



June 10, 2005

Marcel Proulx  
Chair  
Legislative Committee on Bill C-38  
Sixth Floor, 180 Wellington Street  
Wellington Building  
House of Commons  
Ottawa ON K1A 0A6

Dear Mr. Proulx,

**RE: Bill C-38, *Civil Marriage Act***

The Canadian Bar Association appreciates the opportunity you gave us to address the Legislative Committee studying Bill C-38 (*Civil Marriage Act*) last week. The purpose of this letter is to correct the record with respect to a question asked of us by Member of Parliament Brian Jean.

Mr. Jean quoted from what he referred to as a "March 2003 Senate Report":

Thus the CBA supported the bill which sought to confer these rights and responsibilities on same-sex couples and heterosexual common law partners. This was to be accomplished by creating a definition of "common law partner" applicable to both opposite sex and same-sex conjugal relationships. (The term spouse would be reserved for married heterosexual couples.)

Without the document before us, we could not know the context of that quote. We responded that the CBA's position has remained entirely constant in support of equal marriage, and speculated that the quote was in the specific context of *Modernization of Benefits Act* (Bill C-23). In fact, the quote is not a statement of the CBA's position, but rather a rough paraphrase that merely *describes* Bill C-23. The 2000 and 2003 submissions to which Mr. Jean referred are quite clear about the CBA's views on equal marriage.

At page 4 of the 2000 submission, the CBA described Bill C-23:

Bill C-23 is the first legislative initiative which seeks to include lesbian and gay couples in federal legislation by incorporating them under a definition of "common law partner" applicable to both opposite-sex and lesbian and gay

conjugal relationships. The term “spouse” is reserved for opposite sex couples who are married.

The CBA opposed the “marriage amendment” to Bill C-23 proposed in 2000, which would have proclaimed that marriage was the “lawful union of one man and one woman to the exclusion of all others”. Then CBA President, Eugene Meehan, wrote to the Senate Legal and Constitutional Affairs Committee in May 2000, stating that:

Bill C-23 seeks to include lesbian and gay couples under the rubric of “common law partner” while reserving the term “spouse” for married heterosexual couples. Given the existing *Charter* jurisprudence, the inclusion of gay and lesbian couples under the definition of “spouse” is constitutionally recognized. Before the House Committee, we expressed our concern that the creation of a separate category of “common law partners” rather than an inclusive definition of “spouses” was a political compromise which might attract *Charter* scrutiny due to this jurisprudence. The “marriage amendment” enhances this concern because it draws an explicit legislative boundary around those who can become spouses (those in heterosexual relationships) and excludes those who can't (those in gay and lesbian relationships)... It thus exacerbates the compromise and will likely lead to further litigation.

At page 5-6 of the 2003 brief, the CBA reiterated its 2000 position that common law partners should have equal rights and responsibilities, regardless of sexual orientation, saying (about Bill C-23):

Thus, the CBA supported the Bill, which sought to confer these rights and responsibilities on same-sex couples and heterosexual common-law partners. This was to be accomplished by creating a definition of “common law partner”, applicable to both opposite-sex and same-sex conjugal relationships (the term “spouse” would be reserved for married heterosexual couples)... *The CBA also warned the government that, in its view, the segregation of same-sex relationships into the category of “common law partner” while reserving “spouse” for married, opposite-sex couples both ignored the existing jurisprudence and invited constitutional scrutiny because of the denial of marriage to same-sex spouses.* (emphasis added)

Should any confusion remain as to the CBA’s stand on equal marriage, one need only refer to the next heading of the 2003 brief, at page 8: “*Recommended Approach: Give Same-Sex Couples the Legal Capacity to Marry*”.

We trust this will assure all Committee members that the CBA has consistently supported equal marriage.

Yours very truly,

*(Original signed by Tamra Thomson on behalf of James Lebo and Sean Foreman)*

James L. Lebo, Q.C.

Sean Foreman