

Presentation to Special Legislative Committee on Bill C-38

By Bishop Fred Henry

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Liberal Foreign Affairs Minister, Pierre Pettigrew, recently quipped: "*I find the separation of church and the state is one of the most beautiful inventions of modern times.*" He went on to add that the church is obligated to remain silent on the issue of same sex unions as the government and the churches should not get involved in each others affairs. It is significant that no apology or retraction, to my knowledge, was ever offered for his offensive and ill-informed views.

The whole concept of separation of church and state is relatively recent, dating back to the constitution of the State of Virginia which was written by Thomas Jefferson and the slightly later Constitution of the United States to the effect that: "Congress shall make no law respecting the establishment of a religion or preventing the free exercise thereof..." The First Amendment says nothing concerning the various churches' positions, it simply limits the Government of the United States from establishing one or another of them as the "official" religion.

Canada does not have an equivalent statement, either in the British North America Act nor in the Constitution Act as repatriated. What Canada does guarantee is "freedom of religion". This is found both in Parliamentary Act, [The Bill of Rights passed in 1960] and in the Charter of Rights and Freedoms. Article 2 of the Charter states: "Everyone has the following fundamental freedoms: (a) freedom of religion and conscience." There is no statement of "separation of church and state" in either of these basic documents.

Religious freedom is central to the current debate about the re-invention of marriage.

There is a growing spirit of religious intolerance in Canada and an inability to think critically.

1. On June 15, 2004 I received a harassing telephone call from Mr. Terry De Marche from Revenue Canada Charities Division (613 -941-1647) as a result of a complaint lodged by someone objecting to another Pastoral Letter in which I attempted to clear up some moral confusion engendered by the Prime Minister. In much of the secular media Mr. Martin was portrayed as a "devout Catholic" even though his clarified position re abortion and same sex unions constituted scandal in the Catholic community and reflected a fundamental moral incoherence.

2. In response my January 2005 Pastoral Letter in the subject of same-sex unions, which was printed in the secular press, I received a number of messages by snail mail and email which I would classify as hate mail.

Dylan - "I don't think of you as a hater, per se. I think of you as more just a hypocritical, malignant asshole who happens to have a literal pulpit to preach from, the true face of the spitting, railing hissy-fit of the Roman Catholic church ..."

Billy - "..... You are a sick, narrowminded disgusting excuse for a human-being. Child molesters like you deserve to die."

3. Two individuals have filed a complaint against the Roman Catholic Diocese of Calgary and myself on the ground of sexual orientation in the area of "goods/services refused and terms of goods/services", and in the area of "publications, notices, signs and statements," based on my January 2005 Pastoral Letter in which I refuted the standard arguments used to support same sex unions as the equivalent of traditional marriage. These complaints are an attempt to intimidate and silence me and are without any foundation in fact. As a matter of fact, the lodging of these complaints constitutes a violation of my right of freedom of expression and freedom of religion guaranteed by the Charter of Rights and Freedom.

The Supreme Court's decision on the marriage reference indicates that "the protection of religion afforded by s.2 (a) of the Charter is broad enough and jealously guarded in our Charter jurisprudence." Religious officials are protected "from being compelled by the state to perform civil or religious same-sex marriages that are contrary to their religious belief." Freedom of religion also prevents "the compulsory use of sacred places for the celebration of such marriages."

However, there is a disturbing qualifier added in the decision, i.e. "absent unique circumstances with respect to which the Court will not speculate, the guarantee of religious freedom in s. 2(a) of the Charter is broad enough to protect religious officials ..."

Here we have an open door. Particular circumstances might lead to some future court legitimately trying to force religious officials to perform these ceremonies against their conscience, though the justices decline to speculate on what those circumstances might be. It is disquieting that the Court would even raise the possibility.

Bill C -38 not only doesn't close the door, as a matter of fact, it fails in a number of ways:

1. To recognize, protect and reaffirm marriage as the union of a man and a woman, which the Supreme Court of Canada did not suggest was contrary to the Charter of

Rights and Freedoms nor that a redefinition of marriage was necessary to conform with the Charter;

2. To affirm cooperation with provincial and territorial governments to enact the necessary legislation and regulations to ensure full protection for freedom of conscience and religion, so Canadians are not compelled to act contrary to their conscience and religion;
3. To affirm cooperation with provincial and territorial governments to ensure all leaders and members of faith groups are free everywhere in Canada to teach and preach on marriage and also on homosexuality as consistent with their conscience and religion;
4. To affirm cooperation with provincial and territorial governments to ensure that in addition to sacred places, all facilities owned or rented by an organization that is identified with a particular faith group are protected from compulsory use in preparations for or celebrations relating to marriage ceremonies contrary to that faith;
5. To affirm cooperation with provincial and territorial governments to ensure all civil as well as religious officials who witness marriages in Canada in every province and territory are protected from being compelled to assist when these are contrary to their conscience and religion;
6. To safeguard faith groups that do not accept the proposed redefinition of marriage from being penalized with respect to their charitable status.

Bill C38 invokes freedom of conscience and religion under Section 2 of the Canadian Charter of Rights and Freedoms but it is disturbing that there will not be a truly free vote on the Bill. Apparently, party solidarity takes precedence over rights guaranteed in the Charter.

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

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

Claims of a “right” to same-sex-marriage are not the slam dunk that Mr. Cotler thinks.

The so-called “marriage act,” as understood in ordinary language, refers to the unique act of sexual intimacy involving intercourse between a man and a woman. In spite of Clintonesque interpretations of sexual acts, the ordinary usage remains entrenched in language. The so-called “marriage act” is not possible in same sex relations. The acts in these relations are vastly different in origin, in real experience, and in goals. The radical re-definition affects every order of human life from uses of logic to healthy moral and cultural life. This radical cultural shift accounts for the resistance of the majority of Canadians to redefinition of marriage on both religious and rational grounds.

It is a mystery to the majority of Canadians as to why parliamentarians just don’t seem to get it.