



YWCA
T O R O N T O

A TURNING POINT
FOR WOMEN



United Way

“YWCA Toronto Takes a Public Position in Support of Same Sex Marriage”

February 2005

On February 15, 2005, YWCA Toronto’s Board of Directors met and passed the following resolution unanimously: “*That YWCA Toronto takes a public position in support of same sex marriage*”

The following position paper outlines our reasoning for doing so.

What

Currently, through a gradual process of litigation act by act and jurisdiction by jurisdiction, lesbians and gays in Canada have broken down the various aspects of public life that openly discriminate against them – for sexual practices in the criminal code, harassment and unfair dismissal in workplace, adoption regulations, insurance coverage and awards, immigration law, psychiatric committal processes, and so on. The last remaining area of contested legal discrimination is in the definition of marriage, currently worded to be “between one man and one woman”. Following expensive and successful legal battles mounted by individuals in Ontario and B.C. arguing that their Charter Rights had been violated because the state refused to sanction or recognize the legality of their union the matter has become one of national debate.

Where

Canada is at an historic juncture. Canada could soon become a leader in human rights internationally by legalizing same sex marriage across the country.

When

On February 1, 2005, Justice Minister Irwin Cotler tabled legislation to entrench marriage equality for lesbian and gay couples across Canada, to be known as the Civil Marriage Act (Bill C-38). ***The Wording of the Draft Bill is available as Appendix “A”.**

The next step in the legislative process will be a second-reading debate, which will likely start this week (Wednesday February 16th).

The vote is too close to call. The Globe and Mail recently surveyed Members of Parliament. 139 MPs said they would vote in favour of legislation and 118 MPs said they

would vote against the legislation, while 49 are undecided or would not state a position. To pass into law, the bill needs the support of 154 MPs.

Why take a stand

What makes this issue a women's issue?

There are many reasons for YWCA Toronto to support the proposed Bill C-38. Roughly, they fall into three categories:

1. **The separation of Church and State.** The only argument against granting full citizen rights to gays and lesbians is based on a conflict between secular and religious moral codes. By definition, religious codes define social behaviour in moral terms. The groups that are defined as such are known in advance; they are groups protected under our secular legal system, which is rights based (women, homosexuals, ethnic minorities). When we respond to religious objections to the inclusion of certain groups in a rights framework in the name of religious freedom, we wind up tolerating oppression. Those deemed by a particular religious group to have no legitimate claim to equality rights because their identity and conduct are seen through a moral lens then have their civil rights diminished. A rights framework shortcuts this elusive, subjective and shifting determination through transparent, if highly imperfect, principles. It has proven crucial in providing access to fairness for groups previously seen to be "less equal". There is nothing in a rights framework that of necessity impinges on religious freedom.
2. **Lesbians are women,** and this is a lesbian issue. The women's movement in Canada owes a great debt to the leadership of lesbians who have often gone about their struggle for all women from a place of invisibility. When leaders and foremothers among us are denied their rights, it is important for those with rights granted to stand up and defend those under attack.
3. **Feminists are just a bunch of lesbians.** Likewise, it has long been the case that the label of "lesbian" has been used as a fear-producing insult to those heterosexual women who defy traditional gender restrictions or stand up to be counted in traditionally male bastions. This derogatory attempt to demean women's achievements and aspirations makes it clear that there is a deep link between the acts of prejudice against lesbians and those against all women. Curtailment of the rights of some among us on the basis of "gender crimes", leave open the possibility of acts of discrimination against all of us for "gender crimes" of another sort.

The Precedents

Within the history of YWCAs advocacy work, there are precedents for linking the current struggle for same-sex marriage rights to other struggles for women's rights and the broader aims of the Canadian women's movement.

Lesbian Rights In 1973, YWCA Toronto becomes the organizer and host of the first ever lesbian conference in Canada, gathering lesbian leaders and activists to begin the discussion of lesbian rights within a women's rights agenda at 21 McGill Street.

The equality Guarantee in the Canadian Charter of Rights and Freedoms In 1981, YWCA Toronto backs the struggle to have the Canadian Charter of Rights and Freedoms include the equality of women, with the understanding that the Charter must

guarantee the universal access to the same rights and freedoms at the same time as it protects religious freedom.

Pro-Choice In 1981, YWCA Toronto took a position that was pro-choice with regard to the repeal of the Canadian Abortion Act, as section of the criminal code making abortion illegal. The pro-choice movement argues their case on the basis of “choice” because it is inclusive of a larger women’s rights agenda that promotes choice in and all matters of reproduction and sexuality, including sexual orientation and birth control (non-procreative sexuality).

Transgendered Rights and Access In February 1998, YWCA Toronto adopted a policy allowing male to female transgendered individuals living full time in the female gender access to all YWCA services without restriction. This decision was based in part on the understanding that the issue, “illuminates one of the most important contributions of the women’s movement, the understanding that gender is a socially constructed category, and that the restrictive nature of many cultural conceptions of feminine and masculine have limited women’s access to public life and been used to limit the rights of women” (YWCA Discussion Paper on serving Transgendered Individuals, Fall 1997, Amanda Dale).

Sharia Law In January of 2005, YWCA took a public stance against the inclusion of religious based arbitration in matters of family law on the basis that it confused a religious moral code with a secular system of legal protection. (Women’s rights in a Secular Democracy, December 2004, Amanda Dale for YWCA Toronto’s Board of Directors).

YWCA Toronto supports the enactment of Bill C-38 based on the following points:

- Bill C-38 has been proposed with broad consultation and the consideration of The Supreme Court of Canada, and brings our legal practices in line with the Canadian Charter of Rights and Freedoms, a document YWCA worked to have include equality guarantees because universality is a principle we support
- The Canadian practice of provincial governments licensing clergy to enact marriage legally confuses the distinct entities of church and state, something unacceptable in a modern pluralistic society.
- Although religious traditions have adopted their own interpretations of marriage based on their particular religious principles, marriage is not, first and foremost, a religious matter, but a matter of social organization and decision, or
- The state's interest in marriage is not connected to the promotion of a particular conception of appropriate gender roles, nor is it to reserve procreation and the raising of children to marriage. The state's objectives underlying contemporary regulation of marriage relate essentially to the facilitation of private ordering: providing an orderly framework in which people can express their commitment to each other, receive public recognition and support, and voluntarily assume a range of legal rights and obligations
- Stripping religious institutions of their legal authority to marry would not dull the rituals of celebration or undermine the religious institutions’ role in sanctioning a union before their God
- Since our incorporation in 1873, family life has been transformed from one focused heavily on the extended family to one defined more by the "nuclear" family,. The law has also come to recognize common-law relationships and provide for support and custody in the event of family breakdown. Through it all, the battle for justice has been waged largely by women.
- Equality and dignity go hand in hand. There is no dignity, and therefore no equality, when the law ostracizes one particular group based on stereotypes.

- The push for changes to the law, in response to the changing nature of the family, is part of a global phenomenon, and Canada could “come out” as a leader in this regard.

The only objection YWCA Toronto has to Bill C-38, is in its wording: it makes explicit reference to the freedom of religious officials to refuse to perform marriages –a gratuitous and, we believe, discriminatory reference made redundant by the protection guaranteed by the Canadian Charter of Rights and Freedoms. This reference belongs better to the background rationale for the Bill than in the wording of the Act itself. We believe this to be a concession to religious doctrine out of place in a piece of legislation in a secular democracy (See 2, in Appendix A below).

Who –Those against

Leading the voices against the act as proposed are the Roman Catholic Church and Focus on The Family, a US-based organization, that has begun its \$1.5 million ad campaign against equal marriage in Canada. In addition, Muslims, Orthodox Jews, and evangelical Protestants joined the Roman Catholic Church in opposing same-sex marriage in the marriage cases currently underway in Canada. They do so on the basis that (the following can be found at: <http://www.family.org/cforum/extras/a0032431.cfm>, the official web site for Focus on the Family):

“...[The definition of marriage] will be supported by nothing more substantial than the opinion of a single judge or by a black-robed panel of justices. After they have reached their dubious decisions, the family will consist of little more than someone’s interpretation of ‘rights.’ Given that unstable legal climate... How about group marriage, or marriage between cousins, or marriage between daddies and little girls? How about marriage between a man and his donkey? Anything allegedly linked to “civil rights” will be doable. The legal underpinnings for marriage will have been destroyed”.

Overall, we can generally draw a “straight” line between those who oppose same sex marriage and those who advocate a religious based patriarchal view of the family and social relations that include traditional gender roles curtailing the rights of all women.

For more information please see <http://www.ywcatoronto.org/index.htm>.

Appendix A

Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes:

WHEREAS marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians;

WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the *Canadian Charter of Rights and Freedoms*, access to marriage for civil purposes should be extended to couples of the same sex;

AND WHEREAS everyone has the freedom of conscience and religion under the *Canadian Charter of Rights and Freedoms* and officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.
2. Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs.

Consequential amendments will be added in the bill that is introduced in Parliament.*

* Consequential amendments are changes to other federal statutes that will have to be made as a result of new legislation.

Appendix B
Federal Government's Rationale for Tabling Bill C-38

The Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination. The Parliament of Canada is committed to upholding the Charter and the Constitution.

The Government believes that same-sex couples should have equal access to marriage - anything short of that is less than equal and discriminatory. The Government cannot, and should not, pick and choose whose rights they will defend and whose rights they will ignore. If the fundamental rights of one minority can be denied, so potentially can those of others. This bill will respect and defend the Charter rights of all Canadians.

Courts in eight jurisdictions have recognized that the right to equality without discrimination requires that couples of the same sex have equal access to civil marriage. And thousands of same-sex couples are already legally married.

The Canadian Charter of Rights and Freedoms also guarantees freedom of conscience and religion. Nothing in this Bill affects that guarantee and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs. It is for this reason that the Act speaks only of civil marriage. Religions will continue to make their own decisions about this question.

Many Canadians support legal recognition for same-sex unions, but want to call them something other than marriage, such as civil union. Civil union is a separate institution from civil marriage, does not respect the right of same-sex couples to equality without discrimination and is in breach of the Canadian Charter of Rights and Freedoms.

The Supreme Court of Canada has determined that Parliament has legislative jurisdiction over marriage but does not have the jurisdiction to establish an institution other than marriage for couples of the same sex.

The Government's commitment to uphold the right to equality without discrimination precludes the use of the notwithstanding clause to deny the right of couples of the same sex to equal access to civil marriage.

Marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians.