



OFFICE OF THE PRESIDENT  
CABINET DU PRÉSIDENT

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December 6, 2006

The Honourable Stephen Harper, P.C., M.P.  
Prime Minister of Canada  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Prime Minister:

I write on behalf of the Canadian Bar Association (CBA). The CBA is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

We strongly urge you not to re-open Parliamentary debate on the subject of equal marriage. Revisiting the debate would not only contradict the clearest possible determinations made by appellate courts in Canada, but would tarnish Canada's human rights record.

The CBA has historically supported initiatives aimed at eliminating discrimination based on sexual orientation. These include the *Modernization of Benefits and Obligations Act*, concerning federal benefits and obligations for heterosexual and same-sex common-law partners, the sentencing provisions of Bill C-41 covering hate crimes against gays and lesbians, and the inclusion of sexual orientation in the *Canadian Human Rights Act* as a prohibited ground of discrimination. In 2004, we intervened in the Supreme Court of Canada reference on the constitutionality of the proposed *Civil Marriage Act*, emphasizing the practical impact of inconsistent treatment of marriage and divorce throughout Canada.

The Courts of Appeal for Ontario, Quebec and British Columbia, as well as superior courts in five other provinces, have held that precluding civil marriage for same-sex couples is a violation of the *Canadian Charter of Rights and Freedoms*. For example, the Ontario Court of Appeal in *Halpern et al. v. Attorney General of Canada* stated:

The societal significance of marriage, and the corresponding benefits that are available only to married persons, cannot be overlooked. Indeed, all parties are in agreement that marriage is an important and fundamental institution in Canadian society. It is for that reason that the claimants wish to have access to the institution. Exclusion perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships.



In response to those decisions and to a lengthy and divisive public debate, Parliament extended the definition of marriage to include same-sex couples through the *Civil Marriage Act* in 2005, a decision which was taken after ensuring that the Supreme Court of Canada found the government's new legislation to be constitutional.

Arguments to the effect that the *Civil Marriage Act* is an infringement of the religious rights of Canadians are misleading. The Supreme Court of Canada also confirmed that section 2(a) of the *Charter* protects officials of religious institutions from being compelled to marry same-sex couples if contrary to their faith.

Other potential approaches to the marriage question, including legally recognizing same-sex unions though the creation of a separate civil registry, effectively relegate same-sex partnerships to a second-class form of relationship and will not provide equality.

We urge you to consider whether it is wise for Parliament to embark on a journey that may lead to the introduction of unconstitutional legislation. If re-opening the debate results in legislation reinstating the opposite-sex definition of marriage, considerable legal confusion would result, along with further protracted litigation to resolve the issue.

South Africa has recently recognized the right of same-sex couples to marry. Canadians are proud of the fact that Canada and its Constitution have served as a model for human rights protection and respectful democracy in countries such as South Africa. To move backwards on the issue of equal marriage at this time would send a negative message to countries around the world which look to Canada as a beacon for equal rights protection.

We call upon you to withdraw the motion to introduce new legislation defining marriage as excluding same sex couples. We urge you to let the *Civil Marriage Act* remain in force as it stands.

Yours sincerely,

*(original signed by J. Parker MacCarthy)*

J. Parker MacCarthy, Q.C.

cc. Hon. Stéphane Dion, P.C., M.P.  
Gilles Duceppe, M.P.  
Jack Layton, M.P.