SUBMISSION TO THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS ON BILL C-38
THE CIVIL MARRIAGE ACT

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Executive Summary

The Evangelical Fellowship of Canada (EFC) is deeply concerned about the impact of the redefinition of marriage on the future of the institution of marriage, on children and on religious freedom in Canada.

The EFC has a strong interest in issues related to the definition of marriage. In Canada, the civil and religious aspects of marriage have been fused. Seventy-five percent of marriages in Canada are solemnized by clergy. For our community, marriage will remain a religious institution. A change to the civil definition of marriage changes the public meaning of the institution and will have direct and indirect effects on religious institutions.

The EFC has consistently urged Parliament to consider the policy implications of fundamentally redefining marriage. The redefinition of marriage denies children the right to know and be raised by their mother and father. It raises numerous issues of religious freedom, some of which are already the subject of litigation. The Supreme Court noted in the Marriage Reference the potential for conflict with religious freedom given the new definition of marriage.

The guarantee of religious freedom for clergy, contained in s. 3 of the bill, does not actually provide any protection for religious freedom. The Supreme Court indicated that protection for clergy is a provincial jurisdiction.

The amendments adopted by the House of Commons will provide a measure of protection for religious freedom in areas of federal responsibility, but we would hope that the Senate would further amend the bill to ensure protection for religious freedom and freedom of expression for federal employees in the Canadian Human Rights Act.

We continue to be concerned that religious freedom is not protected for clergy, churches and civic officials with respect to the solemnization of marriage. We call on the Senate to amend the bill to ensure that provincial governments have passed legislation to protect religious freedom in relation to the solemnization of marriage before this bill comes into force.

The EFC is further concerned that Bill C-38 is not limited to Canadian residents. This has the potential to create conflicts with laws of other countries.

Given these concerns, the EFC remains firmly opposed to Bill C-38. Should the Senate recommend its passage, the EFC has made some recommendations regarding potential amendments that would strengthen protections for religious freedom and freedom of conscience.
Introduction

Marriage has been given special status in law by governments because of its unique role in providing for a committed relationship between women and men and a stable setting for the raising and nurturing of children. This committee has been given the task of studying a bill that, if passed, will fundamentally alter the nature and structure of marriage.

At its core, this debate is about the preserving the social, cultural, religious and legal means of facilitating the long term exclusive sexual bonding of male and female. It is also about society’s commitment to offer children the practical ideal of a stable and committed context within which they can intimately know and experience their biological and social heritage. Marriage is the preferred means of heterosexual bonding and the preferred context for the procreation and raising of children.

The social consequences of refashioning marriage have not been fully examined. The federal government started a consultative process on this issue through the Justice Committee in 2002. The Committee conducted cross-country hearings in 2003, but did not table a report. The government pre-empted this process by making the reference to the Supreme Court of Canada. The Supreme Court answered the reference questions, and lower courts in several provinces have ruled on the legality of same-sex marriage. However, the courts only properly examine the legal aspect of marriage. It is important to understand that marriage is much more than a contract, and it concerns more than consenting adults.

On February 1, 2005, Justice Minister Irwin Cotler introduced Bill C-38, a bill to redefine marriage for civil purposes as being between "two persons." This bill not only redefines marriage, it also redefines terms in other legislation. The language of husband and wife has been removed from the law. As well, the term "natural parent" has been replaced by the term "legal parent" because we can no longer assume that the children of a married couple are their natural parents.

The Special Legislative Committee on Bill C-38 reported back to the House of Commons on June 16, and recommended two amendments to the bill, intended to offer additional protection for religious freedom in areas of federal jurisdiction. During report stage, a further amendment was approved, providing protection for charitable status under the Income Tax Act. The bill had third reading and was passed by the House of Commons on June 28.

It now falls to the Senate, and this committee to review the legislation. We trust you will consider openly and thoughtfully the implications of this fundamental redefinition of marriage. It is ultimately the responsibility of Parliament to address matters relating to “marriage and divorce” under s. 91(26).

A Christian understanding of Marriage

As Christians, our understanding of the structure and nature of marriage is founded on the biblical account of the creation of man and woman. Genesis 1 and 2 state that God created man and woman to fulfill their need of intimate partnership and to carry out the mandate given by God in Genesis 1:28; “Be fruitful and increase in number; fill the earth and subdue it.” Jesus reiterated this understanding when he said,
Have you not read that the one who made them at the beginning ‘made them male and female,’ and said, “For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh? So they are no longer two but one. Therefore what god has joined together, let no one separate.” (Math. 19:4-5, NRSV).

As Christians, we believe marriage is rooted in the way we are made. Marriage is founded upon the biological reality that we humans exist in two sexes. It expresses the complementarity of the sexes, and therefore requires both sexes. Marriage was established for the purposes of companionship and sexual fidelity between husband and wife. Marriage is the social, cultural and religious context for the conjugal relationship, which is exclusive to male and female.

Properly understood, marriage is covenantal, not merely contractual. Marriage has the unique power to promote the exclusive and permanent sexual, psychological and emotional bonding of a man and a woman. That is why marriage is called a covenant, not merely a contract that can be formed and broken with the casualness of a business transaction.

The Supreme Court of Canada did not require that marriage be redefined

In July 2003 the federal government said it would introduce a bill to redefine marriage and asked the Supreme Court of Canada to comment on the wording of the bill and related issues. The Marriage Reference asked four questions of the Court. The court replied on December 9, 2004 and in effect passed this issue back to Parliament, where it properly belongs.

One of the questions asked was whether the opposite-sex requirement of marriage was consistent with the Charter of Rights and Freedoms. The Court declined to answer the question, referring to the government’s stated position that it intended to proceed with legislation regardless of what answer the Court would give to the question.

The Court wrote:

65 “… In oral argument, counsel reiterated the government’s unequivocal intention to introduce legislation in relation to same-sex marriage, regardless of the answer to Question 4. … Given the government’s stated commitment to this course of action, an opinion on the constitutionality of an opposite-sex requirement for marriage serves no legal purpose.” (par. 65)

The Court made reference to lower court rulings in several provinces that had already legalized same-sex marriage, and wrote that an answer to Question 4 would not only fail to ensure uniformity of the law among provinces, but if their answer to Question 4 was “yes”, it would throw the law into confusion.

So while the Supreme Court has said that Parliament may redefine marriage, it has not said that it must redefine marriage to include same-sex couples. They merely said the federal government could, as a matter of public policy, redefine marriage if it chooses to do so.
Contending that the Charter requires the redefinition of marriage uses the Charter as a sword to refashion society rather than as the shield it was intended to be to protect society from unwarranted government intrusion. It is an inapt use of the Charter in a debate that deeply divides Canadians and will only serve to undermine public confidence in the Charter and its interpretation, and erode its legitimacy among all Canadians.

Many people of goodwill in Canada believe that marriage is, properly understood, the exclusive union of one man and one woman. A key element in this debate is whether Canada is a religious and cultural mosaic, or a melting pot? In a plural society with different views of human relationships, we require language to express differences and public space to promote and foster ways of living that different groups find valuable. If not marriage, what institution in society can we as faith communities, as parents, as citizens, promote the rich and complex institution we know as marriage, replete with its rituals and symbols (underlined because this sentence doesn’t make sense as written)? If marriage is redefined, will we be able to secure language to identify this distinctive relationship? Will we be afforded the public space necessary to encourage and promote it without being told we are intolerant, or bigoted, or unCanadian? Will the people whose values Canada was founded on be pushed to the margins of society?

The Supreme Court’s response to the reference questions did not preclude consideration of alternative means of extending legal protection to domestic relationships other than through the redefinition of marriage. Nor did it conclude what the natural limit of marriage is. The government’s decision to move ahead with legislation is therefore one of policy, and not in fact something the Court has required.

**What does equality require?**

There has been a great deal of comment that “separate but equal” will not work for marriage. Those who advocate for the redefinition of marriage therefore say that it is not acceptable to have legal recognition for same-sex couples that is something other than marriage.

Yet that is precisely what section 15 of the Charter allows. Section 15 requires that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination…”

Equality allows separate treatment. What it prohibits is treatment that is unequal. If gays and lesbians have equal benefit of the law, it meets the requirements of the Charter. The Charter was enacted to support human rights in Canada, not social engineering.

Some inappropriately compare the refusal to restructure marriage with miscegenation laws at one time applied in the United States. The structure and purpose of marriage is the union of a man and a woman. Miscegenation laws thwarted the purpose of marriage by prohibiting such unions for reasons that lacked moral and historical validity. They were properly struck down by courts which recognized the core universal features of marriage throughout time and understood the importance of marriage to society.

There have been several different proposals for the federal government to respond to the court decisions that say the heterosexual definition of marriage is unconstitutional. In November 2002
the Department of Justice released a discussion paper on marriage in preparation for the Justice Committee hearings. The discussion paper, “Marriage and the Legal Recognition of Same Sex Unions,” makes the mistake of framing the debate surrounding marriage in very narrow terms: Rather than considering on what basis the government should register non-marital relationships, the Justice paper focuses on same- and opposite-sex “conjugal” relationships. Other kinds of currently unrecognized relationships, such as non-sexually intimate friendships, are ignored and excluded from the discussion paper.

Gay and lesbian relationships actually share significant similarities with other committed domestic relationships such as non-sexually intimate friendships or relationships between adult relatives. These similarities are not discussed in the Justice paper.

There are at least four options:

- Marriage could be defined in law as the union of one man and one woman
- In addition to an explicit definition of marriage, this option could also include the establishment of a civil registry or domestic partnership regime
- Marriage could be defined in statute as the union of two persons
- Marriage could be replaced in law and policy by a civil registry for domestic relationships

Each of these options requires Parliament to define the types of relationships they will and will not recognize. The Law Commission of Canada’s report Beyond Conjugal goes so far as to suggest that anything short of the legal recognition of domestic relationships of multiple adults will promote inequality. Hence, making distinctions in any of the options may be challenged by the Charter.

The Justice Committee conducted cross-country hearings to examine these options but a report was not tabled. The social impact of redefining marriage and alternative means of addressing equality rights should be canvassed and publicly discussed before Parliament proceeds with enacting legislation.

**Religious freedom guarantee of no effect**

Religious freedom is considered by the Charter to be a “fundamental freedom.” Human Rights Codes across the country protect individuals from discrimination on the basis of any of the enumerated grounds, including religion. In the Marriage Reference, the Supreme Court affirmed religious freedom, “The protection of freedom of religion afforded by s. 2(a) of the Charter is broad and jealously guarded in our Charter jurisprudence.” It appears therefore, that in Canadian society, it is believed to be important to allow people to live in accordance with their fundamental religious beliefs.

Section 3 of Bill C-38 says that clergy cannot be required to solemnize same-sex weddings. The government asserts that this section protects religious freedom for clergy and churches. The reference asked whether the freedom of religion guaranteed by paragraph 2(a) of the Charter protects religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs. In their opinion in the Marriage Reference,
the Supreme Court affirmed that the Charter guarantee of religious freedom protects clergy from being compelled to solemnize marriages contrary to their religious beliefs.

But the Court also made it clear that protecting the religious freedom of clergy in this matter is a provincial responsibility, and that any protection for religious freedom in this legislation will be struck down by the courts because the federal government does not have the legislative power to make such a law.

The court said:

37 The Attorney General of Canada suggests that s.2 of the Proposed Act is declaratory, merely making clear Parliament’s intention that other provisions of the Proposed Act not be read in a manner that trenches on the province’s jurisdiction over the solemnization of marriage. The provision might be seen as an attempt to reassure the provinces and to assuage the concerns of religious officials who perform marriages. However worthy of attention these concerns are, only the provinces may legislate exemptions to existing solemnization requirements, as any such exemption necessarily relates to the solemnization of marriage under s. 92(12). Section 2 of the Proposed Act is therefore ultra vires Parliament.

Under the Constitution Act, 1867, only the provincial governments can legislate to protect religious freedom relating to the solemnization of marriage. But to date only the provinces of Quebec and Ontario have taken action to protect religious freedom. It is therefore disingenuous for the federal government to assure Canadians that section 3 of Bill C-38 can and will protect religious freedom. Protecting religious freedom for clergy and religious institutions is a responsibility of provincial governments.

At report stage, three amendments were made to the bill, with the intention of providing further protection for religious freedom. An additional preambular clause was added to state that “it is not against the public interest to hold and publicly express diverse views on marriage.” While this is a valid and necessary statement, we note that it is merely declaratory and of no legal effect.

A second amendment to section 3 of the bill offers very general protection for religious individuals or organizations from being denied any benefit or put under any burden under federal law by reason solely of their beliefs and practices in respect of the definition of marriage. Another subsection was added to protect charitable status for registered charities whose stated purposes include the advancement of religion.

These amendments will give a certain amount of comfort to those in the evangelical community who have been concerned about discrimination in the face of the redefinition of marriage. While they will assist dissenters from legal, policy and financial consequences in areas of federal jurisdiction, this legislation will have broad and unforeseen consequences, and will directly impact in areas of provincial jurisdiction. These amendments are necessary, but they are not sufficient, and do not deal with clergy, churches and civic officials in the solemnization of marriage.
We would ask for further consequential amendments to other legislation in areas of federal jurisdiction, such as the Canadian Human Rights Act, to clarify the rights of freedom of religion and freedom of conscience for individuals who hold and express their beliefs about the definition of marriage.

We would also suggest that some mechanism be put in place in the legislation to guarantee that the legislation will not come into force until the provinces and territories enact legislation to protect those areas of concern that are outside the jurisdiction of the federal government and this legislation. Only then can Justice Minister Cotler’s assertions be true that religious freedom will be protected.

The Court has made it clear that the Charter guarantee of religious freedom protects not only clergy but also churches who define marriage as being between a man and a woman. In addition, the Court gives instructions that provincial human rights codes are to be interpreted in light of the Charter guarantee of religious freedom.

The Court also said that where there is a clash of rights, religious freedom may be limited. There are many religious freedom issues that the Court’s opinion does not address, including protection for civil officials and protection against discrimination for religious institutions that do not recognize same-sex marriage. Until there is legislative protection, people of faith will not be fully protected.

With more than 75 percent of marriages in Canada solemnized by clergy, it is clearly a deeply religious institution. It is naïve and impossible to suggest that civil marriage can be fundamentally redefined without it having an impact on religious marriage and religious institutions. Parliament has an obligation to ensure that the fundamental freedoms of conscience and religion are adequately protected before proceeding with legislating the redefinition of marriage. This requires both amendments to Bill C-38 to protect religious freedom within areas of federal competence and using mechanism available to strongly encourage provincial governments to make legislative changes that will protect religious freedom in areas of provincial competence (most notably, in relation to the solemnization of marriage).

**Religious Freedom implications**

Given the federal government’s inability to guarantee the protection of religious freedom for clergy and religious institutions, there is a great deal of legitimate concern that the passage of Bill C-38 will set churches and religious institutions up for endless court cases. Clergy should not be subject to the threat of litigation to prove their religious freedom in this regard. Further, there is no protection for individual Canadians who may object to same-sex marriage. Bill C-38 has not yet become law and already there is a litany of examples of religious freedom being threatened by the move to redefine same-sex marriage.

In British Columbia, Manitoba, Saskatchewan and Newfoundland, civil marriage commissioners have been told that they must solemnize same-sex marriages or lose their licences to marry. Under general human rights law, employers must accommodate religious conscience unless there is undue hardship. But marriage commissioners are not government employees. This raises
serious concerns for religious freedom for civil officials in other provinces as well. Several marriage commissioners have resigned in B.C., Saskatchewan and Manitoba. In Newfoundland, several mayors have been forced to resign their civil marriage commissions over the changes in the definition of marriage.

Several marriage commissioners have launched human rights complaints claiming a violation of religious freedom. Kevin Kisilowsky, for example, has a Christian outreach ministry to bikers in Stonewall Manitoba. He is a marriage commissioner so he can marry bikers in a Christian ceremony, but since he is not a pastor, he does not have a clergy marriage licence. Mr. Kisilowsky has been told that he must marry same-sex couples or he can no longer be a marriage commissioner. He has made a complaint to the Manitoba Human Rights Commission about unfair discrimination.

The Knights of Columbus, a Catholic men’s group, in Port Coquitlam, B.C. is facing a human rights complaint because it refused to rent its hall to a lesbian couple for a wedding celebration. The hall is on property owned by the Archdiocese of Vancouver. The club understood that the hall was being rented for an actual wedding ceremony between two women. When the club refused the women the hall rental, it offered to pay for another location as well as the reprinting of the invitations, but this was refused. The matter has gone to a board of inquiry for a hearing.

This is just the beginning of the types of religious freedom violations we anticipate from the redefinition of the institution of marriage.

**Education**

There have already been several legal cases dealing with religious freedom and gay and lesbian rights. Teachers with religious convictions who believe in traditional marriage are already finding themselves pushed aside. It has been suggested that religious schools should not receive government funding if they teach that same-sex marriage is wrong.

In the case of Chamberlain v. The Surrey School Board, the Supreme Court of Canada indicated that schools should teach about families headed by same-sex couples when they are teaching about families even when the children are of tender age. The Chief Justice indicated that if religious parents have concerns about this issue, they may “homeschool their children or send them to private or religious schools where their own values and beliefs may be taught.” (para. 30). It is strange, indeed, when the goal of the case was to provide a welcoming environment for all students that religious students are not required to be made to feel welcome.

Even religious schools are concerned that they will lose the ability to teach the “values and beliefs” after the Marc Hall case. In that case, a gay student in a publicly-funded Roman Catholic school was granted an interim injunction requiring the school to allow him to bring his male date to the prom. Previous cases granted Roman Catholic separate schools the right to teach and inculcate Catholic doctrine. But in this case, this principle was over-ruled.

Teachers who are also religious adherents have similar concerns that their religious beliefs and expression will be restricted. Chris Kempling is a teacher and counselor from Quesnel, B.C, who
was disciplined by the British Columbia College of Teachers (BCCT) for out of class conduct relating to expression of religious beliefs about homosexuality. In several letters to the editor of the local newspaper, Mr. Kempling had expressed concerns that Gay Pride parades and the inclusion of gay and lesbian sexuality in school curricula promotes immorality. The BCCT suspended Kempling for one month for “conduct unbecoming a teacher,” and ruled that Kempling’s comments indicate a discriminatory attitude towards gays and lesbians (May 2002).

Kempling appealed the BCCT ruling, saying what he’d written was based on his religious beliefs that homosexual behaviour was immoral. In June, the BC Court of Appeal upheld the suspension. In its decision, the Court of Appeal applies a Supreme Court of Canada decision, Ross v. Moncton District School Board, where a teacher’s freedom of expression was curtailed on the basis that his off-duty, anti-Semitic writings created a poisoned atmosphere towards Jews in the school. The Court of Appeal says that this case justifies the College of Teachers curtailing the freedom of expression of teachers even in the absence of evidence of any effect in the school. At stake is the freedom of faith-based educational institutions to continue to teach and uphold traditional marriage, as well as the individual religious freedoms of teachers in public schools who may be forced to teach acceptance of same-sex unions. Many are already finding that is the case. Also at stake is the right of parents to determine how and what message their children are hearing about marriage and same-sex relationships.

**Freedom of Expression**

Human rights complaints against Bishop Fred Henry raise the issue of whether religious leaders will be permitted to express publicly their religious views of marriage. Two complaints were filed with the Alberta Human Rights Commission (HRC) in response to a pastoral letter the Bishop released in January and a related article that appeared in a Calgary newspaper. The portion of the letter which has attracted comment reads as follows: “Since homosexuality, adultery, prostitution and pornography undermine the foundations of the family, the basis of society, then the State must use its coercive power to proscribe or curtail them in the interests of the common good.”

The Alberta Human Rights, Citizenship and Multiculturalism Act prohibits exposing a person or a class of persons to “hate or contempt.” The Act also says that nothing in the Code should “interfere with free expression of opinion on any subject.” The Commission will examine the complaints and then decide whether to proceed or dismiss the complaints.

**Implications for the family**

In an article entitled Every Child Deserves One Mom, One Dad, Margaret Somerville writes:

The same-sex marriage debate has focused on the rights of gay adults. But what about the rights of children? Do children have a basic right to know who their biological parents are and to be brought up by them? Does society need an institution that establishes that
right as one of its basic principles and norms? If our answer is “yes,” then we must say “no” to changing the definition of marriage to include same-sex couples.1

While not all married couples have children, all children are born of the union of male and female, including the very few that require technological mediation. In 1994-95, the majority of Canadian children (71%) were born to married parents, with 20% born to parents in a common-law union and 9% born to parents who did not live together.2 Every child has a mother and a father, and marriage provides the most stable environment for the nurturing of a child by his/her biological parents.3 Children born to parents who married without living common-law beforehand are approximately three times less likely to experience family breakdown than children whose parents were living common-law when they were born and did not subsequently marry. By the age of 10, 14% of children whose parents married without living common-law had experienced family breakdown, compared with 25% whose parents married after living common-law, and 63% whose parents lived common-law and never married.4

It is true that the institution of marriage has suffered from the loosening of divorce laws and the legal equating of common-law relationships to marriage, and that there are plenty of married couples that choose not to have children. Yet as Somerville writes, “… the issue is not whether marriage, as it stands, is a perfect institution, but whether society – and especially children – are better off with it than without it.”5

Marriage has proven to be the most stable form of relationship between men and women and the best context for the procreation and nurturing of children. In this manner, marriage (real or symbolic) is society’s commitment to and affirmation of the child’s right to know and experience his or her biological and social heritage.

It is in the interest of society and government to recognize and promote marriage and its distinctive nature and role in society. Though there may be other forms of relationships which fulfill some of the same functions as marriage, the distinctiveness of marriage must be retained so that government may effectively address its specific needs. Government policy should promote, not undermine, marriage.

The social consequences of redefining marriage have not been fully examined, though evidence from countries such as Sweden and the Netherlands that have adopted same-sex marriage legislation suggests that the result has been a further erosion of marriage, with marriage rates declining and cohabitation rates rising, and consequently sharp rises in the number of children born out of wedlock. In these countries, as in Canada, marriage was already threatened –

1 Margaret Somerville, Every Child Deserves One Mom, One Dad, originally published in the The Ottawa Citizen, September 29, 2003.
2 Nicole Marcil-Gratton, Growing up with Mom and Dad? The intricate family life courses of Canadian children, Statistics Canada, 1998, p.8
3 While common-law relationships are capable of procreation, they tend to be far less stable than marriage, which is less ideal for nurturing children. In addition, common law status is imposed on a couple regardless of their intentions concerning the longevity of the relationship.
5 Margaret Somerville, Every Child Deserves One Mom, One Dad, originally published in The Ottawa Citizen, September 29, 2003.
suffering from the no-fault divorce law and the legal recognition of common-law relationships – and the implementation of same-sex marriage served to bring about what Hoover Institute Fellow Stanley Kurtz refers to as the ‘end of marriage.’

International Conflicts

Other countries that have legalized same-sex marriage have limited their legal recognition to nationals. In countries such as the Netherlands and Belgium, for example, marriages between same-sex couples are only available to residents and citizens of those countries.

However, couples from across the U.S., Australia, Europe and Israel have come to Canada to marry knowing that their “marriage” will not be recognized in their home country. This creates a variety of legal problems. First, will Canadian marriages be recognized globally if our definition of marriage is different from that of other countries? Second, if couples that marry here but live in countries where these are not recognized, what will happen if their relationship breaks down?

To obtain a divorce in Canada, they must domicile in Canada for a period of one year. That is not realistic for most couples. But as their marriages are not recognized in their home countries they cannot obtain a divorce there. What if one partner then marries in a valid heterosexual marriage (recognized in the home country and in Canada)? Will that person be a polygamist (subject to criminal sanction) if he or she relocates to Canada with the new married spouse?

This difficulty can be addressed through amending Bill C-38 to require that couples who marry in Canada that are not resident in Canada must demonstrate that their marriage will be valid in their country of residence.

Conclusions

The government is hurrying down an unknown path. It has not taken the time to explore the long term consequences of choosing this path rather than others. Once the path is chosen, it will be difficult to go back. What will be the social effects of refashioning a fundamental social institution – to marriage itself, to spouses, children and society?

There is no strict separation of church and state when it comes to marriage in Canada. To suggest otherwise is to misunderstand Canadian constitutional history, our traditions and practice. To suggest that churches remain silent thwarts civil society and is an expression of a form of secularism that is foreign to Canada. Civil and religious marriage have been fused in Canada. Seventy-five percent of marriages in Canada are performed by clergy, ninety-eight percent in Ontario. It is naive to presume that these can be separated without consequence to marriage.

Marriage has deep cultural, religious and social significance. Marriage between a man and a woman is the foundation of family life. Changing the definition of marriage refashions its meaning and hence its substance in law and public policy. Marriage becomes simply a commitment between two people. It becomes adult centered, increasingly mundane and less able to accomplish its purposes, which is, to foster the enduring sexual bonding of one man and one woman and affording children the right to be nurtured by a mother and father in a committed

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7 Belgium amended its legislation in January 2004 to allow same-sex marriage provided at least one partner lives in or visits the country regularly.
relationship. In refashioning marriage, the essence and full purpose of marriage, hence the reason it has deep religious significance, is lost.

The Supreme Court did not say marriage must be redefined. Parliament must explore the long term implications and effects of such a change. It is vital that the Senate how consider the consequences and alternatives to the path the government has chosen.

If marriage is to be redefined by passing Bill C-38, it is incumbent upon Parliament to protect religious freedom and freedom on conscience within its jurisdiction. Clearly, the federal government cannot protect religious freedom for clergy. But there are areas of federal jurisdiction where religious freedom is at issue and can be protected. In addition, there are mechanisms where the federal government can strongly encourage provincial governments to pass legislation that will protect freedom of religion and conscience that are wholly within provincial jurisdiction. If the government is to fundamentally alter the time-honoured definition of marriage, it must ensure that fundamental freedoms are adequately protected.

**Recommendations**
This legislation should not be passed.

If this legislation is to be passed, we urge the Committee to recommend that it be further amended as follows:

1. Add the traditional definition of marriage to section 2 of the Act. This makes it clear that the traditional definition of marriage continues in Canadian law. It also makes it clear that those who hold to this view of marriage will not be considered unCanadian.
2. Remove section 3 of the bill as it is *ultra vires* as an operative section. The declaration is contained in the preambular clause.
3. Add a new section to the bill to require that if the persons are not resident in Canada, they must prove that the marriage will be recognized in their country of residence.
4. That a section be added under the consequential amendments to make it clear in the *Canadian Human Rights Act* that expressing religious views on marriage will not be considered to be discriminatory speech.
5. If the legislation is to be passed, ensure by some mechanism that either the Act will not apply in any province or territory that has not enacted legislation to protect the freedom on individuals and religious and other groups in respect of their beliefs and practices relating to the definition of marriage, or will not come into effect until such time as the provincial and territorial governments have passed legislation to protect religious freedom with respect to same-sex marriage.