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Legislative Committee on Bill C-38

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Monday, June 13, 2005

Chair

Mr. Marcel Proulx

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● (1530)

[*English*]

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

Welcome to the witnesses.

I'm sure you have been briefed in the sense that you know how this committee works. Witnesses have an opening statement of 10 minutes. The first rounds of questions, comments, and answers are of seven minutes, and additional rounds are of five minutes.

Two of our witnesses are not with us yet. We understand that they are here in Ottawa this afternoon. Hopefully, they'll come in and we can hear them. But we will start now.

We have, on an individual basis, Professor Hugo Cyr. We also have Mr. Bruce Ryder, and representatives of the Focus on the Family Canada Group.

We'll start right away with M. Cyr.

[*Translation*]

You have 10 minutes, please, Mr. Cyr.

Mr. Hugo Cyr (Professor, Faculté de science politique et de droit, Université du Québec à Montréal, As an Individual): Good afternoon. I am appearing as an individual but also to represent 133 of my colleagues who, along with me, signed a letter that was sent to the Leader of the Opposition last January, concerning the bill that you are examining. I will read it to you. There is also an English version; I believe it has been distributed. The letter is addressed to the Hon. Stephen Harper, Leader of the Opposition.

> Dear Mr. Harper,
>
> The federal government has made it clear that it intends to introduce legislation in the House of Commons to extend to same-sex couples the right to marry. You have indicated that you oppose this legislation, and intend to propose amendments to limit the definition of marriage to only opposite-sex couples. You also stated that it would not be legally necessary to use the Charter's notwithstanding clause to protect a statutory definition of marriage that excludes same-sex couples. As law professors, we strenuously disagree. You must be completely honest with Canadians about the unconstitutionality of your proposal, which will only guarantee that same-sex marriage ends up back before the courts as opposed to being resolved by Parliament. Your position is surprising for someone who has constantly defended the pre-eminence of Parliament.
>
> Even though the Supreme Court of Canada did not address this issue in the recent same-sex marriage reference, courts in British Columbia, Saskatchewan, Manitoba, Newfoundland, Ontario, Quebec, Nova Scotia and the Yukon are now unanimously of the view that a definition of marriage that excludes same-sex couples is unconstitutional. The consensus of constitutional experts is that these decisions are correct. You must explain to Canadians how your plan to entrench the traditional definition of marriage will pass constitutional muster. The truth is, there is only one way to accomplish your goal: invoke the notwithstanding clause. Premier Klein has been honest with Canadians on this subject. You must be completely candid with Canadians as well.
>
> If Parliament were to adopt your proposal and define marriage to exclude same-sex couples, this legislation would very quickly end up in court, and be struck down as unconstitutional. However, the Charter allows Parliament to have the last word on many issues of fundamental rights, through the notwithstanding clause. Frankly, we do not think this is an appropriate case for the use of this extraordinary provision. However, if you believe that same-sex couples should be prohibited from getting married, you should propose legislative amendments that include a notwithstanding provision.
>
> The fact that you want Parliament to enact clearly unconstitutional legislation and adopt the traditional definition of marriage without using the notwithstanding clause leads us to suspect that you are playing politics with the Supreme Court and the Charter. The use of the notwithstanding clause would have to be justified to Canadians, who overwhelmingly support the Charter. Not using the notwithstanding clause therefore protects opponents of same-sex marriage from political controversy. And if the Supreme Court judgment struck down the opposite-sex definition of marriage, opponents of same-sex marriage would blame the court for challenging Parliament's will.

● (1535)

> In short, those who oppose same-sex marriage without supporting the use of the notwithstanding clause are shifting political accountability from themselves to the Supreme Court. Rather than ending the Supreme Court's involvement, it would further embroil the court in this issue.
>
> You should either invoke the use of the notwithstanding clause, and justify this decision to Canadians, or concede that same-sex marriage is now part of Canada's legal landscape. If you intend to override Canadians' constitutional rights, you at least owe it to them to say this openly and directly. Canadians deserve better.
>
> Sincerely,

This letter is signed by professors Sujit Choudhry, from Toronto; Jean-François Gaudreault-DesBiens, from Toronto; Wendy Adams, from McGill; Sharryn Aiken, from Queen's; Jennifer Bankier, from Dalhousie; Benjamin Alarie, from Toronto; Reem Bahdi, from Windsor; Bélanger, from Laval; Bell, from New Brunswick; Belleau, from Laval; Berger, from Victoria; Berryman, from Windsor; Bogart, from Windsor; Bourgoignie, from UQAM; Boyd, from UBC; Brooks, from UBC; Brunnée, from Toronto; Busby, from Manitoba; Calder, from Victoria; Campbell, from McGill; Caulfield, from Alberta; Chatterjee, from the University of New Brunswick; Cook, from Toronto; Cossman, from Toronto; Côté-Harper, from Laval; Coughlan, from Dalhousie; Craig, from York; Crépeau, from Montreal; Currie, from Dalhousie; myself, Hugo Cyr, from UQAM; dean Ronald Daniels, from Toronto; professors Dawson, from Carleton; Deckha, from Victoria; Deleury, from Laval; Denholm, from Windsor; Devlin, from Dalhousie; Dhir, from Windsor; Dickens, from Toronto; Doelle, from Dalhousie; Drummond, from York; Duplé, from Laval; Duff, from Toronto; Dyzenhaus, from Toronto; Fainstein, from Manitoba; Fernandez, from Toronto; Gallant, from Manitoba; Gilbert, from Ottawa; Gilmour, from York; Giroux, from Ottawa; Gochnauer, from the University of New Brunswick; Graham, from Western Ontario; Green, from York; Greschner, from Saskatchewan; Guillemard, from Laval; Halley, from Laval; Holland, from Western Ontario; Hughes, from Calgary; Hutchinson, from York; Innis, from Manitoba; Issalys, from Laval; Jackman, from Ottawa; Janda, from McGill; Johnson, from Victoria; Johnston, from Toronto; Katz, from Queen's; Lafond, from UQAM; Landheer-Cieslak, from Laval; Langevin, from Laval; Lareau, from Laval...

● (1540)

The Chair: You have one minute remaining.

Mr. Hugo Cyr: You know that there are still a number of names on this list. I will spare you, they are already in the letter. I read the letter on their behalf.

Thank you very much.

The Chair: Thank you.

[*English*]

Let me take this opportunity to welcome our two additional witnesses. From the Ontario Gurdwara Committee, we have Mr. Parminder Singh and Ms. Harminder Kaur.

As I explained before, witnesses have a 10-minute presentation, and then we go to a round of questions and comments. The first round is seven minutes and the other rounds are five minutes.

We had just started with Mr. Cyr, so we will proceed as planned. We will now hear Mr. Ryder.

Prof. Bruce Ryder (Professor, Osgoode Hall Law School, As an Individual): *Merci, monsieur le président*.

It's an honour to have the opportunity to contribute to the committee's deliberations on Bill C-38, the Civil Marriage Act.

I would like to say a few words about how the bill fulfills Parliament's constitutional responsibilities to respect equality rights and to render uniform the definition of marriage across the country. I would also like to say a few words about how the bill poses no threat to religious freedom.

Let me start with some comments on religious freedom, because it seems to me that this issue continues to concern many people.

The degree to which Bill C-38 poses a potential threat to religious freedom, in my view, has been greatly exaggerated. It is true that many difficult issues have arisen where religious freedom and the equality rights of gays and lesbians appear to collide, and continuing uncertainty about how courts and tribunals will balance conflicting claims is generating considerable anxiety across the country. Many of these issues arose before the marriage debate and have little to do with Bill C-38.

Other religious freedom issues related to the legalization of same-sex marriage fall within provincial jurisdiction and need to be resolved whether or not Bill C-38 passes, since same-sex marriage is currently legal in most jurisdictions. Any attempts by Parliament to address many of these issues—especially those relating to the solemnization of marriage—in legislation would be an unconstitutional invasion of provincial jurisdiction.

Neither religious freedom nor equality rights are absolute, and neither consistently trumps or prevails over the other as a matter of principle. It all depends on the context. In the context of religious institutions and ceremonies, religious freedom will trump equality rights. No Canadian tribunal or court, for example, would uphold a law attempting to force the Catholic Church to ordain female priests.

In the context of public schools, as the Supreme Court held in the Trinity Western case, freedom of teachers to express religious views must give way to obligations to teach the curriculum and create an environment equally respectful of all students.

In the same-sex marriage reference, the Supreme Court considered clause 2 of the proposed act, which provided that "nothing in this Act affects...the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs". The court found that this clause would be ultra vires Parliament as it relates to the solemnization of marriage, a matter within exclusive provincial jurisdiction pursuant to subsection 92 (12) of the Constitution Act, 1867.

Clause 3 of Bill C-38 provides that: "It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs." It is hard to imagine that the slight difference in wording between this clause and the one at issue in the reference would lead the courts to any different conclusion. Clause 3, I conclude, is therefore ultra vires and legally ineffective.

In any case, clause 3 is legally redundant. Paragraph 2(a) of the Charter of Rights and Freedoms provides strong protection for religious freedom. No law currently interferes with the performance of religious rights according to the beliefs and practices of religious traditions. Any law attempting to do so would constitute an extreme violation of paragraph 2(a) of the charter.

In the reference opinion, the Supreme Court summarily dispensed with arguments that defining civil marriage as the union of two persons would have the effect of violating religious freedom. First, the court noted that the proposed definition of civil marriage would not interfere with the freedom to hold contrary beliefs. Second, the court acknowledged the possibility of collisions between religious freedoms and the rights of same-sex couples occurring in the future and said in essence that the courts would balance competing rights on a case-by-case basis, as they have in the past. Third, the court stated that paragraph 2(a) would protect religious officials if government sought to compel them to perform same-sex marriage contrary to their religious beliefs. Freedom of religion protects religious practice and, the court said, “the performance of religious rites is a fundamental aspect of religious practice”. State interference with religious rights would constitute a severe violation of religious freedom.

For even greater certainty, it may be helpful for the court's obvious conclusion on this point to be written into legislation, as the Ontario legislature recently did with the passage of Bill 171, adding a provision to the Ontario Human Rights Code and the Marriage Act to that effect.

● (1545)

Because subsection 92(12) of the Constitution Act, 1867 allocates jurisdiction over the solemnization of marriage to the provinces, and by statute the same is true of the territories, the federal government's role in this regard is limited to encouraging its provincial and territorial counterparts to introduce similar legislative amendments.

What about the situation of marriage commissioners performing civil marriages? Some provincial governments have directed their marriage commissioners to be prepared to perform same-sex marriages or to resign. If these governments do not provide an exemption from performing same-sex marriages to religious objectors, these directives constitute religious discrimination in employment contrary to the charter and applicable provincial human rights legislation. In the reference opinion, the Supreme Court stated that paragraph 2(a) of the charter would protect religious officials from being compelled by the state to perform civil same-sex marriages that are contrary to their religious beliefs. Human rights jurisprudence clearly supports the rights of employees, whether in the public or the private sector, to object to the performance of job duties on religious or conscientious grounds, and employers have an obligation to accommodate them if they can do so without undue hardship.

A civil marriage, of course, is not a religious rite. If a religious official is licensed to perform civil marriages, he or she is delivering a public service on behalf of the state. He or she is acting as a public official and thus is bound to comply with charter equality rights. Same-sex couples have no right of access to a religious marriage, but they do have a right of equal access to all public services, including civil marriage. The appropriate balance between a public official's religious or conscientious objection to performing same-sex marriages and a same-sex couple's equal right to a civil marriage ought not to tilt automatically in one direction or the other. It depends on whether an official's religious or conscientious beliefs could be accommodated by the government without undue hardship and without compromising a same-sex couple's equal access to civil marriage.

Let me say a few words about equality rights and the fact that it is now apparent, I think, that the opposite-sex definition of marriage can no longer survive constitutional scrutiny. Some members of Parliament have suggested that since the Supreme Court chose not to express its opinion on whether the opposite-sex definition of marriage is unconstitutional in last year's reference, federal legislation restoring the definition of marriage as the union of one man and one woman might survive a constitutional challenge in the courts, even without a notwithstanding clause included in the legislation.

With all due respect, the chances of the courts reversing course on the same-sex marriage issue are negligible. The degree of judicial consensus that has emerged on this issue is remarkable. It is a consensus widely shared among legal analysts and constitutional scholars, as we heard from Professor Cyr, and the logic of the equality rights argument is unassailable.

Members of Parliament have an obligation to uphold the Constitution. Taking seriously the demands of the charter is as important for legislators as it is for judges. Those who disagree with the consensus view that the charter requires the legalization of same-sex marriage have a responsibility to put forward the legal basis of their position. What were the legal flaws in the courts' reasoning over the course of the last few years? What legally persuasive arguments have emerged that the courts did not consider? I have yet to hear any.

We should reflect on why the equality rights argument has become so legally compelling. The legalization of same-sex marriage is a result of many social, political, and legal developments. We tend to focus on the role of the charter, but there have been many other political struggles and legislative changes without which we would not be here today. One was the partial decriminalization of private sexual acts engaged in by consenting adults, as a result of changes introduced in Parliament by then Justice Minister Pierre Trudeau in 1968. Implicit in this reform was a reconfiguration of the law's conception of sexual morality. Regardless of the gender of the participants or the body parts involved, the state had no business concerning itself with private sexual acts engaged in by consenting adults.

Another change that's very important, of course, has been the rendering of family law gender neutral. No longer do husbands and wives have distinct legal rights and obligations. It's revealing to do a search through the federal and provincial statute books to see how often the words “husband” or “wife” appear. One finds the odd remnant here or there. Far more often one finds the word “spouse” or “common law partner”, each defined in gender-neutral terms.

● (1550)

Gender and procreation no longer have anything to do with the contemporary law of marriage. Sometimes listening to the speeches of the opponents of same-sex marriage sounds like a return to the 1950s, when husbands were husbands and wives were wives at home taking care of the children. We have moved well beyond that world, and there is no point in trying to turn back the clock.

Thank you very much.

The Chair: Thank you, Mr. Ryder.

We will now proceed with Focus on the Family Canada. Could we have Mrs. White or Mr. Rolston, please?

Mr. Terence Rolston (President, Focus on the Family Canada): Thank you, Mr. Chairman. I will be making the verbal submission, and Anna Marie White is with me to answer any question of the committee.

The Chair: Fine.

Mr. Terence Rolston: Good afternoon to all the honourable members of the committee.

Focus on the Family is a Canadian charitable organization, founded on Christian principles, that supports, encourages, and strengthens Canadian families through education and resources. Our purpose and mission are based on the foundational teachings of Jesus Christ. It is the Bible that grounds our belief that marriage is an institution established by God and that it is not meant to be redefined. We are contacted by tens of thousands of Canadians each year and hear from Canadians every day who affirm to us the importance of marriage in their lives and the need to preserve marriage as a lifelong union between a man and a woman to the exclusion of all others.

We appear before you today to ask you to recommend that Bill C-38 not receive third reading because it is not in the best interests of Canadian families.

Many of our supporters have shared with us the letters they've received from their member of Parliament indicating that Parliament has no choice but to redefine marriage. Many MPs indicate that the provincial courts give them no alternative. However, the Constitution states that it is within the jurisdiction of Parliament to legislate and define marriage for civil purposes, and this was confirmed by the Supreme Court on December 9, 2004, in its ruling on the reference questions. In addition, the Supreme Court refused to state that the opposite-sex definition of marriage is unconstitutional; therefore, traditional marriage can be affirmed by Parliament despite the provincial courts' rulings.

Legal expert Eugene Meehan of the firm Lang Michener writes: “The passage of a new federal Act - i.e. a statutory definition - defining marriage as a union of one man and one woman to the exclusion of all others would trump the common law”—that is at provincial challenges—“and also thereby trump any interpretation and declaration that a court of appeal may have pronounced on the common law definition”.

Focus on the Family's position has been clear, as evidenced in our presentation to the justice committee in 2003, our media campaigns, and public activity in support of marriage, that passing Bill C-38 is not in the best interests of society, and especially not in the best interests of children. Redefining an institution that is so fundamental to Canada, based solely on the argument of individual rights, without regard for its impact on children completely disregards their future welfare. The social science evidence is clear: children are better off when raised in a family setting where the biological mother and father are in a committed relationship. Marriage has proven to be the best way to provide this environment. Research also tells us that fathers interact with their children in different ways than mothers do; both relationships are extremely beneficial to children.

Bill C-38, and in particular many of the consequential amendments, sever parenthood from biology without any real understanding of the consequences this might have on children. The message of Bill C-38 is that fatherhood and motherhood are interchangeable, and their unique differences do not matter. This flies in the face of mountains of research that tells us that a child desperately needs both her mother and her father.

It is important to repeat our position that Bill C-38 should not be passed. However, if the government and this committee are committed to redefining marriage, then we urge you to be equally committed to fully protecting freedom of religion and freedom of conscience.

The preamble to Bill C-38 claims that to deny same-sex couples the right to marry is contrary to the charter. As a result, millions of Canadians of many faiths and cultures will find themselves holding views and values that contradict the charter. This is troubling. If the committee is serious about protecting religious freedom, we hope you will strongly consider our suggestions for amendments.

Currently Bill C-38's promise to allow officials of religious groups the right to refuse to perform marriages that go against their religious beliefs is inadequate. First, it fails to recognize that religious freedom extends far beyond the rights of simply performing marriages, and second, solemnizing marriages falls under provincial government jurisdiction.

A religious organization such as Focus on the Family Canada could also be subject to a challenge of our charitable status. It would be argued that since, under Canadian law, an organization will not be regarded as charitable if its activities are contrary to public policy, after passage of the bill any organization that advocates opposition to same-sex marriage would be acting contrary to Canadian public policy and therefore would be promoting discrimination against same-sex couples.

There are a number of amendments that would help ensure that there is some protection of religious freedom in this bill.

First, delete the preamble. The preamble is not necessary to enact the legislation; however, it clearly indicates that the traditional understanding of marriage—that is, one man and one woman to the exclusion of all others—a view that is held by millions of Canadians from many faiths and cultures, contradicts the charter.

● (1555)

Two, explicitly state in the legislation that it is valid and acceptable to hold a traditional understanding of marriage—that is, one man and woman to the exclusion of all others—and that Canadians can freely express that view and act upon it in Canadian society.

Three, add declaratory language to the bill confirming that those who support the traditional definition of marriage are not acting against the public interest. For example, a new subclause 3(1) could be added to the bill, which would read: “It is recognized that any Canadian is entitled as a matter of conscience or religious belief to maintain that marriage is the union of a man and a woman, and no burden or penalty shall be imposed under Canadian law on any person who maintains such a belief.”

Four, include in the bill specific protection under the Income Tax Act for charitable organizations that conduct activities supporting the traditional definition of marriage, so they would not be in jeopardy of losing their charitable status solely by reason of the position they espouse on marriage.

Five, amend the discriminatory speech provisions of the Canadian Human Rights Act by adding a new subsection 12(2), which would read: “Nothing in subsection 1 restricts the freedom of any person to express the opinion that marriage is a union of a man and a woman.”

Six, amend section 319 of the Criminal Code to clearly protect from criminal prosecution those who would make statements in support of the traditional definition of marriage or against same-sex marriage.

Finally, we recognize that even adopting all of these recommendations will not adequately protect freedom of religion and conscience in Canada, due to the limited jurisdiction of the federal government. Consequently, we strongly argue that you should wait until all provincial governments have made laws ensuring that Canadians with religious or conscience beliefs about marriage can be protected. This would require protection for any Canadian wanting to express and act on his or her support of traditional marriage. Pushing ahead with a change to the definition of marriage without ensuring that these essential freedoms are protected is a clear statement to Canada and the world that the government no longer values Canadians who have deeply held beliefs in support of traditional marriage.

In conclusion, Focus on the Family Canada urges you not to pass Bill C-38. Marriage is an institution that is essential to the well-being of society. If the government is serious about valuing this pillar of our nation, we respectfully ask you to reconsider this devastating social experiment. Failing that, we trust that you will take our concerns regarding freedom of religion and freedom of conscience seriously.

Please be assured of this: if the government is determined to experiment with such a foundational institution to our society, an institution that God himself ordained before governments even existed, Focus on the Family Canada will still be here to help husbands and wives build strong marriages and to help parents as they raise their children. Our job will be tougher, there's no doubt about that, but we are committed more than ever to building a culture that values traditional marriage, no matter what this government chooses to do.

I thank you for your time.

● (1600)

The Chair: Thank you.

We will now move to the Ontario Gurdwara Committee, Mr. Singh or Ms. Kaur.

Mr. Parminder Singh (Member, Ontario Gurudwara's Committee): Thank you very much. I'll be making the submission on behalf of the Ontario Gurdwara Committee.

Once again, we thank the honourable members for the opportunity to put forward our position and our objections to elements of the same-sex marriage act.

We wish to state at the outset that we have the highest regard for the Canadian Charter of Rights and Freedoms, which reflects most of the principles espoused by our gurus. We can say with pride that the Sikh people have been living the charter for 500 years, since before it became part of the Canadian Constitution. In the event, we bring benefit of hindsight.

We also reiterate that the charter has been of the greatest value in ensuring the rights, privileges, and respect that minority and new migrant communities enjoy in Canada.

However, we wish to state the legislature is taking liberties with the state's coercive power and is misinterpreting the spirit of the charter. It is violating one of the most sacrosanct arrangements in modern western democratic secular polity. It is crossing the long-established boundaries that have separated prerogatives of the state from those of religion. This separation, evolved through the long period of European enlightenment, has ensured communal plurality and tolerance of different philosophical outlooks. It was never intended to replace one form of tyranny, uniformity, with another.

In fact, the boundary of separation and responsibility of neutrality is assumed in paragraph 2(a) of the charter, in the section on fundamental rights: “Everyone has the...fundamental freedoms: freedom of conscience and religion”. Let us remind the legislatures of the charter's first section: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

It is the prerogative of religion to have freedom to exercise ownership of some words and associated activity that exclusively convey its core concepts, values, and purposes as long as they do not violate the life and liberty of individuals or perpetuate prejudices or discrimination in the public sphere. We refer to the liberty being taken with the word “marriage” in Bill C-38 by stretching its meaning. Marriage, as used in the long history of European languages, has a meaning and concept deeply rooted in the religious traditions of sanctioning a union between a man and a woman. In fact, the Oxford, Cambridge, and Webster's dictionaries all emphasize the meaning of the word “marriage” as a union between a man and a woman.

The word apparently originated from the French word *mari*. It has been part of the English language for nearly a thousand years as the solemnization of the committed union between people of different genders by religious ceremonies.

In the last century the state decided to bring this word into its legal ambit for the institutionalizing of rights and responsibilities that were traditionally codified through religious doctrine. In time, the state extended the meaning to cover committed unions between people of opposite genders who do not subscribe to a religion. The state's extension of its role in the personal commitments of people was qualified as "civil marriage"; however, the word "marriage" remained without further corruption and continued to be rooted in its traditional religious context as a union between man and woman.

Now the state is intending to hijack this word and concept to give it an entirely different definition, reflecting its own bankruptcy of linguistic dexterity and context. No article of the charter or the Constitution entitles the state to encroach upon the recognized contextual identity of a word belonging to religious tradition and force a new, secularized interpretation upon it. This violates the boundaries that exist between state and religion. The state is in violation of charter paragraph 2(a) when it begins to interfere in the concepts of religion and change the doctrinal usage. Moreover, it is exceeding its power under section 1. It cannot convincingly argue that limiting the free domain of religion by imposing a new interpretation is in the interest of a free and democratic society.

We appreciate and feel it is indeed the fundamental responsibility of the state to ensure that all its nationals are treated equally in the enjoyment of rights and privileges, regardless of the lifestyles and the beliefs of individuals. It is not the purpose of the state to impose their sanction of one form of moral values by selective grant of rights and privileges.

In the issue of same-sex lifestyles, the state allegedly stands accused of negligence in its responsibility or, rather, of being in abrogation of granting equal rights and privileges to all its nationals. However, the state cannot redeem itself by stealing a word exclusively rooted in religion and stretching its meaning. Moreover, and notwithstanding the ruling by the Supreme Court, with which we do not agree, the legislation is not ensuring the equality enshrined in charter section 15 by making the word "marriage" inclusive of all unions and in fact deviating from the concept of equality as understood in Canadian jurisprudence.

● (1605)

We point out to the honourable legislators that the legal understanding of equality in Canadian jurisprudence has its philosophical origins in the works of Albert Dicey, who proposed the concept of substantive equality. This concept, which has been a guiding principle of Canadian jurisprudence in the field, acknowledges that people do not have the same abilities and attributes and are not equal under the law, but by treating people differently, everyone will be subject to the equal impact of the law. In other words, to formally treat people indiscriminately as equal fails to differentiate between people's personal characteristics. While a law may be discriminatory, it must have equality in the substance of the law and be applied equally to all. We ask legislators to reflect on the original purpose of the state's encroachment in the most personal arena of people's lives, that of marriage.

The state assumed the role of legally acknowledging marriage for the principal purposes of recognizing committed cohabitation, taxation, inheritance, and social benefits. The state recognized such committed cohabitation as a contract and consequently set out the associated revenue benefits and responsibilities related to this contract.

Religion uses the word "marriage" not as a mere contractual relationship with rights and privileges, but as a commitment rooted in spiritual and personal obligations. However, since the commitment described as marriage by the state remained essentially between a man and a woman, consistent with religious doctrine, conceptual tension did not matter much.

Now the state is overstepping its boundaries and is not only taking over the concept, but is hijacking the word, with its inherent archeology, to distort its meaning completely out of context. We ask the legislators to explain which part of the charter imposes this responsibility and which part of the Constitution grants this right.

Many European and other democracies have fulfilled their obligation to treat all citizens equally by finding different words for different forms of lifestyle union without forcibly taking over the widening and conceptual lexicon of the religious domain. The United Kingdom, which has jurisprudence close to that of Canada, has successfully dealt with this. We see no reason for Canada to exhibit a remarkable lack of creative flexibility.

In summary, we're not asking to pass judgment upon others, nor are we trying to restrict the state to extending rights and privileges merely to one practical doctrinal concept. But we are requesting that the state discharge its obligation to ensure the equal administration of justice and enjoyment of rights under the charter without playing the role of the church or taking away the core concepts of the religious domain and distorting their meaning for political purposes.

We request that legislators reflect deeply and ask how they are any different than the regimes of the medieval church whose attempts at imposing one doctrinal truth upon everyone has left a legacy of secularist antipathy against spiritual traditions. Now legislators are engaged in a similar exercise to impose atheistic doctrines upon everyone. The law must understand that there are different types of associations and ideological concepts in society. Consequently, there are different words to justify different forms of unions that don't mitigate the rights, privileges, and responsibilities of anyone.

We are opposing Bill C-38 to stop the state from forcibly stealing and distorting a word that has a historic association with one form of union rooted in religious doctrine. Equality and respect is not advanced by emulating or taking over the exclusive concepts of others, but by the state finding its own definitions and seeking parity in treatment. We also point out that in Sikh gurdwara we use the Gurmukhi language. We consider the words "Anand Karaj" to translate as marriage ceremony in English. If the state is so minded to change the meaning of the word "marriage" to make it inclusive, we feel that the words "Anand Karaj" can no longer translate as "marriage" according to our doctrine. Under the charter, article 2, we ask the state to incorporate the words "Anand Karaj" to describe the union between a man and a woman, at least for unions solemnized by Sikhi.

Thank you for your time.

● (1610)

The Chair: Thank you very much. We will now proceed with the first round of questions, comments and answers, each being seven minutes long. We will start with the Conservative Party.

Mr. Toews, please.

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

I've noted the letter from the 134 or so law professors. I must express my disappointment with this kind of presentation. One would think that when lawyers come to the committee, they would actually provide legal advice, as opposed to a thinly veiled political attack.

It's quite interesting to go through this. First of all, they choose to attack Mr. Harper rather than dealing with the bill itself. I didn't raise any technical objections to this. I would have thought lawyers would know better, but apparently not.

In reference to Mr. Harper, they write, "You also stated it would not be legally necessary to use the charter's 'notwithstanding' clause to protect the statutory definition of marriage that excludes same-sex couples". Then they make the profound statement, "As law professors, we strenuously disagree."

I don't know whether these law professors practise law, as opposed to teaching, but they must know that 50% of all lawyers in every case are wrong. In this case, I don't know whether we got the 50% who are right or the 50% who are wrong, but I'm disappointed that they wouldn't at least tell us why they strenuously disagreed.

Then they suggest that a parliamentarian has been less than honest. I find this amazing. Maybe that's why they couldn't give us an opinion—because 134 law professors couldn't agree on anything. They say, "You must be completely honest with Canadians about the unconstitutionality of your proposal, which will only guarantee that same-sex marriage ends up back before the courts as opposed to being resolved by Parliament. Your position is surprising for someone who has constantly defended the pre-eminence of Parliament."

I don't know why 134 law professors would find that surprising. They don't say. This kind of a letter is not fitting for a law student, never mind 134 law professors. Where is the legal opinion? There's no legal opinion here.

I want to go through this to demonstrate that this is not a legal opinion; this is a thinly veiled political attack. We all know that Professor Choudhry, who was on the Prime Minister's policy committee for his re-election, is a prominent Liberal. So we know where this is all coming from.

In the second paragraph, they say, "You must explain to Canadians how your plan to entrench the traditional definition of marriage will pass constitutional muster". They then go on to say, "The truth is, there is only one way to accomplish your goal: invoke the 'notwithstanding' clause".

Again, does he give us a legal opinion? No. It is some kind of vague appeal to the authority of law professors who "strenuously disagree". To suggest that Mr. Harper or anyone else has been less than truthful is simply not warranted. When I get a letter from 134 law professors, I would expect to see a little law.

They go on to say, "Even though the Supreme Court of Canada did not address this issue in the recent same-sex marriage reference, courts in British Columbia, Saskatchewan, Manitoba, Newfoundland, Ontario, Quebec, Nova Scotia and the Yukon are now unanimously of the view that a definition of marriage that excludes same-sex couples is unconstitutional."

Here they dismiss the Supreme Court as though it's some kind of irrelevant technicality. I'm a little surprised at "Even though the Supreme Court of Canada". They don't mention why the Supreme Court of Canada chose not to deal with this issue. Where's the legal opinion?

Then they say, "The truth is, there is only one way to accomplish this goal".

I've got to be surprised at "The truth is". We're not interested simply in bald statements. We would like to know what the opinion is.

● (1615)

Then, on the second page, accusing the leader of the Conservative Party of playing politics, he states at the end of the letter, "If you intend to override Canadians' constitutional rights, you at least owe it to them to say this openly and directly. Canadians deserve better."

I would have thought Canadians deserve better from 134 prominent law professors than their coming here in a thinly veiled political attack on this kind of thing.

What I am concerned about and what I would like to hear about perhaps from Focus on the Family is the Court of Appeal for British Columbia decision upholding the dismissal of Mr. Kempling, the British Columbia teacher. We've heard from one lawyer here today, don't worry about religious freedoms being attacked. Well, those statements from these lawyers remind me of the Iraqi information minister—

The Chair: One minute, Mr. Toews.

Mr. Vic Toews: Yes, thank you.

It reminds me of the Iraqi Minister of Information in Baghdad being interviewed by the media, and he says, "Oh no, no American tanks in Baghdad", and in the background you see the tanks going by.

That's exactly what has happened here. The Kempling decision is in fact the evidence of the attack on religious freedoms in this country. Yet we have lawyers, like the information minister, simply saying, "No tanks here. No problems here".

Ms. White, could you maybe let us know a little bit about your concerns?

Ms. Anna Marie White (Director, Family Policy, Focus on the Family Canada): Sure, absolutely.

Actually, I was just going to draw your attention to an article in the newspaper this morning that talked about how faith groups are a little concerned about what's happening in the realm of the discussion around same-sex marriage. There are some who have come out in favour of stripping charitable groups of their status, their tax-exempt status, for example.

The situation of Dr. Kempling is one that greatly concerns us all. He's a private citizen who has been denied the right to express his religion in the public square. I think what we need to do is look at a dialogue that goes beyond holding your rights and holding and keeping them personal.

My esteemed colleague here made reference in his presentation of how, in the Trinity Western case, that right to expression was limited. You can hold your religion, your right to religion is guaranteed, but your expression of that in the public square—and Dr. Kempling is a perfect example of that—is what will be limited. That is one of our major concerns with this bill.

[*Translation*]

The Chair: Thank you.

We will now move on to the Bloc Québécois.

Mr. Marceau.

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

I would like to thank the witnesses for appearing before us today. The presentations were most interesting and greatly appreciated.

I will begin by making a comment. Messrs. Cyr and Ryder, it gave me a thrill to hear you read the letter with 134 signatures, including your own. I was delighted to see that 134 well-respected constitutional law professors were in agreement with my own analysis and the conclusion I have drawn from the testimony that we have heard at the Justice Committee. Contrary to my colleague, Mr. Toews, whom I like but with whom I sometimes disagree, I found your letter quite interesting. We had not asked you to provide a legal opinion, but a summary to be circulated to the media. When you want something to be published in a newspaper, you do not provide an 80-page brief with 18 footnotes. We agree on that.

I have two questions, the first one for Mr. Cyr. Do you agree with Mr. Ryder's interpretation of the unconstitutionality of clause 3 as it now appears in Bill C-38?

My second question is either for Mr. Cyr or Mr. Ryder. Mr. Rolston alluded to Mr. Meehan's opinion. I would like to hear you on that, as I am sure you have had an opportunity to read it. We can begin with Mr. Cyr and the question on clause 3.

● (1620)

Mr. Hugo Cyr: I will quickly deal with Mr. Meehan's opinion. Some people have stated that the decisions brought down by the Court of Appeal in British Columbia and Ontario, and, in fact, most of the provinces, dealt with common law and that, therefore, if an act were adopted, the courts would deal with the issue in a different way. However, for a reason that escapes me, they forget that the case that comes from Quebec and that was the subject of a Superior Court and Appeal Court decision dealt with the challenge to a federal statute adopted by this Parliament.

● (1625)

Mr. Richard Marceau: You are referring to the Federal Law-Civil Law Harmonization Act, no. 1.

Mr. Hugo Cyr: Precisely. It is a federal act. They have already tried it: there is no difference between the way in which the courts treat the discriminatory common-law definition of marriage and the definition that flows from a rule adopted through a legislative process.

On that point, I am not familiar with all of the details of Mr. Meehan's opinion, but he may have wanted to say that Parliament could adopt the legislation. I am not saying that Parliament could not adopt a bill without resorting to the use of the notwithstanding clause, except that as soon as it is adopted, it will be challenged and overturned. That is the real question. It is not a matter of determining whether or not Parliament could be prevented from acting if your pencils were taken away from you before you could sign it. That is the first point.

The second point deals with clause 3 of the bill, which reads as follows:

> 3. It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

I am not quite as sure as my colleague when he says that this provision is unconstitutional. The difference, in terms of the way in which it is expressed, seems to indicate, in my opinion—and you need not agree with me—that the provision is purely declaratory and is not intended to define the division of jurisdictions as could have been the case with the provision that was referred to the court. It seems to be a simple declaratory provision, which recognizes religious rights. This recognition is pursuant to clause 2, but is not intended to determine legislative jurisdiction. However, we must remember that the provinces hold the jurisdiction for performing marriages and it is impossible for the federal Parliament to legislate on that.

As an aside, we must not forget why marriage is a matter of federal jurisdiction. What is happening today is a repeat of what happened in 1867. For religious reasons, people did not agree on what constituted a valid marriage, which led to scattered, different systems, and meant that there was a lack of consistency, and chaos in private international law, resulting in constantly conflicting legislation. Therefore, the only reason why the federal Parliament has jurisdiction for this statute is to avoid the recurrence of this type of problem. Since the various religions could not come to an agreement, they decided to ensure that marriage would remain open so that people from one province could be married in another one without losing or regaining their rights. This does not affect only individuals, but also the banks and insurance companies, so that they can all do business with people who were married in a given province, in order to guarantee the stability and legal implications of their contracts.

Mr. Richard Marceau: Thank you.

How much time do I have left, Mr. Chairman? I have one minute left, so I will just make a brief comment.

Mr. Rolston and Ms. White, we have until 6:00 p.m. to table the amendments to Bill C-38 at this stage. I just wanted to say that I have tabled an amendment, which more or less states that an organization cannot lose its status as a charitable organization if it refuses to celebrate marriage between two people of the same sex. In my view, this is redundant. I believe that this right is already protected, but in order to mitigate some of the fears that your group and other groups expressed, I would like this expressly stated in Bill C-38. I know that this will not win you over to Bill C-38 or to same-sex marriage, but I still hope that it is one step in what you considered the right direction.

I would like to thank one of your allies, who is sitting over there behind you, and who provided the wording for the amendment.

[*English*]

The Chair: Merci.

We will now go to the New Democratic Party.

Mr. Siksay, seven minutes, sir.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Mr. Chair, and thank you to all the witnesses for your testimony this afternoon. Thank you for being here.

I want to ask Professor Ryder something.

You were very clear in your presentation, Professor Ryder, that you had no concerns for the religious freedom provisions of the charter that exist currently. Do you have similar confidence about provincial human rights acts, or are there examples there that you feel are glaring, where there have been concerns about religious freedom in the case law that you might be familiar with?

Prof. Bruce Ryder: I wouldn't say I have no concerns. As I said in my presentation, I believe this is a very difficult area of Canadian law at the moment, and one on which there are a number of unsettled issues. That is where religious freedoms collide with equality rights, and particularly equality rights of gays and lesbians.

My point was simply that those problems do not emerge from Bill C-38; they pre-date Bill C-38. Whether Bill C-38 passes or not, those problems will continue to exist, including problems related to the solemnization of marriage, because same-sex marriage is already legal across most of the country. I think Parliament has a very limited ability to address those issues, but it may be that there are amendments that can be made to human rights legislation at the provincial and territorial level that will alleviate some of the fears that have been raised.

The amendment that the Ontario legislature passed earlier this year is one example. It's a provision that is, in my view, stating the obvious, but nevertheless it may be useful in alleviating some fears and making it perfectly clear that it is not a violation of human rights legislation for religious officials or institutions to refuse to solemnize marriages that run counter to their beliefs. And it may be useful for provincial and territorial legislatures to consider other amendments that might go further, beyond a situation of religious officials and religious institutions, to consider other situations that have arisen and given rise to concerns.

I think it is very important that we do our best to achieve an appropriate balance between religious freedom and equality rights, and there is much the legislatures can do in reaching that balance. We can't pick or choose which rights or freedoms we want to uphold. We have to seek a respectful accommodation of all.

Mr. Bill Siksay: Mr. Rolston and Ms. White, I take it Focus on the Family has appeared before parliamentary committees before in the past, and probably on many issues. Have you done that many times, or is this an unusual experience for you folks?

Ms. Anna Marie White: No, I would say we were involved in many issues.

Mr. Bill Siksay: In the past, has your charitable status with Revenue Canada or CCRA ever been challenged as a result of any intervention that you've made?

Mr. Terence Rolston: No, it hasn't. What makes this distinctively different is the issue with respect to whether or not it's a human right and against the charter. There is an issue of discrimination there that would go against potentially the public interest. Once again, Anna Marie alluded to this article in the paper today, but this was actually highlighted in the *National Post*. It was today's paper, and it was Mr. Bourassa, who the paper would describe as a leading Toronto gay activist, who himself has said we have reason to be concerned that our charitable status would be under challenge. So I don't think we're dreaming that up. I don't even think we're blowing smoke of fear. It is a very real recognition of concern that both we, on our concerns for the bill, but also perhaps those who would be proponents of the bill would also recognize. I don't think it is just fear-mongering. It is a very clear real issue that we are looking for clarity on, but also protection.

● (1630)

Mr. Bill Siksay: We heard from the United Church earlier in our hearings that they had a phone call from CCRA during the federal election campaign to remind them of the responsibilities of organizations that had charitable status in terms of their obligations around partisan political involvement. That's what Mr. Bourassa was referring to when he referred to his volunteer work for the Metropolitan Community Church in Toronto and how he wanted to make sure they complied with those requirements of the existing legislation. Is that something you've had other organizations express concern to you about, or have you ever had that kind of contact during an election period specifically about partisan political involvement?

Mr. Terence Rolston: We don't represent other organizations, so I can't necessarily say, but certainly in our own organization we are very aware of the restrictions and the guidelines that the Income Tax Act provides for us as a charitable organization.

In respect to activities that are related to partisanship, we can't get involved with them. It's prohibited. This is not an area of restrictive political activity at all. This is an area of deciding and clarity on whether or not holding a religious belief could be considered discriminatory, hence, against the public interest, against public policy, and hence, put us in a situation where we are literally not looking after the public interest and therefore not eligible for charitable status at all. It's not a matter of politicizing anything. It's a matter of what that belief means.

Mr. Bill Siksay: But you've never had that experience to this point, where anyone has taken that kind of action against you for a statement your organization has made, or for an appearance before Parliament, or anything like that?

Mr. Terence Rolston: I'm not too sure I'm answering.... I think we're—

Mr. Bill Siksay: Were any actions taken against your organization with regard to your charitable status, or do you know of any organization that has had that kind of action taken against them?

Mr. Terence Rolston: We have certainly been approached by government organizations for things we've said, whether it's the CBSC, or others who are monitoring the activity we are engaged in. Last year, during a particular campaign of ours, we were addressed on whether or not we were carrying out partisan activity. So I think that's an appropriate watchdog and appropriate accountability. We're very aware of that legislation and the rules.

But once again, just for clarity, it has nothing to do with political activity. This is a matter of whether or not a belief, a religious belief, is discriminatory and therefore against the public interest and public policy, and for which we could very reasonably expect to lose our charitable status.

Mr. Bill Siksay: But from the contact you've had, you've said it was appropriate watchdog activity. You didn't perceive it as a threat or intimidation, or anything like that?

Mr. Terence Rolston: Well, in the particular case last year during our campaign, a notice was given to us by CRA that they would like to come in to audit our books. Was that a threat? Was that intimidation? That is not for me to say. I think they have a process to follow. We are presently looking into the matter, just to get full disclosure on it.

Again, our interest is to do what is right. We are very concerned and very aware of what the regulations state, and we are not concerned that we're offside the regulations. We're concerned that this bill would put us in a situation where the very beliefs we hold are held to be discriminatory.

The Chair: Thank you.

We will now move to the Liberal side.

[*Translation*]

Mr. Boudria, you have seven minutes.

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

[*English*]

My first question is to, Mr. Rolston. You advocate removing all of the preambles. There are some 10 of them, I believe.

The seventh preamble refers to the “guarantee of freedom of conscience and religion”. Do you want to remove that one as well?

Ms. Anna Marie White: Do you mind if I respond to that?

● (1635)

Hon. Don Boudria: It doesn't matter to me.

Ms. Anna Marie White: The difficulty with, shall we say, attempts at guaranteeing religious freedom in the preamble is that they're ineffective and not enforceable in a court of law; that is the difficulty. They provide a legal framework within which the courts will interpret the law, as we've seen in past cases, but they do not provide anything close to an iron-clad guarantee of a right to religious freedom.

As I said earlier, we're very much concerned about how religious freedom then flows into freedom of expression as well.

Does that begin to address your concern or question?

Hon. Don Boudria: I don't agree with you, but if it's true that it has no force, then why are you so adamant about removing it?

Ms. Anna Marie White: There are a couple of areas of concern here.

First of all, the religious freedoms that have been put into the operative clauses of this bill are outside the jurisdiction of Parliament, in that they deal with several provincial issues, which my colleague has alluded to already. We're thinking of things like private schooling or education, which is a provincial jurisdiction. We're also thinking of adoption laws, for example. There is a host of areas, I'm sure the honourable member is aware of, over which the federal Parliament has no jurisdiction. We are concerned about what's happening within that realm, or about the areas that need to be addressed by both federal jurisdiction and provincial statutes.

Hon. Don Boudria: But with respect, you're now addressing clause 3. I was asking a question about the preamble.

Anyway, let me move on to another one. I'm still a little confused about that position. You're advocating, again, Mr. Rolston, that we have amendments to the bill. As you may know, the legislative process is such that.... I'm reading here from our manual. This is the rule book under which we operate. It's called Marleau and Montpetit's *House of Commons Procedure and Practice*. About amendments, it says, “The committee is restricted in its examination in a number of ways. It cannot infringe on the financial initiative of the Crown, it cannot go beyond the scope of the bill as passed at second reading”, and so on. In other words, we cannot amend an act that isn't before us. There are things we can do by way of amendment for greater comfort, for greater clarity, and so on.

For instance, the Income Tax Act—at least some sections of it—is referred to in the bill, but the Criminal Code is not, so we cannot amend the Criminal Code by way of an amendment to this bill. That's beyond the scope of the bill. I can't think, for the life of me, that such a thing could ever carry.

Now, the amendment you're referring to is for a greater clarity provision in reference to the Income Tax Act. Is that correct?

Mr. Terence Rolston: That's correct.

Hon. Don Boudria: We'll debate it depending on when we see it. That might be within the scope. But as for the Criminal Code one, I say to you, I'm sorry, but no matter how much anyone would want to, it's not in the cards. I don't see how that can possibly happen, from my knowledge of how our procedure works.

[*Translation*]

My next question is to Mr. Cyr, about that letter. If we were to do what the Leader of the Opposition is asking—and that is not, of course, what I plan to do—what would the impact be on same-sex couples who are already married? Since the first decision was handed down, I believe that a great many couples have married. If my memory serves me, the minister's office told me that the number was about 2,000. I do not remember whether that is 2,000 couples or 2,000 people, but regardless of what it is, we are talking about a large number of marriages.

If Parliament were to decide that same-sex marriage did not exist, would that serve to annul the marriages of the 1,000 or 2,000 couples who have got married so far? Of course, that is not what I would wish. I would simply like you to give us your views on the issue.

Mr. Hugo Cyr: That is an excellent question. In fact, it is one of the main reasons—if not the main reason—cited by the Supreme Court as grounds for refusing to answer question 4. We did not mention this in the letter, which was a letter of opinion intended for the courts. With respect to marriage, the Supreme Court explicitly states that the people already married have vested rights. It refuses to arrive at a ruling in the current circumstances because that ruling would create confusion about whether the marriages were still valid. It does not state whether the marriages would be valid or would not be valid; it states that the ruling would create confusion.

We do not really know what would happen if the legislation were to stipulate that the marriages were never valid. What we do know is that it would make things extremely uncomfortable for a great many people. It would not affect only couples who are already married, but also people who have legal dealings with those couples, based on the notion that the couples' relationship had some stability.

For example, family property is a concept that exists in Quebec for people who are either married or have entered into a civil union. There is no family property for common-law couples. However, there is family property in a same-sex marriage. A creditor of one half of the couple, for instance, assumes that the house included in the family property will become part of the general property. If the union is invalidated, a significant portion of the family property disappears. This is doubtless not what the creditor expects.

These problems might also arise in banking, with mortgage lenders, or with life insurers. The net result would be significant disruption that would have an impact on other people, as well as on the married couple. I do not wish to minimize the problems these couples would have. Their whole lives would be destabilized. However, there would also be a major impact on others.

● (1640)

Hon. Don Boudria: Thank you, Mr. Chairman.

[*English*]

The Chair: Merci.

We will now go back to the Conservative Party. We are now in the additional rounds of five minutes.

Mr. Warawa. Five minutes, sir.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman. Thank you to each of the witnesses for being here.

I have an editorial comment, Mr. Chairman. Mr. Cyr and Mr. Ryder are both listed as individuals, they received 10 minutes each, and yet they are both signatories on this letter. I found that interesting and a little perplexing. This would be another example of one side receiving a little more time to speak on the issue, as opposed to the others.

The Chair: Okay, before we go any further, as you've brought this up, let me explain to you that Mr. Cyr was on one list, in regards to the letter, and Mr. Ryder was on another list, not in regards to the letter but on the list that originated from Justice Canada.

Thank you for bringing this up. They have had their ten minutes; you now have your five.

Thank you.

Mr. Mark Warawa: Thank you, Mr. Chairman.

The first comment is for Mr. Ryder.

I appreciate your perspective, but I don't necessarily agree. I was quite concerned, actually, about your closing comments. You said in the 1950s a husband was a husband and a wife was a wife, taking care of children at home. I think some may find that offensive and degrading. If a woman chooses to be a wife and chooses to take care of children at home, they may find your perspective degrading.

I'm a man who's been married 33 years. My wife and I had five children. She is an incredibly talented woman. She could do anything she wanted to, and she chose to take care of our children. She has gifts and skills that I do not. So I praise her. As I say, she's an artist, she's an interior decorator, but she chose....

So I was a little concerned about those comments.

I'd like to ask a question, first of all, of the Ontario Gurdwara Committee. We had as a witness the World Sikh Organization, and they took one perspective on Bill C-38, and you have another. I also am aware that you have a number of schools within your organization. We heard from a number of witnesses last week regarding faith-based schools. We heard there may be an attack on the freedom to be able to teach what your faith is based on in those schools. There is provincial funding. Approximately 50% of the funding comes to the school.

Now, is there any concern that you would have on that, from previous cases? We've heard that Dr. Kempling...again, it was found against Dr. Kempling, the freedom of expression. How about in your faith-based schools? Could you comment on that?

● (1645)

Mr. Parminder Singh: Sure. I couldn't comment on the exact context of the schools, because I'm unfamiliar with that system. It's another wing of our organization that does deal with it. But I do understand the concerns that would arise. In my statement I think what we were primarily concerned with was the term “marriage”. Whether a person chooses to live a certain lifestyle and so forth goes back to the independence of anyone else. Would it be a concern? Perhaps, yes, it would. Is it a concern right now? I don't think so. It hasn't been brought up yet. That's as far as I can comment on that.

Mr. Mark Warawa: Okay. And regarding the World Sikh Organization, as opposed to your organization, perhaps you could comment on the two different perspectives.

Mr. Parminder Singh: Well, I believe the World Sikh Organization, again.... Just as I'm assuming there are a lot of Christian faith groups that have various members under their constituency per se, or their organization, I think that's how we separate. Our perspective was taken from a general survey of the gurdwaras that are a part of our union, the Ontario gurdwara organization, whereas the World Sikh Organization is a conglomerate of members from North America as well as from abroad.

Mr. Mark Warawa: Okay. I have a quick question. My time is limited, so perhaps each representative could comment.

The perspective of approximately two-thirds of Canadians is that we protect the traditional definition of marriage as being between a man and a woman, that we provide the same rights and benefits to all Canadians on same-sex unions—for example, it could called be a civil union—and on protecting religious freedoms. That's basically what was presented to Parliament, which Parliament voted down, and we're continuing on with Bill C-38.

Do you see a civil union, if it has the same rights, to be less than marriage? There are two different definitions, both giving the same rights. Could you comment on that?

The Chair: I'm sorry, this is going to have to be for five seconds each, because you're over your time, Mr. Warawa.

[*Translation*]

Mr. Hugo Cyr: That is not the same thing at all.

[*English*]

Mr. Mark Warawa: Why?

The Chair: No, I'm sorry, your time has run out. You can get a quick answer from the other witnesses.

Prof. Bruce Ryder: Briefly, the reason is that the courts have said that it wouldn't fulfill the equality of rights in the charter. That's because what's at issue right now is on the symbolic resources that accompany marital status. Those symbolic resources don't accompany civil union status, as the Supreme Court sets out.

The Chair: Are there any other comments?

Mr. Terence Rolston: Clearly, our position is that we support traditional marriage. That's the highest value that we want to see.

On the other matters, it's hard to comment without seeing the legislation in front of us. We'll withhold comment on that.

Mr. Parminder Singh: I want to add that, as I practically stated, in the Sikh gurdwaras, again, we use the term “Anand Karaj”, which is the marriage ceremony. The issue we have is that our definition would not be in the same position as the state.

Again, it's not about Sikhism. The power that the state is assuming right now is what we have difficulty with.

The Chair: Thank you.

We will now come back to the Liberal Party of Canada, Mrs. Neville, for five minutes.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, Mr. Chair.

I thank all of you for attending.

My questions right now are to Ms. White and Mr. Rolston.

I noticed in the agenda that we received that it says “Focus on the Family Canada”. Could you tell us a little bit about your organization? Why does it say “Canada”? Are there Focus on the Family groups in other jurisdictions?

I then have some other questions.

● (1650)

Mr. Terence Rolston: It says “Focus on the Family Canada”. We're actually incorporated as Focus on the Family Canada Association. We dropped the word “Association”.

We are a separate legal entity, incorporated under the Society Act of British Columbia in Canada. We are affiliated with other Focus on the Family organizations internationally, but we are a separate legal entity here in Canada. Our board is here in Canada, and management is in Canada.

Ms. Anita Neville: Can I ask what your relationship is when you talk about other countries? Are you talking about the United States? Are you talking about Europe? Is there sharing of resources? I'm interested in knowing how you operate.

Mr. Terence Rolston: We're affiliated in the sense that we share the same name and have permission to use that name. We are completely independent, governed independently. We have common purposes, obviously, so we meet and share ideas. But we are a completely independent organization here in Canada.

Ms. Anita Neville: Thank you.

I have a document that I received. It's called "Eleven Arguments Against Same-Sex Marriage", by Dr. James Dobson. Are you familiar with this document?

Ms. Anna Marie White: I'm not sure that I've seen that exact document, but I'm fairly familiar with his arguments on this issue. You can proceed.

Ms. Anita Neville: I'm interested in knowing whether you share the same concerns. I've certainly heard you speak about the traditional family, but there are a number of other items here.

It references children's suffering. It says that public schools in every state will embrace homosexuality, adoption laws will become obsolete, foster programs will be impacted upon dramatically, the health care system will stagger and perhaps collapse, arguments are made around HIV and AIDS, social security will be stressed, and religious freedom will be jeopardized. You've certainly touched on that today.

Can you comment on whether the arguments that Dr. Dobson puts forward are similar to those of Focus on the Family? I'm trying to understand, because it certainly has a ripple effect on other jurisdictions in this country.

Ms. Anna Marie White: Sure. I think we all recognize that when you share a continent with a major country like the U.S., there are some considerations. There's going to be some spillover through media and other means.

I think in the interest of accuracy, I would prefer to address each of those individually. So if you could perhaps.... We'll start with whichever one is most disconcerting to you, and we can address that one.

Ms. Anita Neville: I didn't say disconcerting, I was just asking—

Ms. Anna Marie White: Oh, sorry. I'll rephrase that and say whichever one you're curious about.

Ms. Anita Neville: Let me start with two, then, if you don't mind: children will suffer most, and the public schools in every state will embrace homosexuality.

Ms. Anna Marie White: I think in that case we're dealing with an American context, but perhaps I can put it into a Canadian context.

I suspect this committee is probably familiar with the Surrey school board case in British Columbia. That would be a good example of those types of concerns being brought forward in a Canadian context. We have a kindergarten teacher bringing forward books that talked about same-sex families, about same-sex relationships, demanding that they be approved by the school board for youth in a kindergarten classroom for five- and six-year-old children.

So I would think that if we were to apply a statement like that to a Canadian context, it would come out of concerns such as that, what happened in British Columbia. I think everyone here would be at least a little bit familiar with that case. It dragged on for several years, went to the Supreme Court of Canada, and cost a great deal of resources. In the end, the school board was forced by the court to put into the classroom books that the parents in that district disapproved of. In fact, the parents in that district had twice, I believe, re-elected those school board trustees during the course of the legal process in that case.

That would be something that perhaps would be analogous within the Canadian context. There are certainly other concerns as well. I think the Trinity Western case would be another example of, sure, a teacher can hold their beliefs, but they can't express them. I think that helps propel this myth of a values-neutral society. It's not really neutral at all. Secular atheism is itself an implicit faith system. Whether or not it calls itself by a religious name is irrelevant. There are still beliefs that come along with it that the adherents understand.

Ms. Anita Neville: What did you refer to it as, secular...?

Ms. Anna Marie White: Secular atheism.

The Chair: Thank you, Ms. Neville.

Ms. Anita Neville: Oh, am I finished?

The Chair: Unfortunately, you are.

Ms. Anna Marie White: I'd be happy to answer more questions after we're done. I want you to have time.

The Chair: Five minutes is very quick.

[*Translation*]

We will now go to the Bloc Québécois.

Mr. Lemay.

● (1655)

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good afternoon, and thank you for being here today.

I have appreciated the opportunity to take part in this debate, because it is on a very interesting issue. Our position is clear. I would like to talk to you about two points that have drawn my attention.

Mr. Cyr and Mr. Ryder, I would like you to explain the issue of striking the right balance between freedom of religion and family law. I am talking about family law because I missed a small part of the translation.

In 1867, the federal government was given the task of defining marriage because the provinces could not agree. I would like us to go a little further and see why we are where we are today.

You have two minutes to answer these questions. I will try to take less than one minute for my next question.

Mr. Rolston and Ms. White, I am quite surprised, even very surprised by what you say. I would like you to give me an explanation. I was deeply involved in sports at the national level, and I spent many years shouting at and fighting the federal government, yet our status as a charitable organization, which made it possible for us to issue receipts, was never taken away. I believe that the Honourable Don Boudria knows how hard I fought the federal government.

I would therefore like to know why you made those statements. You have the right to express a view, and we have the right not to share it. However, I do not understand why CCRA would take away your charitable organization status. I would like to go a little more deeply into the thoughts underpinning your statement.

Those are my two questions. I will now listen to the answers my colleagues, the two university professors, will give, and then by Mr. Rolston and Ms. White. I hope I did not take too long and that you will have enough time left to give me good answers.

Mr. Hugo Cyr: Initially, in 1867, the issue was to determine who would have jurisdiction over marriage, since the provinces had jurisdiction over property and over civil law. It was thought that there might be problems because some provinces recognized divorce, while Quebec and other provinces did not. Some provinces recognized civil marriages, while at the time Quebec did not.

It was feared that someone who had entered into a civil marriage in Ontario could then go to Quebec and, since his or her marriage was not valid in that province, marry again, in a catholic church, for instance, and the next day, travel to the Maritimes, obtain a divorce there for the first marriage, then return to Ontario and get married again there. Where would the property end up? Who would be entitled to what? This is a very quick overview of a specific situation, but given that there is increasing mobility among provinces nowadays, the issue is significant.

Thus, the Parliament of Canada has jurisdiction only over the status of marriage. In any case, for those who were wondering, the Court expressly stated that civil union did not quite constitute marriage, and was therefore under provincial jurisdiction. That is in the Supreme Court ruling. The province has jurisdiction over the establishment of rights and obligations among various persons, but cannot create marriage. Conversely, the Parliament of Canada cannot create civil union for general purposes.

I will now turn to my colleague to answer your question on freedom of religion.

[*English*]

Prof. Bruce Ryder: Religious freedom, of course, is guaranteed in the charter, and all laws, including family law and government actions, must comply with the guarantee of freedom of religion. I think the issue we're most concerned about in this conversation is how freedom of religion will safeguard the rights of religious officials to perform marriage ceremonies only in accordance with their religious beliefs and traditions.

And there's also, of course, the issue of marriage commissioners performing civil marriage ceremonies. In my earlier presentation I suggested that they have a right to invoke religious freedom to refuse to perform ceremonies that run counter to their religious beliefs.

● (1700)

[*Translation*]

Mr. Marc Lemay: I see. That is very clear.

The Chair: Thank you, Mr. Lemay. Unfortunately, your five minutes are up.

We will now go back to the Liberals, with Ms. Boivin.

Ms. Françoise Boivin (Gatineau, Lib.): If I have time, I would be happy to put your question again, Marc.

First of all, I would like to thank our witnesses for being here today. I would also like to take this opportunity to express particular thanks to Focus on the Family Canada for all the e-mails they have sent me. I admire your passion and that of other members of your organization. Many political organizations would do well to work as you do, because you really know how to get people moving. I find that particularly interesting. When I was on the radio, I would encourage listeners who called in to write to their members of Parliament when they were not happy about something. These days, I occasionally regret making that suggestion, but it is only fair.

That said, like Ms. Neville—since I have received a great many e-mails and faxes from your group—I would like to know what the word "family" means to you. Which family? What exactly do you mean by "family".

[*English*]

Which type?

Ms. Anna Marie White: I think that's why we're here today having this discussion. And just to comment on the volume of responses that you've seen from Canadians, we were quite frankly overwhelmed by that as well. We have never seen an issue in the history of our organizations that has really energized and mobilized Canadians. So I don't think we can actually take the credit for that. I think that what's been happening here in Parliament, and happening in the mainstream media, and happening in courts, has really been the galvanizer in that case. So we cannot take undue credit for those things.

But why we are concerned about marriage goes right to the heart of your question: What is a family? Is a family any group of people that live together and have some level of economic co-dependency? Are they roommates?

I had a call about two weeks ago from a woman who was concerned that if we travel down this road by taking away all distinctions to marriage, can her roommate someday leave the roommate situation and can she somehow sue her for half of her property? So we have a lot of people concerned about what does family mean? Is it just this group of people? So that comes to the core of who we are as an organization, why we have been so passionate about this, why are supporters are so passionate, it's because marriage is at the centre, it's the foundation, it's a long-standing human social institution.

[*Translation*]

Ms. Françoise Boivin: I will come back to my question, which is very simple and very specific. What does the word "family" mean to you? Does it mean a father, a mother and children? Does it mean a biological father and mother and children? What about adoption? I am just trying to understand your view of what a family is.

[*English*]

Ms. Anna Marie White: The brief answer to that is that our working definition of a family, within the organization, is persons who are related through marriage, birth, or adoption.

Mme Françoise Boivin: So you include adoption.

Ms. Anna Marie White: Yes, absolutely.

Ms. Françoise Boivin: Okay, that was my point on that one.

Ms. Anna Marie White: In fact, my boss is adopted. So hey, I'm sure he has a family too.

[*Translation*]

Ms. Françoise Boivin: Mr. Cyr, I was listening to you speak and it took me back to when I was studying law at university. The course I hated most, and I will tell you this quite frankly, was private international law. I found it so complicated. It was so difficult to understand various jurisdictions, and to see how legislation in force in one area would apply elsewhere. And I do not even dare mention the law of the forum, because I do not remember exactly what it was, to the chagrin of my instructors.

At present, seven provinces and one territory have enshrined a definition of marriage equivalent to that set forth by the Supreme Court in the reference. Earlier, I believe Mr. Boudria was saying that some 2,000 people or couples—I do not know which it is, so I will just repeat his mistake—have entered into marriage. How are we to see those unions? Sometimes, on a purely practical level, people ask us whether those couples are actually married or whether they have entered into a civil union. Perhaps you might shed some light on what is going on.

Mr. Hugo Cyr: Marriages entered into in provinces were a court ruling recognized same-sex marriage are valid marriages. That is already recognized.

Problems arise in that, when someone who has entered into a same-sex marriage moves to Alberta, for instance, or to another province where same-sex marriage is not recognized, it is not yet clear whether the province will recognize that person's status as that of a married person. If it did not, that would oblige the person to go to court to have his or her marriage recognized once again. Given that the courts have been unanimous on the issue, the couples will end up getting recognition of their married-couple status, but in the meantime the uncertainty continues, things remain complicated and costs are incurred.

● (1705)

Ms. Françoise Boivin: I want to make sure I understood you correctly. I will stop there, because I have never pushed too far. That means that regardless of whether we pass Bill C-38 or not, it won't change the situation in the seven provinces and territories, where civil marriages will continue to be performed.

Mr. Hugo Cyr: In those provinces, yes, but it will change people's lives, since it won't be easy for them to move from one province to another.

[*English*]

The Chair: Merci.

We're going back to the New Democratic Party.

Mr. Siksay, five minutes.

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

Ms. White, I want to come back to the comments you made when you were responding to Madame Boivin, where you said you had a phone call from someone who was concerned that their roommate relationship might somehow be affected by this. Were you able to reassure them about the difference between being a roommate, a common law partner, and a married couple, that there were indeed some differences there?

Ms. Anna Marie White: I think in the current context we hope there is. Can we guarantee that it will stay that way down the road? That's what she was concerned about.

Mr. Bill Siksay: Do you have any fear that this legislation is somehow going to change her situation?

Ms. Anna Marie White: No, I would say our concerns centre more around dismantling marriage. If you take away one aspect of it, at what point does it no longer have any meaning? If you take a concept and pull everything out of that, then there's nothing left.

Mr. Bill Siksay: So you aren't concerned that roommates are suddenly going to be considered as if they're common law or married folks?

Ms. Anna Marie White: No, I'm not concerned. I was sharing the concern of someone who called our organization.

Mr. Bill Siksay: All right.

Mr. Singh, when Sikhs first came to Canada, was there automatic recognition of the gurdwara, or a Sikh priest's ability to marry people of the Sikh faith? Do you know the history of how that took place or if there was a problem there?

I don't know the answer to my question. I'm curious more than anything.

Mr. Parminder Singh: The reason I have a bit of a smirk on my face is that I've looked at the history of Sikhs in Canada, and believe me, you would not want me to go into that at this table right now. Just as with any other individuals new to any terms and new to any issues, yes, there is a lot of opposition to it, just as with the *Komagata Maru* per se, and I believe that's what the Ottawa member probably wants me to refer to.

I think the issue we have, and it's very implicit in the statement we've made, was that in the Sikh faith, again, we have the term *Anand Karaj*, which specifically, when translated into English, means marriage ceremony.

Another member asked a question about confusion at the primary school level about the Sikh faith, whether it would cause problems and so forth. Well, yes, we have two definitions of a word; when defined, it could mean two different things, depending on what you're used to.

Coming back to the original question, I can say our concern is the fact that even the term “marriage”, whether it's being better handled by the state...could there be better alternatives presented? Yes, we believe there should be, but in terms of the opposition that's being presented right now, I don't think there's a thorough discussion of alternatives. There's just a takeover bid that's been presented, and we don't agree with it.

Mr. Bill Siksay: But did the Sikh community find acceptance of its understanding of marriage when it came to Canada?

Mr. Parminder Singh: Well, I don't know exactly about that ordeal, historically speaking, so I couldn't really comment on that.

Mr. Bill Siksay: Thank you.

I wonder if members of the Ontario Gurdwara Council have any concern for the rights of other religious groups who do seek the ability to marry, who have been doing it, and who do see this as an issue of religious freedom from perhaps the other side of the coin?

Mr. Parminder Singh: As you mentioned earlier, the doctrines of Sikhism have been forever open to whatever changes have been about, and the Canadian Charter of Rights reflects what we believe. The issue here is not the doctrines of Sikhism. The issue here, we feel, is pretty much the role the state is assuming; that's what we have concern with.

● (1710)

Mr. Bill Siksay: So you don't see this state as trying to ensure religious freedom by ensuring that...and I agree that it is probably a minority of religious organizations in Canada, but there are some that do seek the ability to marry gay and lesbian couples in exactly the same way they would marry a heterosexual couple. You don't have a concern for their ability to do that?

Mr. Parminder Singh: A concern? I couldn't say, because again, we have religious freedom, as anyone else has the right to do what they feel.

But when it comes to marriage, an example I would give you is football in Europe and football in America, right? Same word but two different meanings. We have football here, which is football American style, but then we have soccer, which is football European style. So let's look at the definitions of the terms, and why not come up with something that would be acceptable to everyone? I think that's the issue with terminology we have.

Thank you.

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

The Chair: Thank you, Mr. Siksay.

We're now back to the Liberals. Mr. Macklin, parliamentary secretary.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Chair, and I want to thank all the witnesses for appearing.

You've brought us a lot of interesting, thought-provoking ideas today. In particular, one of the concerns that I think pervades a lot of what we discuss here is, how far does freedom of religion go in terms of protection as it is set out in the charter? Earlier, I think, there were references made to the Trinity Western case. In the Trinity Western case—I'll just take a little snippet out of the decision—they said "...freedom of religion, like any freedom, is not absolute. It is inherently limited by the rights and freedoms of others".

Can you give us some sense of how you believe this will roll through our society? How do you forecast how this is going to ultimately affect people in the positions they hold? At the moment, of course, we have some cases that are out there, as I think you referenced, where in fact there are some problems with marriage commissioners and others, although they're still working their way through the process. I know you're not weather forecasters, but you at least can look at the history of how laws become adapted in our society and give us some sense of what you think will ultimately be the outcome of these processes, especially in the provincial area.

I direct that to Mr. Cyr and Mr. Ryder most particularly.

Prof. Bruce Ryder: It's a very difficult question to answer in the abstract because, as the Supreme Court stated in the reference, these issues have to get resolved on a case-by-case basis. And as I suggested earlier, freedom of religion, when it bumps up against other rights like the equality rights of same-sex couples, won't necessarily prevail, and equality rights won't always necessarily prevail either. What the courts are seeking to find is a balance or an accommodation.

For example, when it comes to the freedom to express religious beliefs, including opposition to same-sex marriage, that strikes me as essentially an untrammelled right. It's hard to see how it could ever conflict with the rights of others. But if we're dealing with the public school context, where the school board has a commitment to non-discrimination, including non-discrimination on the basis of sexual orientation, then the expression of religious views in the classroom that would denigrate or be disrespectful of families headed by same-sex couples may well be unwelcome, because the right to an equal educational environment may prevail over the freedom of religion in that context.

There are a whole series of very difficult issues in this area. I think the Supreme Court of Canada, when it's dealt with these issues in cases like the Chamberlain v. Surrey District School Board case and the Trinity Western case, has demonstrated great sensitivity. We have much to be proud of in this country about the ongoing debate about achieving the appropriate balance between religious freedom and equality rights. I think we have an exemplary record. We've defined religious freedom in very broad terms and taken it very seriously. We're also committed to the full protection of equality rights. But no right is absolute. They often have to be adjusted to achieve what we consider to be an appropriate accommodation.

Hon. Paul Harold Macklin: I think that would be reflected in section 1 where it talks about "demonstrably justified in a free and democratic society", where you can subtract, so to speak, if you wish.

Mr. Cyr, do you have a comment on that?

● (1715)

[*Translation*]

Mr. Hugo Cyr: I would only add one thing. If you look at the decisions the Supreme Court of Canada has handed down in recent years on freedom of religion, you can see that the court is very attentive and sensitive to the diversity of viewpoints. Just think of the decision involving a co-ownership contract that prohibited putting anything on the outside of the building. The Supreme Court said that this decision, even though it was personal or contractual, infringed upon an important aspect of the religion of the appellants and that consequently there should be reasonable accommodation.

Remember that the expression “reasonable accommodation” goes to the very essence of rights and freedoms that are in conflict. One group's freedom of religion is limited by another's equality rights, but it goes both ways.

There's another thing to keep in mind: this is about civil marriage, not religious marriage. The legislation is obviously not about the religious definition. As a matter of fact, the legislation ultimately has to do with a fairly technical matter.

[*English*]

The Chair: Thank you, Mr. Macklin.

Hon. Paul Harold Macklin: Thank you.

The Chair: We now go back to the Conservative Party.

Mr. Jean.

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

I have to apologize for my French. It's very sloppy.

Mr. Cyr, how long have you been a lawyer, sir?

Mr. Hugo Cyr: I've been a lawyer since, I think, 1999.

Mr. Brian Jean: How long did you teach law school?

Mr. Hugo Cyr: I started teaching when I was quite young. I first started when I was 24, and I'm now 32. At the time, I was the youngest professor ever at McGill.

Mr. Brian Jean: Did you teach before you got your law degree?

Mr. Hugo Cyr: Yes, I was able to teach constitutional law at that time as a TA for a professor.

Mr. Brian Jean: So you were a teaching assistant.

Mr. Hugo Cyr: That was when I was in my second year, but I was teaching law before, when I was 24, and I already had a bachelor degree in civil law and a bachelor degree in common law. When I started teaching full-time, I was 26 or 27, and then I was coming back from the Supreme Court and had graduated from Yale Law School.

Mr. Brian Jean: Were you the gentleman who circulated this letter?

Mr. Hugo Cyr: No, I wasn't the one who started the letter.

Mr. Brian Jean: At the time of this letter, were you a law professor?

Mr. Hugo Cyr: Yes.

Mr. Brian Jean: Were you aware of any other letters circulating that were proposing the opposite position?

Mr. Hugo Cyr: I've never heard of any.

Mr. Brian Jean: Do you know how many professors on this list are constitutional professors?

Mr. Hugo Cyr: I could count, but I don't know the exact number.

Mr. Brian Jean: Just off the top of your head, an approximate number?

Mr. Hugo Cyr: I don't know. I can tell you the names if you want.

Mr. Brian Jean: No, that's all right, sir. I have only another 30 seconds.

Mr. Hugo Cyr: For the first two, yes—

Mr. Brian Jean: I've already had that opportunity. Please stop.

Mr. Hugo Cyr: How many minutes do we have?

Mr. Brian Jean: We already went through it once, sir. We can just read it into the record.

There are approximately 3,000 or 4,000 other law professors in Canada?

Mr. Hugo Cyr: No, no way.

Mr. Brian Jean: How many, sir?

Mr. Hugo Cyr: Well, I think there are 20 law schools in Canada overall.

Mr. Brian Jean: I taught law for a little while, too. I was fortunate enough to do that. And I disagree with this proposition.

I was just wondering if there was the opportunity for other people to circulate letters, because I never saw this letter before it was signed. I never saw any letter before it was signed. I was just wondering how it was circulated, to be honest.

Mr. Hugo Cyr: It was circulated among mainly constitutional law professors, and then people in their faculties sent them to other people who might be interested. I sent it to my department. I think it was published on January 8, so it was hard to get more people than that because people were still away on vacation. That's what we got at that time.

Mr. Brian Jean: I have a very brief amount of time.

Ms. White, you've had some experience at the United Nations. You've studied some international law. What are going to be the effects of this internationally for immigrants, both coming in and going out of Canada, in your perspective, given, of course, that most countries—all except for, I believe, two or three—have adopted the traditional definition of marriage? What do you see as the differences and the difficulties we're going to have in future?

Ms. Anna Marie White: Well, I think we've already seen some of this going across our border with the U.S., with American couples coming north to get married and going back and attempting to get their marriages recognized in civil law in the U.S. It's a prime example. They're our closest neighbour. We are transmitting some Canadian values their way, it seems, now.

Internationally, I think there has been a fairly clear consensus arise on how to handle this matter. Countries like the U.K., France, Denmark—very progressive western democracies—have debated how to recognize the relationships of gays and lesbians at length. They have, with the exception of two, possibly three, come to the conclusion that a regime of civil union, call it whatever you want, in existence, a parallel institution to marriage, seems to be the best way to provide for the greater good of society by preserving marriage, by providing children the best chance of having their parents in the home. That's the best way to respond to both the needs or the demands of gay and lesbian communities, and as well upholding marriage at the same time.

In terms of confusion, we've already seen, as I mentioned, this difficulty arising.

● (1720)

Mr. Brian Jean: With the U.S.

Ms. Anna Marie White: Absolutely. We can anticipate this in other countries, as well.

Mr. Brian Jean: Now, I've heard reference to studies on the effects on children. That seems to be, quite frankly, my paramount concern. With fairness, I hear both sides of the argument. Have you seen any suggestions on an international scale of what the effect could be? I heard—and it was only by rumour, not in hard data or empirical evidence—that in one country, I understood, there was a 75% decline in marriage applications. Is that...?

Ms. Anna Marie White: I would think certainly in some western European countries especially, we're seeing a great change. Government law, as you well know, has very much an educational effect upon its citizens, in particular in democracies, where government is expected to act in the best interest of all its citizens. When marriage is devalued by those who run the country, there is a message given to your everyday voters that this is made in your best interest, therefore it's good for you. Certainly there's a concern there.

As to what this may look like on an international scale, I don't know of any empirical research. I have stacks of research and could probably find something on that, to look at where this could lead. Again, we come back to the idea that we're dealing with an institution that is foundational to human society. It encompasses a norm. It encompasses the way we ensure we perpetuate the human race, our civilizations.

Could I see the end result of that? I wouldn't speculate at this point.

The Chair: Thank you.

We're going to the Liberals. No? Okay.

[*Translation*]

We're going to the Bloc Québécois.

Mr. Marc Lemay: One mustn't make any mistakes, these days, Mr. Chairman.

Fear not.

The Chair: You have five short minutes, Mr. Lemay, because we are going to have to go and vote, and I wouldn't want the Bloc Québécois to be short one vote.

Mr. Marc Lemay: Yes, of course. There is no stopping progress.

Mr. Rolston, I ask again the question I asked 14 minutes ago. What are the difficulties you have, as a charitable organization, in receiving charitable donations? I was a lawyer for 30 years, and I can assure you that the definition of marriage is not what made the number of divorces go up and the number of marriages go down. You have to have spent time out there to see what's really going on. I can tell you that we are not out there at all, and same-sex marriage is not going to prevent divorce or marriage.

That said, let's come back to the question. I want an answer. How has the Canada Revenue Agency made life difficult for you? Those people are causing problems for you. I want to hear about it.

[*English*]

Mr. Terence Rolston: The issue with respect to charitable status relates to the provisions in law for an organization to be considered charitable and, hence, to receive charitable status. The distinction has to be, what is religious freedom and what can we do under religious freedom provisions, and what is charitable and what can be granted charitable status? Under religious freedom, you have the ability—perhaps under the various legislative provisions that have been mentioned—to have religious beliefs. Clearly, as per our earlier comment, our concern is whether you can have religious belief and can act on it. I think there's a clear distinction that has to be made. I think we understand it as a committee, but certainly from our point of view, this legislation needs to be reinforced so that you can actually act on your religious beliefs.

But as this relates back to charitable status, we have to understand that charitable status is, by common law, granted with four basic provisions: relief of poverty; advancement of religion; education; and the final one, as I understand it—I'm not a lawyer—is for the common benefit or common good. As I understand from our legal counsel, there has been a very clear challenge to the acceptance of charitable status if the position held by that charity cannot be construed to be in the public interest. I think there are some cases in the United States that have made this abundantly clear. I'm not a lawyer, so I can't quote them to you, but we can provide them to the committee afterwards, which we'll certainly do. But they made it abundantly clear that if there's a situation where the charitable organization is not promoting the public interest, it's free to hold its religious beliefs, but it just can't get charitable status to do it or to promote itself. So that's the concern.

Again, in this particular situation, I think that acting on our religious beliefs is at risk—a not unfounded risk. Again, it is not only we who are raising this issue; even the opponents, as we saw in today's *National Post*, have raised this as a very real concern. And certainly, as a charitable organization, we would be very concerned that there would be legislation that would somehow prevent us from continuing to promote and support, on the basis of our religious belief, what is foundational to us, the helping of marriages and families and the reaching out to those marriages, which largely substantiate the vast majority of Canadians as husbands and wives, and which we believe are best for children.

So there is a very significant concern, one of distinguishing or discerning between what is required of charitable status and what is religious freedom. I think it is a very real concern.

● (1725)

Ms. Anna Marie White: If I could just add to this, for greater clarity in response to your question, we have indeed been contacted by the CRA, and we have had, shall we say, difficulties in the past as a result of our media campaign last spring.

[*Translation*]

Mr. Marc Lemay: I am very surprised. Don't take it; I know what they're like. You can challenge them. You have the right to defend your cause. I'm not saying I share it, I'm saying you are entitled to defend it and you are for the common good. Get yourselves a good lawyer.

[*English*]

Ms. Anna Marie White: Thank you.

[*Translation*]

The Chair: Thank you, Mr. Lemay from the Bloc Québécois.

Mr. Lemay, Mr. Marceau, I apologize for the error, we know full well that you are from the Bloc Québécois.

[*English*]

This will put an end to today's meeting.

I want to thank the witnesses.

[*Translation*]

Thank you, witnesses.

[*English*]

Have a safe return.

This committee is adjourned.

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