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Same-Sex Marriage and the Christian Churches in Canada

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Summary:

Same-sex marriage is an important topic in Canadian courts, legislatures and churches today. This paper explores the sorts of official arguments put forth in public policy venues by Canadian churches and then proceeds to analyze these contributions.

Résumé:

Le mariage des homosexuels est un sujet important pour la justice, les législatifs, et les églises dans Canada aujourd'hui. Cette étude explore les genres des arguments officiels des églises canadiennes dans les politiques publiques. Puis, cette étude analyse ces contributions.

Same Sex Marriage and the Christian Churches in Canada

Introduction

In Canada churches often comment on matters of public policy. Official (and unofficial) representatives of churches submit briefs to hearings on various proposed legislative changes. Courts have often sanctioned churches as interveners in matters where they are thought to have some stake in the outcome.¹ Such status has been granted on subjects considered issues of morality and/or matters where the church has been traditionally involved. Certainly churches have often been interveners on matters that have to do with marriage and divorce, given churches' historic involvements in these areas.

Since the early 1990s churches have routinely commented to legislators and intervened in legal cases having to do with the extension of rights, and ultimately, in some jurisdictions, the right to marry, to same-sex couples. Thus, it is timely to look at public policy statements made by churches since the early 1990s on same-sex relationships and same-sex marriage. In this paper I will present and analyze some of the arguments made by various churches in Canada.² Although I am here interested only in arguments made by churches, it is worth noting that other religious traditions, both in official and unofficial capacities, have made forays into the same-sex marriage debate—sometimes in Coalition with the Evangelical Fellowship of Canada. The churches, however, have been the predominant and most consistently present religious players on this stage.

Presenting the Contemporary Arguments

In the current debate, some churches and groups of churches oppose same-sex marriage.

Some of those in this category are: the Roman Catholic Church; the Evangelical Fellowship of Canada (a group representing some 40 denominations which in some presentations is also allied with an Interfaith Coalition that has had different names over time)³; The Presbyterian Church in Canada; the Salvation Army; the Pentecostal Assemblies of Canada. Some are in the process of rethinking their stances and are in a middle position. The most prominent of these is the Anglican Church of Canada which has in the summer of 2004 declined to take a stance on the blessing of same-sex relationships, but which has affirmed the “integrity and sanctity of committed adult same-sex relationships” (ACC 2004). And some are supportive of the movement for same-sex marriage. These supporters include the Metropolitan Community Church, the Canadian Unitarian Council and the United Church of Canada. Here I concern myself only with the official positions taken by churches in public policy discussions. What this means for the current paper is that I only deal with statements made in the public policy venue. Thus, for instance, although the Anglican and Lutheran churches have views on same-sex relationships and same-sex marriage, they have not been much involved in presenting arguments in the context of courts and legislations. Also, within most churches and church organizations there are identifiable groups of people who support equality for gays, lesbians, bisexuals and transgendered persons and who are in favour of same-sex marriage but who are not articulating what might be considered “official” positions for the churches in question.

In the 1990s and following, there were a number of court challenges by gay men and lesbians seeking to be protected from discrimination on the basis of sexual orientation, and challenges from same-sex couples seeking the extension of benefits on the basis of their relationships and also seeking the right to marry. At the time of this writing (early 2005), same-

sex couples are permitted to marry in Ontario, British Columbia, Quebec, the Yukon, Manitoba, Nova Scotia, Saskatchewan and Newfoundland; and the government of Canada has received an opinion on several issues concerning same sex marriage from the Supreme Court of Canada and proceeded with legislation to define marriage as “the Lawful union of two persons to the exclusion of all others.”⁴

In the churches’ positions on same sex marriage since 1990, none has refuted the changes to marriage over the last century wherein marriage has gone from a relationship where women are seen as property and in need of protection to a relationship of equals. These changes are generally assumed.

Churches Opposed to Same-Sex Marriage

Those churches opposed to same-sex marriage in 2004 often began their public-policy argumentation on same-sex relationships in the 1990s by arguing against the extension of benefits to same-sex couples. The arguments fall into several general categories.

1. Churches advance theological arguments against same-sex relationships on the basis of the Bible, tradition and the will of God. 2. Churches advance arguments on the basis of procreation, child rearing and male-female complementarity. Here a mixture of biological, philosophical and sociological argumentation is used. 3. a. Churches advance arguments on the basis of the churches’ role in performing marriages and on the basis of historic views of marriage. b. Churches advance arguments on the basis of freedom of religion. 4. Churches advance arguments on the basis of preventing moral and social discord.

The tone of these documents is clearly measured. Although in the early 1990s the documents often argued that “homosexuals” were not, as a group, discriminated against, these

arguments fall by the wayside after 1995 when the Supreme Court of Canada unanimously decides to read sexual orientation into the Canadian Charter of Rights and Freedoms as a prohibited grounds of discrimination. The documents usually make a statement that they wish to uphold the civil rights of “homosexuals” but that marriage is not a right.

1. Theological Arguments. Although most churches opposed to same-sex marriage have explicitly articulated theological statements about the sinfulness of same-sex relationships, these arguments are not usually front-and-centre in churches’ public policy statements. In making statements to courts and legislators, churches often use more generalized theological language, referring, for example, to the inclusion of God in the Charter of Rights and Freedoms as an invocation of the core principles and beliefs found in the religious traditions that have historically shaped Canada’s principles and beliefs. “One way in which these principles and beliefs has found expression is in the institution of marriage, which reflects the central role accorded to that institution (as a union between persons of the opposite sex) by all major religions” (EFC 1992). Or allusion is made to the “theological” roots of the biologically unique relationship between women and men (ICMF 1995).

When theological argumentation is explicit, it is often used to bolster a point. For instance, the biblical idea of marriage as a relationship where the spouses become “one flesh” (see, e.g., EFC 2000) is used in aid of arguments about complementarity (see below). Or theological points are raised to make claims for the beliefs of members of the Canadian population. For instance, the submission of La Ligue Catholique pour les Droits de l’Homme et Alliance Évangélique du Canada as interveners in the appeal of the Hendricks and LeBoeuf case in the Quebec Court of Appeal (LCDH 2003) makes the point that evangelical Protestants and

Roman Catholics believe that God creates and orders marriage between a man and a woman and that scripture prohibits homosexual relationships.⁵ Thus, any changes to the law allowing the marriage of same-sex couples would go against the beliefs of such citizens (see also ICM 2001).

Theological arguments are also used to foster “universal” claims. “Marriage is ordained by God and has been made central to the created moral order, which is a *universal* moral order” (ICM 2001). Or particular readings of scripture are used as the basis for contemporary understandings. “A family is a kinship group related by blood, marriage or adoption. According to scripture, the family is founded in the marital relationship” (EFC 1996).

When specific theological claims are made in public policy documents, they are made in the context of the recognition of Canada’s pluralistic society. Thus, when the Pentecostal Assemblies of Canada make their presentation to the House of Commons Standing Committee on Justice and Human Rights On Marriage and the Legal Recognition of Same-sex Unions they offer their own theological statement on marriage “as responsible citizens in a pluralistic society” (PAOC 2003). Then they go on to say:

- A biblical definition of marriage would include the following characteristics:
- § a publicly recognized covenanting together for life between a woman and a man who live together in a relationship
 - § a commitment to “other-centred” love
 - § fidelity
 - § lifelong companionship, mutual interdependence and responsibility for each other
 - § potential procreation
 - § symbolic of God’s relationship to his people and Jesus Christ’s relationship to his church. (PAOC 2003)

2. Arguments on the basis of procreation, child rearing and heterosexual complementarity.

By far the preponderance of public policy arguments against same-sex marriage by churches who oppose it fall into this second category, which uses biological, philosophical, historical and

sociological reasons to justify a negative stance. Often these positions assume or argue for a purported universality of belief or practice. To allow same-sex marriages would create a form “that would replace the institution of marriage as it has always universally been understood” (ICMF 2003). Male-female sexual bonding is generally considered “natural.” Thus, if universal and natural, then differential treatment for same-sex couples is not discrimination. One common claim is that although “spouse” is a legal term and can be defined by the courts, there is a general agreement that marriage is not a legal category, but one that precedes legal codification (ICM 2001; CCCB 2003a). Often, too, appeal is made in defining marriage to an 19th c. British court case, Hyde v. Hyde, where the judgement reads: “I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all other” (Hyde v. Hyde et al. (1866) L.R. 1P & D 130 at 133).

When Pierre Beaulne and Todd Layland were denied a marriage license and appealed a lower court decision to the Court of Appeal for Ontario in 1993, the Evangelical Fellowship of Canada was an intervener in the case. In its argument, the Evangelical Fellowship of Canada stated that there was a “universal acceptance that marriage is a sexual relationship that involves the union of a man and a woman” (EFC 1992). These documents depend heavily on the notion that heterosexual marriage is the only way properly to constitute a family.

One of the principal purposes of marriage is the founding and maintaining of families, in which children will be produced and cared for. The union of husband and wife has traditionally been treated as the basic unit of society, upon which society depends for its continued existence and stability. This purpose can be achieved only in a heterosexual relationship. (EFC 1992)

Sometimes the documents state that procreation is **the** main purpose of marriage. “Le survie de la race humain dépend donc du lien (bonding) entre les deux sexes. Le but principal du

mariage est de réglementer la conjonction des sexes opposés et de protéger leur progéniture” (LCDH 2003). Many of the churches’ arguments emphasize their view that heterosexual spouses are “uniquely, biologically capable of procreating children” (ICMTF 1995; see also IFC 1999). The creative force of sexuality “overflows and is designed to bear fruit” (i.e., procreation) (CCCB 2003a). Spouse, argues the Interfaith Coalition on Marriage and Family, means “heterosexual and conjugal and thus capable of procreation” (IC 1999). The desire to change that definition that has been protected by courts and history alike from challenges by “polygamists, bigamists, transsexuals and homosexuals” (IC 1999).

Sometimes the statements acknowledge that, for whatever reasons, not all heterosexual marriages are procreative. But when such acknowledgment is made the statements quickly go on to say that the exception does not invalidate the point. “The inherent biological fact remains that a marriage between a man and a woman will usually produce children which no shift in thinking, social trends or technologies can alter” (CCCB 2003a).

The biological capacity to produce children is usually set alongside a view that sees male and female as two complementary parts of one human whole. “The key image of creation is reflected in the richness of the masculine and feminine dimensions of the heterosexual couple” (CCCB 2003b). Complementarity is presented as “a fundamental good in our society, in the tradition of western philosophy and throughout the world’s major religions” (ICMTF 1995). And the heterosexual couple is seen to occupy a unique and privileged place (a “fundamental and foundational role”) in the structuring of society (ICMTF 1995). There is an assumption that heterosexual couples signal “difference” in an intimate relationship and that “difference” is crucial for both families and society.

Same-sex unions cannot offer a family venue based on sexual difference. Including same-sex relationships in the definition of marriage would send a clear message to Canadians that sexual difference makes little or no difference in the formation of family and society at large. It would also in effect say there is nothing unique about the community and families that men and women create. (PAOC 2003)

The difference invoked here seems to include both biological and social differences between the sexes. “Canadian society has been centred around and indeed anchored by the heterosexual spousal unit. Such a union, protected by law, has been historically, philosophically, legally and theologically rooted in the biologically unique relationship between men and women” (ICMTF 1995; see also IC 1999). In the context of a discussion of complementarity, The Canadian Conference of Catholic Bishops says:

Sexuality at its very core is relational; it is a creative force opening one to communion. Through conjugal love, expressed between a man and a woman in the language of their body and soul, they offer themselves to each other. In their physical, emotional and spiritual union, the other is recognized and accepted in every dimension of his or her being and, in turn, the other reveals the deepest reality of her or his existence (CCCB 2003a).

This self-offering and union is presented here in the context of the idea that such an experience is rooted in a biology and only possible in a heterosexual couple. “Because it includes both sexes in a mutual covenantal relationship, marriage presents a model of inclusivity, within which an understanding of the differences between men and women and respect for each sex is naturally passed on to succeeding generations” (Salvation Army 2003).

Sometimes the arguments also appeal to the idea that gay and lesbian couples are not usually involved in child-rearing (see, for example, ICMTF 1995). Over time, however, as it becomes clearer to various groups that a growing number of parents are in same-sex relationships, this particular point falls out of the documents. They also appeal to the notion that a child has a “right to grow up being nurtured by both [heterosexual] parents” (EFC 2003). Here

there is a strong emphasis on the importance of a biological connection between parents and offspring. This is connected to a notion of marriage as the “cornerstone of the family” (EFC 1996). “At its core, this debate is about preserving the social, cultural, religious and legal means of facilitating the long term exclusive sexual bonding of male and female,” particularly for the purpose of providing stable homes for children (EFC 2003; see also EFC 2000).

3. The Churches and marriage. Several of the public policy documents written by churches opposing same-sex marriage appeal to the importance of church opinions in this matter because they see marriage as a religious concern (see, for example, ICMF 2003). “Until the mid-eighteenth century in Western European legal traditions, marriage was recognized as a purely religious institution” (ICM 2001; see also LCHD 2003).

Some documents point to the fact that in Canada from its beginnings, churches were involved in marriages. “At confederation, the only marriage recognized in Canada was that religiously performed” (ICM 2001).

Other documents point to the importance of the connection between religion and marriage, but do not claim that marriage is inherently religious. “Religious bodies represent ancient traditions that have great importance for most of those who marry” (Salvation Army 2003). Or they assume that the fact that something has been done historically means that it should continue the way it has been (at least in recent history). “While historically marriage has been rooted in religion, there is still a strong interplay between faith and marriage today. This is evident in the number of Canadians seeking to be married by clergy” (EFC 2001). The same document goes on to argue that:

since marriage has evolved as a religious institution in Canadian society, with legal recognition by the state, the continuing role of marriage as a legal and religious

institution in Canadian society must be informed by historical, philosophical and religious traditions, and by the current religious beliefs and values of many faith communities. (EFC 2001)

Religious organizations opposed to same-sex marriage often claim that all religious traditions have historically seen marriage as inherently a relationship of opposite-sex couples.

All the worlds' [sic] major religions recognize that the concept of marriage and spouse should only involve the union of man and woman. This is a basic tenet of the major religious communities which make up the multicultural heritage of Canada and which has been reflected in our legal concept of marriage and spouse (ICMTF 1995; see also IC 1999; ICMF 2003).

Even the possibility that religious traditions have not been entirely uniform or monolithic on the matter does not, in this view, discount the point.

All major world religions confine the institution of marriage to men and women. The existence of some dissentient views . . . does not alter the fact that major world religions do not and cannot accept a fundamental redefinition of marriage to include same-sex partnerships (ICM 2001).

The implication is that religious traditions either cannot or will not change on this matter in response to changing social mores. "Recognition of same-sex marriage is not an option for Catholics since it is completely opposed to the Catholic understanding of the moral, religious, social and legal traditions that include the purpose of creation itself" (ICM 2001). Another implication that is drawn is that the churches and Christians might have to choose between accepting the views of the state and adhering to scriptural beliefs. "For Canadian evangelicals, it [same-sex marriage] would mean pitting the state against the authority of holy scriptures and 'over and against the very heart of conservative Protestant and religious belief.'" (ICM 2001).

Both from a Christian and an interfaith point of view, the public policy documents in question often express a worry about being forced into "a religious redefinition of marriage which the major faiths would find unacceptable" (EFC 1996). Quoting an affidavit from Daniel

Cere, the LCDH (2003) says:

To affirm same-sex marriage is more than just an act of inclusion, tolerance, and respect for homosexuals. It is the exclusion of a whole set of widely shared views of human sexual identity from the legal system. . . .The legal affirmation of “same-sex marriage” will lead to a fundamental disconnect between religious communities and law on the question of marriage. (LCDH 2003)

The documents often also express a fear that religious communities who do not perform same-sex marriages will be marginalized, stigmatized or excluded from approbation in Canadian society.

The evidence indicates that the Catholic, Conservative Protestant, Orthodox and Traditional Jewish and Muslim communities cannot participate in or accept a fundamental redefinition of marriage to include same-sex unions. Any such judicial redefinition would not only alienate them from this institution, but will very likely render them subject to further legal, political and social stigmatization and exclusion Here justice compels, in any order made in the direction of “same-sex marital recognition,” an express affirmation of the rights of conscience and religious freedom in relation to the new concept of marriage. (ICMF 2003)

The Evangelical Pentecostal Church worries about the health of the churches if the definition of marriage changes to include same-sex couples.

If the Government of Canada chooses to follow the registered partnership option to answer the call for courts to change the laws concerning marriage to include same-sex couples, it will sever this important link between the religious community and the state. In this model, religious ceremonies will not have legal recognition from the state. If weddings performed in a temple, mosque, or church are no longer considered valid legal unions, they will become obsolete, because they will be seen as redundant, merely symbolic and extravagant. At a time when organized religion needs government's support and recognition in an increasingly secular society, the dissolving of a partnership will affect and marginalize a solid ally in nation-building. (EPC 2003)

The CCCB expresses a similar concern. “For the first time in its history, Canada is faced with a proposal that it accept two conflicting definitions of marriage, one that would be civilly valid and another that would be religiously valid, at least for most faith groups” (CCCB 2003c).

This fear of marginalization is sometimes stated in conjunction with worries about

freedom of religion and freedom of conscience. “Les protestants évangéliques se sentent de plus en plus marginalisés dans la société canadienne. Ils croient être l’objet d’une intolérance croissante, et qu’ils risquent de voir leur liberté de religion bafouée.” (LCDH 2003; see also ICM 2001). Even if no religious functionary is made to perform marriages for same-sex couples, the argument is that freedom of religion and conscience are still violated (LCDH 2003). Several of the documents claim that if the definition of marriage changes, there might be contradictions between beliefs and the civil law which would prove untenable for many faithful Christians and those of other religious traditions (ICM 2001).

An entirely redefined conception of marriage would have a significant effect on these Interveners and their religious communities. All cultural change permeates through religious communities. In particular, all citizens live in civil society and share, and are shaped by civil society’s institutions, which is particularly evident in the case of public education. The wider culture of easily available divorce, for example, although consciously rejected by these communities, nevertheless influences (and undermines) them. The judiciary ought to be very cautious about acceding to changes which will undermine the identity and practices of religious communities. (ICMF 2003)

The spectre of court challenges to churches and clergy who refuse to perform same-sex marriage ceremonies is also raised (ICM 2001; EFC 2003).

4. Arguments that predict moral and social discord. Those churches opposed to same-sex marriage often see only moral and social chaos following when same-sex couples are permitted to marry.

In addition to the reasons cited above to privilege heterosexual marriage, some churches argue that there are compelling reasons of social policy to continue the way things are. One of these reasons is that many Canadians, both past and present, oppose it on the basis of a definition of marriage that is deeply rooted in Canadian society (ICMTF 1995). Most of the documents say that there is no evidence that gays and lesbians suffer discrimination by not being allowed to

marry.

We believe changing the definition of marriage to include same-sex couples would cause great moral and social discord across the country, our community, our congregation, and our denomination. If the government chooses the definition of marriage to include same-sex couples, we believe the Government of Canada would be presenting same-sex marriage as a moral norm in our society. By doing this, the Government of Canada would be moving in the direction of giving its approval to same-sex couples by legitimizing them in the eyes of the law. This would then lead to the laws and the doctrine of our church and other world religions practised in Canada being in conflict with or outside the bounds of Canadian law. To put it more frankly, it would violate our moral values and natural law. (Geneva Presbyterian Church 2003)

The documents argue that their opinion serves the good of Canadian society.

The Catholic Bishops of Canada are participating in this debate and encouraging lay people, especially those who are married, to do so as well, not just because we are concerned about the freedom of clergy to celebrate the sacrament of marriage, but especially because we believe that marriage between a man and a woman benefits society and serves the common good which all Catholics are called to promote. (CCCB2003c)

Marriage, for such churches, is also said to be about protecting women and children from economic disadvantage. Gay men and lesbians do not suffer economic disadvantage according to some of the documents (ICMTF 1995). As Interveners in the *M v H* case, in arguing against the extension of property rights to same-sex couples, the Interfaith Coalition claimed:

“Heterosexual spouses have been recognized through our social, legal, political, religious and philosophical traditions, as fulfilling a unique and essential role in the very fabric of our social structure through the procreation, nurturing and raising of children, and require continued social and legislative support” (IC 1999).

The Evangelical Fellowship of Canada also argues that women and children are safer in traditional marriages (EFC 2003). Marriage is about protecting the vulnerable. It is also about keeping men in the reproductive and child-rearing loop. This notion is supported in affidavits that have been commissioned by groups opposed to same-sex marriage (see Young 2001; Cere

2001).

In quoting statistics about single-parent families and children's well-being in Canada, the Evangelical Fellowship of Canada concludes that children are better off in a two-parent family. "It is clear, therefore, that the preservation of the family based on heterosexual marriage is in the best interests of children, and, as such, is essential for the stability of society" (EFC 2000). The assumption is that these two parents would be a man and a woman. Society benefits from the stability that marriage provides, but "giving the name of marriage to other relationships will not transfer the benefits that flow from marriage" (EFC 2001).

Social chaos is also the result if we start permitting courts to make decisions that only Parliament should make (ICMTF 1995). Further, such churches often wish to guard morality by proclaiming that sexual activity within heterosexual marriage is the only moral choice.

Churches Who Favour Same-Sex Marriage

The Metropolitan Community Church⁶, the United Church of Canada and the Canadian Unitarian Council favour the extension of marriage to same-sex couples. The arguments of these groups also fall into several categories. 1. Churches who favour same-sex marriage usually argue that marriage is a social form that has changed and is changing over time.

2. Homosexuality, as an orientation, is not seen as morally negative. (In this they agree with some of the churches in the previous category.) In addition, however, same-sex sexual activity is not regarded as morally negative either. 3. These churches stress the quality of intimate relationships rather than the importance of having an opposite-sex partner as what should differentiate a healthy relationship from one that is not healthy. 4. These churches also stress religious freedom.

1. Marriage changes. In churches that support same-sex marriage, the stress is usually placed on the worth and dignity of every person. Principles of rights, justice, equity and diversity are lauded (see, for example, CUC 2003). Society changes and churches within society change.

For churches that support same-sex marriage, procreation, or the potential for procreation is not a defining characteristic of marriage (see, e.g., UCC 2003a). Marriage is about the partnership of two persons, not about encouraging those two persons to procreate.

As the Metropolitan Community Church Toronto notes, many people of faith believe in same-sex marriage, even if their churches officially do not. “The majority of Canadians claim to belong to a religious faith, and the majority of Canadians support same sex marriage” (MCCT 2003).

Although those churches opposed to same-sex marriage point to the intimate connection between churches and marriage by noting that in Canada clergy have always been the primary agents of marriage, the MCC notes that at the beginnings, only Church of England clergy and Roman Catholic priests were permitted solemnize marriages in Canada—so the extensions of marriage rights over time to other religious organizations is itself a change (MCCT 2003).

If marriage is a changing institution, there is no reason it cannot change further to include same-sex couples.

2. Same-Sex relationships are not morally negative. Not only does marriage change over time, churches’ views of what is morally acceptable change as well.

The Metropolitan Community Church was founded in 1968 to have a specific outreach into the gay and lesbian community at a time when most churches were either shunning gays and lesbians or avoiding issues of gay and lesbian sexuality. “The foundation of the denomination’s

distinct Christian theology is the belief that the traditional Christian view that homosexual acts are sinful is in error” (MCCT 2003). Since its beginnings, ministers in the denomination have blessed same-sex relationships. The Metropolitan Community Church has always been involved in the movement for gay and lesbian equality and freedom from discrimination. Since 2000, the MCCT has sought to register marriages performed in its church, after reading banns the prescribed number of times, as legal marriages.

The MCC speaks in terms of a “continuing process of revelation” concerning sexuality (MCCT 2003). What this means is that although at one time virtually all churches and Christians would have condemned same-sex relationships, points of view are changing, both as society changes and as churches begin to see that their readings of scripture and tradition have not remained static on any number of issues.

Although it condemned homosexuality as sinful in 1960, since 1984, the United Church of Canada has claimed that all persons, regardless of sexual orientation are in the image of God and full members of the church and, since 1988, sexual orientation has not been a barrier to ordination. In 1984 as well, the United Church pledged itself to work to end discrimination against gay men and lesbians (UCC 1984). In 1992, the United Church published orders of worship for covenanting or blessing services same-sex relationships. In 2002 the United Church decided to work towards the civil recognition of same-sex partnerships. And in 2003, when same-sex marriage became a possibility, rather than just the extension of equal rights to gay and lesbian couples, The United Church of Canada called on the government of Canada to recognize same-sex marriage in marriage legislation (UCC 2003b: 74-75).

The Canadian Unitarian Council is the umbrella body for Unitarian Universalist

Churches in Canada. Since the 1970s Unitarian congregations in Canada have blessed same-sex relationships and worked to promote equality rights for gay men and lesbians.

3. The quality of intimate relationships is what counts. Since views of marriage have changed over time, churches that support same-sex marriage have not stressed an abiding definition of marriage. Rather, they have tried to look at the quality of human relationships. “Legislation should reinforce an intention to permanence and fidelity in intimate relationships, regardless of the sexual orientation of the partners. In other words, the church’s policy is to support life-long monogamy and fidelity” (UCC 1999). What is important, then, is that intimate relationships need to be:

faithful, responsible, just, loving, health giving, healing, and sustaining of community and self. The implication is that these standards apply to both heterosexual and homosexual couples as the United Church has come to recognize that gay and lesbian members want to make the same life-long commitments that heterosexual members make, and to make their solemn vows with communities of faith who will support them in their commitments (UCC 2003a).

Diversity of relationships is a good thing for Canadian society. “The United Church seeks to support the diversity of families who uphold a secure environment for nurture, growth, and development, and to contribute to the spiritual, social, psychological, sexual, physical and economic wholeness of the members” (UCC 2003a). The Canadian Unitarian Council notes that that allowing same-sex partners to marry will increase social stability and is “is one way to provide for healthier communities” (CUC 2003).

4. Religious freedom for those who believe in same-sex marriage must be upheld. Those churches who favour same-sex marriage as are committed to their faith as those opposed. They see it as a matter of freedom of religion that they should be permitted to marry same-sex couples in the name of the church. As to those who argue that their religious rights will be violated if

same-sex marriage is permitted in Canada: “Respect for religious faith should not be confused with a right to state enforcement of religious beliefs.” (MCCT 2003).

Those churches who support same-sex marriage note that no church is now, nor will it be compelled to perform marriages for any couple (see, for example, MCCT 2003). Speaking for the Canadian Unitarian Council, Mary Bennett says:

It is my opinion that freedom of religion, as guaranteed by the Canadian Charter of Rights, requires that a definition of marriage be extended to same-sex unions. . . . We strongly also believe that no church or other religious authority will be forced to conduct marriage ceremonies that are not in conformity with its beliefs and rituals because such interpretation of a new definition of marriage would violate freedom of religion and go afoul of Canadian jurisprudence. All clergy have the right to determine the criteria on which they will agree to marry two individuals and we support that right for ourselves and others. (Bennett 2003)

Analysis of Arguments Against Same-Sex Marriage

1. Theological Claims. It is not my intention to analyze the specific theological arguments put forth in public policy statements by churches opposed to same-sex marriage. Here it will suffice to note that when theological arguments are made it is often assumed that all Christians are unanimous in interpreting scripture or tradition in a particular way. It is also often assumed that Christian views are static and unchanging. As the presentation of various positions has made clear, there is not unanimity in the way churches use scripture or tradition.

2. Complementarity. For the most part, the churches’ public policy arguments against same-sex marriage depend on assumptions about what is “natural” or given in biology. The assumption is that heterosexual intercourse is how sexuality is intended to be because heterosexual sex is procreative. This assumption leaves a number of points unanswered. First, not all heterosexual intercourse is procreative, whether because couples are infertile or because they choose

contraception. When the documents reflect on this they note that a few exceptions do not invalidate the potential procreativity of heterosexual intercourse. But this stance that exceptions do not invalidate the rule does open the door to the idea that at least some forms of sexual contact are considered “licit” by such groups in potentially non-procreative forms. If non-procreativity does not invalidate the “rule” then a better argument is needed to exclude gay and lesbian couples since it is not clear why some exceptions are more valid than others. Second, with access to new reproductive technologies and adoption, many gay and lesbian relationships become procreative. The “unique” biological capacity that heterosexual couples have to produce children is an argument that seems weaker in an age of reproductive technologies where children are not always biologically related to one or both of their (heterosexual) parents. The argument about procreativity makes the whole weight of marriage fall on reproduction. But in Canadian society since the 1960s there has been clear acknowledgment that companionship of equals is the primary function of marriage and that reproduction and child-rearing might or might not be part of that relationship.

Many gay and lesbian couples are raising children, whether born to one of them biologically or adopted. Thus the idea that only heterosexual couples with children are families totally runs against the actual reality. So to say the purposes of marriage and family (i.e., stability for childrearing) “can be achieved only in a heterosexual relationship” (EFC 1992) is not factually accurate at the very least.

Women and men are assumed to be “opposites,” two complementary parts of one whole. But as many contemporary theorists point out, the assumed complementarity of male and female is a construction, a meaning that we have assigned to one set of biological differences (Delphy).

We do not claim, for example, that brown-eyed people are “opposite” to blue-eyed people or short ones to tall.

Until the last few decades, human sexuality was usually understood as a fixed phenomenon. It was thought to endure over time in roughly the same form, with the same properties. But recently we have come to see in sexuality, as in other areas of human existence from forms of energy to the organization of space, that our categories for classification are not naturally occurring, but the result of human artifice. (Gudorf 2002: 45)

Further, biological sex is not always as clear-cut as many take it to be. Science has about six different sex markers: chromosomal sex, hormonal sex, sex of the external genitalia, sex of the internal reproductive organs, gonadal sex, and sex of the brain. These markers are not always aligned.

The arguments against same-sex marriage depend on a notion of “difference” that attributes “difference” only to the differences between male and female and not to any other differences any couple might embody. When the CCCB (2003a) describes heterosexual sex it speaks of the offering of selves to each other in a “physical, emotional and spiritual union.” Same-sex experiences could also be described in similar terms. The unstated notion which seems to underlie many of these arguments against same-sex marriage is that all licit sexual expression is about placing penises in vaginas and that the vast range of other sexual activity in which even married heterosexual couples might engage is not really acceptable sexual expression.

3. Marriage and the Churches. Some of the documents against same-sex marriage make arguments about universality. They claim, for instance, that marriage is universally understood (or universally understood by all world religions) to be the union of one man and one woman. But universal claims are difficult to sustain. The existence of polygamy would seem to call into question the universality of one man and one woman. And even if it could be verified that no

society or religion has ever sanctioned unions between same-sex couples (a huge task in itself), the contemporary situation where there are, in fact, those who do understand marriage to include same-sex couples makes the claim to universality false.

Several of the documents claim that in Europe, marriage was always recognized as a religious institution until very recently. As any look at the history of marriage makes clear, this is far from the case. Marriage, however, has not always been seen as a religious function. The early church did not involve itself in marriages. Insofar as the writers of the early patristic era were concerned with marriage, their concern was pastoral in nature, not the concern of making or validating, or even blessing marriages. Around the 4th century we have records of the blessing of marriages by priests, but such blessings were not required, even for the Christian faithful (Martos 1993: 40). Further, the blessings were not understood in any way to constitute the marriage. The marriage was constituted by the process of the couple giving mutual consent. All through the patristic period in the West, although a blessing by a priest on a marriage was possible, it was not common and it certainly was not required. When there was a blessing, it always took place after the constitution of the marriage, never as part of that constitution. The first known instance of a blessing by a priest during a wedding ceremony happened in 950 CE in Durham, England.

Canada took its views on the relation of marriage and the church from its British roots. The rights of Roman Catholic priests to perform marriages was protected in the Articles of Capitulation in 1760. Anglican clergy in Quebec were given the right to perform marriages between Anglicans in 1795. In English Canada initially only ministers of the Anglican Church were given the right to solemnize marriage in 1793. This was extended further in 1798 to include Presbyterian, Lutheran and Calvinist ministers; and further extended again in 1829 to include

Congregationalist, Baptist, Independent, Mennonite, Tunker, Moravian and Methodist ministers. Finally, in 1857 there was another extension to ordained ministers of “every denomination in Upper Canada” which included Jewish Rabbis (Arnup 2001).

Many of the documents also worry about the marginalization or alienation of religious persons and institutions from the state if the state redefines marriage. Although freedom of religion is protected in the Canadian Charter of Rights and Freedoms, the whole notion that it is the business of law or public policy not to alienate religious groups does not seem to be required in such a protection. Various laws as they now stand vary from the stances of religious traditions. As Robert Wintermute (2002:132) notes, freedom of religion itself requires that religious doctrines should be seen as irrelevant to the content of secular laws and human rights. Otherwise, the will of the religious majority would rule in law. “[L]iberal democracies . . . require everyone to accept and respect the differences of their neighbours. Religious individuals will remain free to apply their own religious beliefs to their own lives and will have to accept that the law does not require others to comply with their beliefs” (Wintermute 2002: 141).

The Roman Catholic church prohibits the remarriage in the church of divorced persons. In reforming the laws on divorce in the mid 1960s, the Canadian government chose to make divorce more accessible. Many churches (including, actually, the Canadian Roman Catholic bishops at the time) approved of these changes. No evidence is presented that Roman Catholics were alienated from the state by changes in the divorce laws.

The Roman Catholic Church has not been forced to marry divorced persons. Indeed, no one who has a license to preside over marriages is forced to marry all those who come to them with legal capacity to marry. No evidence is offered to argue why this will not continue to be the

case. Thus, conscience and religious freedom are preserved.

4. Moral and social values. Canada is a country in which moral and social values are diverse. It is not the job of the law to uphold the moral and social values held by any specific group of people, religious or otherwise, but to seek to find a way to mediate such that all Canadians receive equal and just treatment. Lawmakers and courts, like all other social institutions are, of course, influenced by the tenor of their times. Their job, however, is not just to reflect majority points of view, but to protect all Canadians.

If marriage really is an aid in social stability and the protection of children, then extending marriage to same-sex couples should produce more, not less stability. Certainly marriages are economic partnerships with varying economic arrangements, and women are still economically disadvantaged in Canada in comparison with men. But the documents offer no evidence that allowing same-sex couples to marry will disadvantage either women or children.

Analysis of Arguments in Favour of Same-Sex Marriage

Churches who favour same-sex marriage have, on the whole, produced fewer and briefer statements of their support than those opposed. It is not entirely clear why this is the case. Certainly it would appear that fewer resources have been expended in a church like the United Church of Canada to support same-sex marriage than have been devoted by groups like the Canadian Conference of Catholic Bishops and the Evangelical Fellowship of Canada to oppose it. The brevity of these documents might also suggest that the groups which favour same-sex marriage think that they are speaking to courts and governments and a society that are likely to agree with their opinions.

Churches that favour same-sex marriage do not think that there is anything universal about marriage. For these churches marriage is socially constructed in different ways over time by different societies. Nor is marriage inherently religious. The connection between marriage and religion is itself a socially constructed connection. Not only does marriage change over time, theology also changes over time. The theological opinion of one era give rise to changed ideas in another. As the brief history of marriage given above makes clear, this presumption of social construction is justified. But the documents do not generally provide their own constructions of the history of marriage to challenge the opposing view.

Most of the views supporting same-sex marriage depend on the assumption that people have a given sexual orientation and that this orientation is relatively fixed. There exist a wide variety of viewpoints on this issue which I am not going to try to arbitrate here. I do want to point out, however, that these churches will still have to grapple with what might arise if sexual orientation or same-sex desire is seen as more fluid.

The churches that support same-sex marriage also have an interest in social stability. But for them stability is served by supporting marriages in general, not just heterosexual marriages, and diversity of relationships is to be celebrated rather than feared.

Those churches that support same-sex marriage argue that if only one religious point of view on the matter is allowed to prevail their own religious freedoms are compromised. Further, they do not fear that the state will be telling them (or anyone else for that matter) whom they must marry.

These documents supporting same-sex marriage rely far less on detailed argumentation and more on the presumption of what justice requires than the documents of those who oppose

same-sex marriage. Their counterpositions are stated, but the positions are not generally supported by extensive argumentation. Thus, beyond stating and showing that not all churches oppose same-sex marriage and assuming this is what justice requires, the actual argumentation is fairly brief.

Conclusions

Although the primary intention of this paper has been to present the types of arguments made by various churches in the debate over same-sex marriage, my biases are probably quite clear to any reader. In my view, most of the arguments put forth by those opposed to same-sex marriage do not stand up in a public policy debate. In the end, it seems to me that these arguments are driven by theological motivations that are not usually stated in the documents. The non-theological format of argumentation chosen by most of the churches would seem to confirm that they think that theology would not be persuasive in public policy discussion in Canada. Because there are fewer churches in favour of same sex marriage and because the churches that favour same-sex marriage have not devoted as much time and energy to developing their positions, the appearance of lopsidedness in the arguments is probably inevitable.

What we are left with, then, are arguments based on the assumed naturalness of heterosexuality and heterosexual pairing; and arguments based on history. But in recent years most scholars have come to be suspicious of arguments that assume something to be “natural” or “universal.” A brief look at the history of marriage shows how much marriage has changed over time even in the Western world. Even a cursory look at families and patterns of procreation since the 1960s shows many changes in numbers of children in families, technologies to control fertility and infertility, patterns of conception and adoption, family structures and membership.

Views and patterns of marriage, procreation and family have changed over time and there is no reason to assume they will not continue changing as the needs and values of societies change.

Marriage is not inherently or historically a religious institution, even if religious traditions have often involved themselves in the making or blessing of marriages. Thus, although churches, because they have historically been involved in marriages, do have a right to a point of view, that point of view should in no way be allowed to dominate the public debate.

As to the question of freedom of religion, no change in the law will violate the ability of Canadians to practice their religion as they see fit in regard to marriage so long as there is no attempt to impose particular points of view on all Canadians.

List of Abbreviations

ACC--Anglican Church of Canada

CCCCB-- Canadian Conference of Catholic Bishops

CUC--Canadian Unitarian Council

EFC--Evangelical Fellowship of Canada

EPC--Evangelical Pentecostal Church

IC--Interfaith Coalition

ICM--Interfaith Coalition for Marriage

ICMF--Interfaith Coalition on Marriage and Family

ICMTF--Interfaith Coalition on Marriage and the Family

LCDH--La Ligue Catholique pour les Droits de l'Homme et Alliance Évangélique du Canada

MCCT--Metropolitan Community Church of Toronto

PAOC-- Pentecostal Assemblies of Canada

SA--Salvation Army

UCC--United Church of Canada

Notes

1. Courts grant intervener status, that is, permission to enter into a lawsuit, in specific lawsuits to those whom they deem have some right or interest in the suit.

2. For a full chronicle of legislation and court cases around same sex marriage see Kathleen Leahy and Kevin Alderson (2004) *Same-sex marriage: the personal and the political*. Toronto: Insomniac Press or The Equal Marriage web site (www.samesexmarriage.ca)

3. The Evangelical Fellowship of Canada has been a main player in the various Interfaith Coalitions that have formed around the issues of same-sex relationships and same-sex marriage. From the court documents it is not clear who, beyond the Evangelical Fellowship of Canada was included in the “Interfaith Coalition on Marriage and the Family” (1995). The “Interfaith Coalition” (1999) included The Evangelical Fellowship of Canada, The Ontario Council of Sikhs, The Islamic Society of North America, Focus on the Family. The “Interfaith Coalition for Marriage” (2001) included the Evangelical Fellowship of Canada; the Archdiocese of Vancouver; the Council of Sikhs, BC; the BC Muslim Association; the Islamic Society of North America; the Ontario Conference of Catholic Bishops; the Ontario Council of Sikhs; the Catholic Civil Rights League. The “Interfaith Coalition on Marriage and Family” (2003) included The Evangelical Fellowship of Canada, the Catholic Civil Rights League, the Islamic Society of North America, and the Canadian Conference of Catholic Bishops.

4. The full text of Bill C-38 can be found at:
www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-38/C-38_1/C-38_cover-e.html

5. Michael Hendricks and René Leboeuf were the appellants in the cases concerning same sex marriage in Quebec.

6. The Metropolitan Community Church of Toronto, as the largest Metropolitan Community Church in Canada has taken the lead in making statements on same-sex marriage in Canada. I treat these as official statements because they are consonant with the denomination’s opinions.

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