

Equal Marriage

EQUAL MARRIAGE LEGISLATION

Same-sex couples have been getting married in Canada for well over a year. Thousands have done so. In fact, 87% of Canada's population now lives in jurisdictions where same-sex couples can legally marry. Couples and lawyers across Canada have gone to the courts asking for the right to marry, one province or territory at a time. In every instance, the courts ruled strongly in favor of marriage equality.

The federal government has committed to passing legislation in the course of 2005 to extend equal marriage to all provinces and territories in Canada. Such legislation was endorsed by the Supreme Court of Canada in its recommendation in December 2004.

Equal marriage legislation could take many months to pass both the House of Commons and the Senate. A majority of parliamentarians and senators must endorse the new law, which at this point is not guaranteed. In addition, because of the minority government in Canada, a snap election call would prevent the bill from passing.

Bill C-38 received first reading in the House of Commons on Feb. 1, 2005. The summary of the bill reads as follows:

This enactment extends the legal capacity for marriage for civil purposes to same-sex couples in order to reflect values of tolerance, respect and equality, consistent with the Canadian Charter of Rights and Freedoms. It also makes consequential amendments to other Acts to ensure equal access for same-sex couples to the civil effects of marriage and divorce.

Region	Date
Ontario	10 June 2003
British Columbia	8 July 2003
Québec	19 March 2004
Yukon	14 July 2004
Manitoba	16 September 2004
Nova Scotia	24 September 2004
Saskatchewan	5 November 2004
Newfoundland	21 December 2004

WHY EXCLUDING SAME-SEX COUPLES VIOLATES THE CHARTER

The purpose of s. 15 (of the Charter) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice. *Supreme Court of Canada, Law case, at paragraph 51*

SAYING MARRIAGE "JUST IS" HETEROSEXUAL IS WRONG

Opponents of equal marriage often assert that marriage "just is" the union of one man and one woman. They claim this is a "universal" definition across religions and cultures, that exists separate from and "pre-dates" the law. This exclusion of classes of people by "definitional boundaries" has been the intellectual foundation of discrimination and oppression in all of the significant social struggles of our time.

Even if marriage had been heterosexual-only "since time immemorial," the mandate of human rights law is to critically evaluate and challenge longstanding, often commonly accepted, practices. The term "person" had been historically defined to exclude women. The term "citizen" had been historically defined to exclude slaves. Historical pedigree does not make something right. At one time, the prohibition against mixed race marriages was deemed to be a cultural "given." The issue is whether the exclusion of a historically disadvantaged group is discriminatory and, if so, whether that discrimination is justified.

The Charter aims to protect the traditionally disadvantaged from discrimination, however deeply ingrained, seemingly natural, and longstanding.

IT'S DISCRIMINATION

Excluding same-sex couples from civil marriage is discrimination based on sexual orientation. Under the Charter, if there is a line drawn between gay and lesbian people and heterosexual people, and that separation reasonably violates their human dignity, then discrimination is established and s.15 of the Charter is violated.

Permitting opposite-sex couples to marry and not same-sex couples draws such a line, because it is the sexual orientation of the individuals involved which leads to the formation of the same-sex couple. To find otherwise would be as wrong as saying that being pregnant had nothing to do with being female.

Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. (Ontario Court of Appeal, Halpern case, at paragraph 78)

Based on the historical disadvantage of lesbian and gay people, their actual needs, capacities and circumstances, and the societal significance of marriage, courts have determined that the exclusion of same-sex couples from marriage reasonably violates their human dignity.

WHERE IS THE THREAT?

The strongest opponents of equal marriage say that marriage must remain heterosexual or dire consequences will follow. They argue equal marriage is a threat. They cannot find any harm from equal marriage itself, so they try and shift the focus to something else or talk in general terms about threats to families.

As noted by former Supreme Court Justice L'Heureux-Dubé, "[I]t is in society's interest to improve conditions to enable families to function as best they can, free from discrimination. ... It is not anti-family to support protection for non-traditional families. The traditional family is not the only family form, and non-traditional family forms may equally advance true family values." (Mossop case).

The real concern of many opponents of equal marriage is that it will reduce the stigma of homosexuality.

THERE'S NO REASON TO EXCLUDE SAME-SEX COUPLES

Going back to first principles, why would society want to exclude same-sex couples from civil marriage? The courts carefully examined this question.

They rejected the justification that only opposite-sex unions can "naturally" procreate, because this ignores the fact that same-sex couples are capable of having children. They also rejected the purpose of promoting the raising of children, as this suggests that same-sex couples are not equally capable of childrearing.

The courts found that the only reason to exclude same-sex couples is to favour one form of relationship over another, to suggest that uniting two persons of the same sex is of lesser importance than uniting two persons of the opposite-sex. This is the essence of discrimination.

Since the courts found no pressing and substantial reason to justify the discriminatory exclusion of same-sex couples, the opposite-sex restriction was "struck down" as unconstitutional.

Limiting the definition of marriage to couples of the opposite sex reinforces the stereotype that gay and lesbian people cannot and do not form loving, lasting, caring, mutually supportive relationships in the same manner as heterosexual couples.