've been used over the centuries to justify things like apartheid, slavery, the repression of women, the Crusades, a lot of things that I doubt that anybody here would endorse. Marriage has in fact changed already over time, and this reflects that change and is in fact entirely conducive to a person's faith.

So that's why I asked the question.

• (1650)

Mr. Charles McVety: I really think that speaks loudly to our point here that the state should not get involved in religious definitions, because you're not going to have 100% consensus. And under the separation of church and state, you as a committee and Parliament should not be redefining this religious term “marriage”.

Mr. Michael Savage: Thank you.

The Chair: You're done?

Thank you.

[*Translation*]

We will now go back to the Bloc Québécois and Mr. Ménard.

Mr. Réal Ménard: Thank you, Mr. Chairman.

Are you basically challenging the constitutional nature of civil marriage, Mr. McVety? In your argument, you steadfastly disregard the existence of civil marriage. You come before us saying that the state is seeking to redefine religious marriage. We respond with supporting evidence and quotes from legislation, that it is not the will of the state, but rather that of seven courts, which asked the government to proceed in this way. We live in a state where the rule of law prevails. There is no state religion, but there is the rule of law. The rule of law exists, and once the courts ask the government to put an end to a situation that has been ruled discriminatory, there is no choice for the government but to do so.

Can you acknowledge that while there is a religious dimension to marriage, there is also a civil dimension, which is no less real, and which can be observed throughout Canada? There are people who love each other, who want to join their lives together, who want to live and even die together and who do that through civil marriage. Such marriages exist. If you acknowledge that, I think both of us will sleep better tonight—not together, but separately.

[*English*]

Mr. Charles McVety: It is very clear that we have the term “marriage” in our society and that this term has been propagated by various religions around the world throughout our history—and now all of a sudden the state wants to redefine it.

Just to use your logic, Mr. Ménard, the state could not redefine marriage and all of sudden called polygamy “marriage”, because it would be going against the tradition of marriage. Our country was founded upon these traditions; the tradition of marriage has brought our civilization to where we are today, and as long as the state borrows this religious term and does not desecrate it and turn it into

something that it's not, then it's fine. But as a religious spokesman, I am here to say that we strongly object to the state redefining marriage. And you cannot differentiate between religious marriage and civil marriage: marriage is marriage.

[*Translation*]

Mr. Réal Ménard: I must say in all honesty that I do not understand your logic. You are a cultivated, congenial man, but I do not understand your stubborn refusal to recognize the existence of civil marriage. Such marriages exist. You cannot say in the name of religious freedom that you have a prerogative to say that civil marriages do not exist. They do. Do you agree with that?

[*English*]

Mr. Charles McVety: Well, polygamy exists as well.

[*Translation*]

Mr. Réal Ménard: No. Polygamy is not the same, because it is not accepted under Canadian values and it is prohibited under the Criminal Code. Polygamy and marriage are not the same. They are in no way similar. Polygamy is the opposite of marriage. Have you ever seen a court judgment that acknowledges polygamy?

• (1655)

[*English*]

Mr. Charles McVety: And same-sex union is also contrary to marriage. It's the same argument.

Do you want to respond?

Mr. Roy Beyer: Maybe I can respond as well.

When we discuss this, terminology is very important to people of faith. That's exactly why we need to seek a creative solution. Allow the definition of the word “marriage”—as they have in France—to remain as being a union between a man and a woman, whether it's for the purpose of producing future generations, or it has to do with religion.

It's important to people to keep the word “marriage” as marriage, defined as being between a man and a woman. The term “civil union”, in a separate category of relationships, can be used to provide exactly what it is that you want those unions to provide. Civil unions and marriage: this is the solution that would avoid the inevitable conflict with religious tradition.

The Charter of Rights does recognize people of conscience and religion, and you don't trample on the rights of some in order to extend rights to others. You need to find a solution that respects the rights of people of faith and religion, and at the same time if you want to accommodate same-sex couples, think of a creative solution without trampling on the rights of people of faith.

This is what we're asking for.

[*Translation*]

Mr. Réal Ménard: Yes, but the situation you mention does not exist for Parliament. If you read the reference, you will see that the federal government cannot create something called civil union, because civil law does not come under federal jurisdiction. The same is not true in France, which does not have a federal system of government. That option does not exist.

In addition, from a symbolic point of view, gays want access to marriage because they believe in exactly the same values as you. Civil union and marriage are not the same thing. Qualitatively, they are different, and legally, this option is not possible. The Supreme Court does not allow us to proceed in this way. We live in a state where the rule of law prevails. You cannot completely ignore the rule of law in the name of your religious convictions.

[English]

Mr. Roy Beyer: Again, my response to that is we are living in a pluralistic society where we need to respect both your view and my view. What you're doing with this bill is proposing to trample on our definition of marriage. In similar fashion, eliminating the word "Christmas" to celebrate someone else's view of a holiday wouldn't make sense.

In a pluralistic society, you accommodate the rights of both. That is, you retain the word "marriage". There is a creative solution that can be sought that would at the same time not force this cultural conflict. This is a compromise solution. A compromise solution means that no one is entirely happy with it, and that is exactly the point as we look to find a way to avoid the inevitable conflict while addressing the concerns. That is what we would suggest: there has to be some accommodation that recognizes both sides.

[Translation]

The Chair: Thank you.

[English]

We now move back to the Liberals.

[Translation]

You have the floor, Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): Thank you, Mr. Chairman.

I would like to start by thanking our guests for being here, particularly our two lawyers from Quebec. I am a member of the Quebec Bar, and I am pleased to meet you, particularly since you spent some time in my region at the end of last week at the time of the conference. Please congratulate Ms. Lemieux on becoming the *bâtonnière*, the president of the bar.

In the document we received, which was signed by the former *bâtonnier*, Mr. Mondor, we read the following on the first page:

When we reviewed the document entitled "Marriage and legal recognition of same-sex union" we supported the approach whereby same-sex spouses would be included in the definition of marriage.

Further on, the document states:

As mentioned previously, the Quebec Bar is opting for this solution, which is not only the simplest one from a legal point of view—it eliminates all court challenges under the Charter—but also the most comprehensive one from the point of view of its effects.

I would like you to explain what you mean here. When I listen to the guests at the table today, it seems to me that there will be endless legal battles if Bill C-38 is passed. What does this paragraph mean? What does the Quebec Bar mean here?

Ms. Eva Petras: When we stated this principle, we did so in the name of the equality of all persons under the Canadian Charter. The idea is to put everyone on an equal footing and to allow all persons

access to marriage. That is how we view this, in a purely legal and legislative context.

• (1700)

Ms. Françoise Boivin: Does that mean the end of the current challenges before the courts and of further challenges that could happen in provinces that have not yet included same-sex spouses in the definition of marriage?

Ms. Eva Petras: Yes. Of course, this does not deal with the problem, in various provinces, of those who perform marriages and their right to refuse to perform a marriage on the basis of their convictions. We passed legislation in Quebec that is similar to clause 3.

Ms. Françoise Boivin: Thank you, that is clear. I want a clear understanding of what you mean when you say that this will eliminate all legal challenges.

Let us talk now about the people who perform marriages. My question is to you, Mr. Kisilowsky. Perhaps my background in labour relations gives me an interest in your situation. I worked in labour relations for 20 years before becoming a member of Parliament, and of course I had my share of wrongful dismissals, forced resignations and so on.

I would like to hear a little more about this, because the committee has heard a lot of people express fear about what will happen once Bill C-38 is passed. It may be valid for people to express these fears, but I am trying to determine to what extent they are subjective rather than objective. You say you refused to resign and that you went to the Manitoba Human Rights Commission. Did I understand that correctly? Where are you at with your case? So far, no one in Manitoba has dismissed you. Is that correct?

[English]

Mr. Kevin Kisilowsky: Yes.

[Translation]

Ms. Françoise Boivin: So you are still in your position. Did you choose this approach which I would describe as somewhat conservative—in order to protect your rights?

[English]

Mr. Kevin Kisilowsky: I am still in my position. The provincial vital statistics governmental agency never offered any kind of negotiation. They pretty much said "You must hand in your certificate and resign", and there was no discussion.

Ms. Françoise Boivin: You said "pretty much said"—

Mr. Kevin Kisilowsky: You tricked me.

Ms. Françoise Boivin: Why?

Mr. Kevin Kisilowsky: Because you went to the English.

Ms. Françoise Boivin: Oh, I'm brilliant like that.

Mr. Kevin Kisilowsky: Good.

Ms. Françoise Boivin: But when you say "they pretty much said", I'm curious, what did you receive exactly? What made you think that you would have...? If somebody says to me, "you resign", in my book, in the labour law, in Quebec, anyway—I don't know about Manitoba—to resign, it has to be of your own free will. So if you refuse and they force you, it becomes a forced—

Mr. Kevin Kisilowsky: I will give you the exact wording, to the best of my memory here.

Ms. Françoise Boivin: Please do.

Mr. Kevin Kisilowsky: They pointed out that the Queen's Bench made a decision. They said "If you are opposed to same-sex marriage, we ask that you now send in your certificate of registration and resign".

Ms. Françoise Boivin: They said it verbally, or you received a letter?

Mr. Kevin Kisilowsky: They put it in writing.

Ms. Françoise Boivin: If you don't mind, do you think it would be possible to receive a copy of that letter?

Mr. Kevin Kisilowsky: Absolutely. I can give it to my federal MP and have it passed on to you.

Ms. Françoise Boivin: Excellent.

[Translation]

All people who perform marriages in Manitoba would have received this type of document. Is that what you are telling us?

[English]

Mr. Kevin Kisilowsky: All 600 marriage commissioners received this exact same letter. I understand possibly 12 simply resigned. I felt that this was a direct violation of my individual human rights that were guaranteed under the charter—

Ms. Françoise Boivin: I understand that.

Mr. Kevin Kisilowsky:—so I opposed it. I went to the Manitoba Human Rights Commission and I filed my complaint with them. They said I certainly had grounds for a complaint, and it went to full investigation.

Ms. Françoise Boivin: And now you have an investigator on the case. Did the investigator submit a report?

Mr. Kevin Kisilowsky: The report has been drafted, but at this point it's adjourned; it hasn't gone before the board. The earliest we'll hear something is the end of August.

And regardless of what she says, the board could overturn it. Really, it's in the board's hands.

[Translation]

Ms. Françoise Boivin: It is really unfortunate that things happen this way in Manitoba. The protection is different in Quebec.

I am trying to reconcile that with the decision of the Supreme Court of Canada, which I think has considerable force. I do not know whether you have had an opportunity to read it, but I imagine you have. And I do not mean just the parts that suit everyone. I would draw your attention to paragraphs 53 and 54 of the Supreme Court decision, which state:

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

The decision ends as follows: In summary, the potential for collision of rights raised by s. 1 of the Proposed Act has not been shown in this reference to violate the Charter. It has not been shown that impermissible conflicts—conflicts incapable of resolution under s. 2(a)—will arise.

I imagine that all the cases mentioned here were also raised before the Supreme Court. The Court had to look at the options you told us about. It took your fears into account in making its decision. At the moment, your fears may be subjective.

[English]

What do you make of this part of the decision?

● (1705)

Mr. Roy Beyer: Maybe I can just comment briefly here on the real problem.

When the lower courts made the rulings with respect to the redefinition of marriage, first of all, instead of appealing to the Supreme Court and getting a clear ruling on the question, they left us, really, with a vague decision. There is a statement that we theoretically have protections of religion—and we understand that; of course we expected there would be that. But it's interesting that the lower-court rulings have triggered a large number of examples across Canada. Practically every province has examples of marriage commissioners being required—and now some of them have gone back, but the initial trigger was the marriage commissioners. Chris Kempling is a school teacher who wrote a letter to an editor and was suspended.

So it puts us in a position where we now have to defend ourselves, and we've never had to defend ourselves in that manner before. We are now in a place where we have to go to the human rights tribunal. It's triggered an attitude of intolerance towards people of faith. So the fear is that Bill C-38 will just reinforce that attitude of intolerance.

I'm interested to hear that in Quebec, at least, there's a recognition of this and legislation in place to make sure that this problem is minimized. But until we have that same kind of legislation in place in every other province, we have every reason to be concerned and to be afraid.

The Chair: Okay, so we come back to the NDP.

Mr. Siksay, five minutes.

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

Rabbi Novak, you said, I think towards the end of your presentation, that you feared the passage of Bill C-38 would make members of the Jewish community appear to be enemies of the state. I'm wondering if you could clarify my interpretation of that, or what you said exactly, and explain it a bit further.

Rabbi David Novak: I did not say "enemies of the state", I said that those who are opposed to this—and I can specifically speak of those in the Jewish community who are opposed to this—would be considered to be, shall we say, countercultural. In other words, if you look at the arguments that are made, there's been an institution called marriage. It has developed and evolved in certain ways—primarily concerning property rights, yes—but it's remained remarkably consistent, certainly in our society.

Now there's a challenge to that institution. The challenge to that institution is that it has, all along, been discriminating against same-sex couples. Therefore, in order to change the institution, it has to be argued—at least the way that I see it—that this institution has been fundamentally unjust, and this injustice has to be rectified and the situation made right again.

Now, if that's the case, then the argument for this bill is a moral judgment that discrimination has taken place. Therefore, those people who are in favour of the traditional institution of marriage and were opposed to this moral charge against the traditional institution of marriage have basically, if this bill passes, become countercultural in the sense that they are now, in effect, endorsing an institution that in its previous incarnation, as it were, has been judged to be immoral and unjust. So that I consider to be cultural marginalization.

• (1710)

Mr. Bill Siksay: As a member of a religious community myself, I often feel countercultural, and often it's my religious community that celebrates the fact that they speak in a different way from society as a whole. That's not an unusual sense for a religious community.

Rabbi David Novak: Excuse me, sir. It's not a question of being countercultural, but of being counter-morality. I have all kinds of religious practices, such as covering one's head, etc., etc., eating certain foods, not working on or even using a telephone on the Sabbath, or something like that. They're considered to be practised by a very small minority in Canada. However, there is nobody that I know of in Canada who is saying that my practice or endorsement of these traditional practices is immoral or unjust.

If I'm going to be in favour of the traditional institution of marriage and morally opposed to this radical change of this institution, then in terms of the judgment of Parliament or the Supreme Court of Canada, or whoever, I am basically endorsing something that the society has judged to be immoral and has to be changed. I'm still in favour of the earlier institution.

So it's quite different from my peculiar religious practices, which, I dare say, very few people if any could have any moral argument against.

Mr. Bill Siksay: What about the situation of the equality of women in Canadian society and in other religious traditions, such as Orthodox Judaism, where there are probably limitations placed on the participation of women, say, in the rabbinate? Is that not a similar kind of circumstance to this, where—

Rabbi David Novak: No.

Mr. Bill Siksay:—society has taken a very strong position on the equality of women, and some religious traditions have taken a different position, and yet there's been respect for those decisions across society?

Rabbi David Novak: But the rabbinate is not a civil institution, as marriage is. It's an entirely different type of situation in terms of the question of the ordination of women. There are some people who've employed those kinds of arguments, I think, unfortunately, in religious communities. But I don't think that analogy holds here.

Mr. Bill Siksay: Maybe I could ask the folks from the Barreau du Québec about the assertion that marriage isn't a civil institution. It seems to me that we're talking about two kinds of marriage here in Canada and that there is a strong civil marriage tradition in Canada. The bill tries to address the civil marriage situation.

There was another statement I wanted to ask you about too. I think at one point it was stated with regard to marriage that the whole thing was about children. I'm just wondering if that's been true of our civil marriage tradition as well, or if there isn't another part of marriage that relates to the relationship of couples.

Ms. Eva Petras: I think that marriage is a civil institution. It has always been legislated in a civil fashion, with rules on the celebration of marriages, the validity of marriage, the qualification to marry, etc.

We have both religious and state rules, if I may call them that, with respect to marriage. Certainly, if we talk about these provisions, we're talking about civil marriage or provisions with respect to a civil marriage. In fact, the title says, "An Act respecting certain aspects of legal capacity for marriage for civil purposes", so we're creating a legal status for marriage and calling it marriage. That's why the Barreau du Québec is in favour of the bill.

The issue of children and the purpose of marriage is a religious issue, so we don't enter into that debate as to whether they are the purpose of marriage. I think that most couples who marry want to have children, and I certainly think they are an important element and purpose of marriage, but are they the sole purpose of marriage? I don't think that's the view of the civil institution of marriage, and I don't think that's the view of the Province of Quebec, because we've always had a civil law on the issue of marriage.

I don't know whether that answers your question.

• (1715)

The Chair: Thank you, Mr. Siksay.

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

The Chair: I have to go back to the Liberal side, and Mrs. Neville, for five minutes.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you. I hope it's not a bad thing, coming back to this side, Mr. Chair.

The Chair: If you'd rather, we could go to Mr. Kenney.

Ms. Anita Neville: No, I'll take my spot, thank you.

Allow me to welcome those of you who are here this afternoon, and extend my apologies for coming in late. I was in another committee meeting. I had three scheduled concurrently this afternoon.

I have two lines of questioning, and I'm going to undertake both of them right up front. My first question is to Mr. McVety and Mr. Beyer. You've both been active in your opposition to civil marriage for same-sex couples for some time. I'm wondering if you could tell the committee what you've done to engage both the public and members of Parliament in the debate, and how long this has been going on.

My second line of questioning is to ask the same people—and whoever else would like to answer—about something I have here from a Supreme Court decision. It's from former Chief Justice Brian Dickson. He says, "What may appear good and true to a majoritarian religious group, or the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view." What do you say to religious institutions like the Unitarian Church, the United Church, and other religious groups that choose to marry same-sex couples? How do you reconcile it?

I apologize if these questions have been asked before.

Mr. Charles McVety: Do you want me to first address what we've done?

Ms. Anita Neville: Please.

Mr. Charles McVety: Our organization has brought together many organizations across the country to develop grassroots activity and democracy. We have had religious leaders from around the world, like Pope John Paul II and the head of the Sikh religion in India, make strong statements in defence of marriage.

This has mobilized people of all faiths right across the country. We have helped them to engage in communication with their members of Parliament and to participate in democracy. We believe that we have a free democracy, and that it is every citizen's right to participate in this great process. We have engaged in many initiatives to communicate to the grassroots and rally them.

Ms. Anita Neville: My question was in relation to members of Parliament as well. How did you engage members of Parliament? Could you be more specific about the activities you've undertaken?

Mr. Charles McVety: I'll let Roy talk about that.

Mr. Roy Beyer: We feel the most important voice is the voice of the individual voter speaking to his or her member of Parliament. We're not lobbyists per se; we're simply helping people who feel strongly about the issue to understand what it is and what they can do about it. There's been a sense of frustration that Parliament hasn't been listening, that parliamentarians have ignored the will of the people.

Of course, there's the previous marriage committee, which did a tremendous job travelling across the country. Their work, however, was never followed up with a respectful response to the concerns of Canadians.

A lot of Canadians feel very frustrated that Parliament isn't listening. We try to encourage people not to give up. There is a possibility of being able to persuade a sufficient number of MPs not to allow this bill to go through. Of course, we're also looking to encourage people towards a compromise solution. It's important for average Canadians to feel they're being heard. Right now, a lot of them don't feel that way.

Ms. Anita Neville: I was hoping for some specifics.

What do you say to those religious organizations that wish to and choose to marry couples of the same sex?

• (1720)

Mr. Charles McVety: I don't think it has ever been the responsibility of the federal government to adjudicate religious disputes. It's very unhealthy for the government to side with one particular group, such as the United Church, and say, "Okay, we are going to legislate your definition of marriage for the whole country of Canada. Everybody has to conform to this definition of marriage." I think it is very unwise. It has never been the responsibility of the government. With Bill C-38, the government is entering into waters they've never seen before.

Ms. Anita Neville: Thank you.

The Chair: Thank you.

Now we're back to the Conservative Party, to Mr. Kenney, for five minutes.

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

Rabbi Novak, I believe you're both a lawyer and a theologian. Is that correct?

Rabbi David Novak: Did you say lawyer?

Mr. Jason Kenney: Yes.

Rabbi David Novak: No, I'm not a lawyer. I'm a professor of religious studies, a professor of philosophy, and an ordained rabbi. And yes, I've been called a theologian.

Mr. Jason Kenney: All right.

Rabbi David Novak: The blurb on my latest book calls me a theologian, so who am I to argue?

Mr. Jason Kenney: Sorry for calling you a lawyer, in that case.

Rabbi David Novak: But I'm the father of a lawyer.

Mr. Jason Kenney: Right. I'll take responsibility for that then.

I have a couple of questions for Madame Petras from the Barreau du Québec. Madame Petras, in reading the letter you've kindly furnished us with in trying to deduce the reasons for which the Barreau du Québec has supported Bill C-38, the best I can do is to infer that you do so because you believe this constitutes an equality right.

Ms. Eva Petras: That's correct.

Mr. Jason Kenney: Would you say that this equality right is equivalent to a human right?

Ms. Eva Petras: Yes, that's correct—protected by the charter.

Mr. Jason Kenney: Protected by the charter.

Would you therefore agree that any legal instrument or statute that defines or understands marriage in exclusively heterosexual terms contravenes equality or human rights?

Ms. Eva Petras: That's correct. That is the position of the Barreau du Québec.

Mr. Jason Kenney: All right.

I'd like to cite a couple of legal instruments and ask specifically whether you feel that this violates the principle of equality rights that you've enunciated.

I'll cite, first of all, "Men and women of full age...have the right to marry and to found a family"; and secondly, that "Men and women of marriageable age have the right to marry and to found a family".

Would you find those citations, insofar as they are exclusionary in terms of gender, to violate the principle of equality rights?

Ms. Eva Petras: I don't believe it's excluded by Bill C-38 as drafted—

Mr. Jason Kenney: No.

Ms. Eva Petras: —but certainly the position of the bar has been that if you limit marriage to heterosexuals, then you are creating a discriminatory situation and you risk running afoul of the charter.

Mr. Jason Kenney: All right.

Ms. Eva Petras: So this is why we support that.

But if you're talking about specific legislation to determine age qualifications, and so on, perhaps the drafting is not felicitous.

Mr. Jason Kenney: Sure. To go back to a previous answer, I think you stated that a legal instrument that understands marriage in exclusively heterosexual terms would run afoul of a principle of equality.

The two instruments I've just cited are from the Universal Declaration of Human Rights, 1949, of the United Nations, and the European covenant on human rights. It was on the basis of these international human rights documents, which define marriage in heterosexual terms, that the United Nations Commission on Human Rights refused to find that the New Zealand marriage law, which defines marriage in exclusively heterosexual terms, constituted a violation of international human rights. It was similarly on these grounds that the European Court of Human Rights at Strasbourg found that domestic laws defining marriage in heterosexual terms did not violate the European covenant on human rights.

Do you have anything to add to this international human rights jurisprudence with respect to the definition of marriage?

• (1725)

Ms. Eva Petras: I think our society has evolved and developed, and I believe the Supreme Court of Canada decided otherwise in the *renvoi* before the Supreme Court. So the situation now is that we're living in a pluralist society, and from the point of view of the law that marriage is an institution of the state and that there has been an evolution since that time, would the decisions be the same today? I don't know.

Mr. Jason Kenney: For your information, these decisions, in both instances, were in the past three years at these international jurisprudential fora.

Speaking of the Supreme Court of Canada, I'd like to cite for you part of the judgment in the Egan case, 1995.

Citing from Justice La Forest, he said the ultimate *raison d'être* of marriage transcends philosophical and religious traditions

...and is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual.

So you're saying that you disagree with a finding of five judges of the Supreme Court of Canada in the Egan decision.

Ms. Eva Petras: I think we're dealing with the situation with the present *renvoi* before the Supreme Court and the most recent position of the Supreme Court, and the Barreau du Québec's position is that we support entirely the Supreme Court's decision and we support this bill. I'm sorry, I can't answer other than that.

Mr. Jason Kenney: When you're talking about the decision, I think you're talking about the response to the government reference case.

Ms. Eva Petras: That's correct.

Mr. Jason Kenney: Are you not aware that the Supreme Court demurred on question 4 and did not in fact make a finding that there is a charter obligation for Parliament to redefine marriage?

Ms. Eva Petras: That's correct. I'm aware of that.

Mr. Jason Kenney: Chairman, I was a bit surprised by the testimony—taken aback, really—by the position the witnesses from

the Defend Marriage Coalition have taken here. They've articulated what they've called a compromise position, that they are willing to support civil unions, which provide all substantive access to rights to people in relationships, regardless of sexual orientation.

I'd just like us to reflect—and I'd like them to respond on this—that this is actually the same position taken by the vast majority of the secular, social democratic, social left, and green parties in western Europe, which support maintaining the heterosexual definition of marriage in all of western Europe, save Belgium and the Netherlands. I'd just like to put this in perspective, Mr. Chairman, because my friend Mr. Boudria has in the House of Commons pejoratively referred to the Defend Marriage Coalition as being representative of “the religious right” and has tried to frame their position as being an extreme one.

The Chair: Let's make it very brief, and let's be very careful with—

Mr. Jason Kenney: I'm just citing what—

The Chair: Let's get an answer quickly. You're out of time.

Mr. Jason Kenney: Could you comment on how you came to this decision? It throws into fairly stark relief the actually extreme position of Bill C-38, which is out of the mainstream of even the left and centre-left secular parties of western Europe.

Mr. Charles McVety: We're here to defend the rights of religious people in this country. We do not want to see religious people delegitimized, marginalized, persecuted, prosecuted, or have their religious freedoms infringed upon.

We're not here as sociologists. We're not here as members of Parliament, as you are. It is your purview to talk about civil institutions. It is not your purview to talk about religious institutions. Therefore, in France and in many of these left-leaning nations they came up with this compromise of civil union to give all the rights we have heard about yet not violate the first fundamental right of any civilization or society, and that is freedom of religion.

• (1730)

Mr. Roy Beyer: Of course, this is the position, by the way, the majority of Canadians have come to as well. Most Canadians do want a compromise solution where the rights of homosexuals in terms of their unions is recognized while at the same time we're not redefining marriage. To me, clearly, that's what the Canadian people want. It's something that works in terms of United Nations rights conventions; it works in terms of other nations coming to compromise solutions.

This is certainly the kind of answer Canada should be open to, and up to now this government has not been open to a compromise solution. We're begging the other members from other parties and even pro-marriage members of the Liberal government to look at the compromise solution as the way to resolve the conflict we have.

The Chair: Thank you.

We have two minutes left. We're on the Liberal side.

Mrs. Neville.

Ms. Anita Neville: Thank you.

I have a very brief question. It's briefer than that as long as the answer can be brief.

My question is for Mr. McVety and Mr. Beyer. What would be required for Mr. Boudria, me, and several of our colleagues to retrieve our names from your organization?

Mr. Roy Beyer: Would this not be out of order, Mr. Chairman?

Mr. Charles McVety: Your name is your name. You have your name.

Ms. Anita Neville: My domain name.

Mr. Charles McVety: That is something we can talk about. We have not been asked. You've not talked to us about that. Domains are like a header on a magazine, and you go to a website and you purchase it. Many members of Parliament have asked us for them and we've discussed it. It's something we use for the purpose of communicating with and educating the public.

Mr. Roy Beyer: Josephvolpe.com, for example, is a website where you actually have a senior cabinet minister going into a church, making a promise to church-going people that he will oppose the lower-court decisions—he disagrees with them—and

saying he now wants the support of church-going people to get elected. He gets elected on the basis of that promise in a church, and all we do is—

Ms. Anita Neville: Sorry, I'm speaking about my name.

Mr. Roy Beyer: All we've done is place the names of these members of Parliament forward and say if you want to know—

Ms. Anita Neville: That's fine. Thank you.

Mr. Roy Beyer: —the promise that's been made.... Promises made, promises broken.

The Chair: Thank you.

We have run out of time.

I want to thank very sincerely the witnesses for appearing here today. I want to thank the members.

We will now adjourn this committee. For those of you who are interested, the next meeting of this committee will be in 28 minutes, at 6 p.m.

This committee is adjourned.

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