



March 22, 2012

Via email: NichoR@parl.gc.ca

The Honourable Robert Nicholson, Q.C., P.C., M.P.,  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Minister:

**Re: Bill C-32, *Civil Marriage of Non-Residents Act***

We are writing on behalf of the Canadian Bar Association's National Family Law Section (CBA Section) and Sexual Orientation and Gender Identity Conference (SOGIC), to express our views on Bill C-32, *Civil Marriage of Non-Residents Act*.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, with a mandate that includes seeking improvements in the law and the administration of justice, and promoting equality in the law. The CBA Section consists of lawyers specializing in family law from every part of the country. SOGIC represents lesbian, gay, bisexual, transgendered (LGBT) and two-spirited members within the Association and provides a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity.

The CBA has advocated for equal marriage for same-sex couples and supported initiatives aimed at eliminating discrimination based upon sexual orientation. Since equal marriage was obtained for same-sex couples in Canada,<sup>1</sup> gay and lesbian couples from around the globe have come to Canada to get married. Canada has been celebrated as a world leader in the recognition of LGBT rights. In our view, Canada has an obligation to also afford these couples a remedy should their relationships break down. The CBA appreciates the government's efforts to address the current legislative deficiency and supports Bill C-32.

Bill C-32 would address the problem in two ways. First, the Bill makes it clear that a marriage in Canada, consistent with Canadian law, rights and values, will be recognized as valid in Canada, regardless of whether the domicile of the parties recognizes the relationship, or treats it in a discriminatory manner.

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<sup>1</sup> Bill C-38, *Civil Marriage Act*, received Royal Assent in July 2005; Statutes of Canada, 2005 c.33.

Second, the Bill provides a remedy for non-resident couples who came to Canada to marry, but now find they wish to dissolve their marriages, and have no option to do so in their own domicile.

We have examined Bill C-32 in some detail. While we support the spirit and objectives of the Bill, we believe the goal should be to treat non-resident divorces as consistently as possible to other divorces granted in Canada under the *Divorce Act*. To that end, we suggest the following changes:

1. The objectives of the Bill could be more effectively achieved through a consequential amendment to the *Divorce Act*, similar to the approach in the original *Civil Marriage Act*.<sup>2</sup> This approach would ensure greater consistency between the treatment of resident and non-resident marriages. For example, non-resident divorces could be granted on grounds other than separation.<sup>3</sup> Corollary relief applications for custody or child or spousal support could still be excluded, given the practical difficulties in enforcing any such orders.
2. An application should not be limited to joint or consent applications, or based on the exceptions under section 7(2) of the Bill requiring an order from a foreign jurisdiction that may not recognize the relevant relationship, and perhaps even be hostile to it. It is unreasonable to expect parties to obtain an order in their domicile to declare the other spouse incapable, unavailable or unreasonable, particularly if that domicile does not recognize the relationship. Canadian courts routinely deal with service or other issues where the opposing party is domiciled outside of Canada. Canadian courts could and, in our view, should make these determinations, as the small number of non-resident divorces would not cause undue burden on Canada's justice system.
3. In section 7(1)(c), the one-year residency requirement should apply only to one spouse, not both. Otherwise, one spouse could prevent the other spouse's application by moving within each year.
4. In section 5(3), "as of the day on which the order takes effect" should be replaced with "as of the effective day of the order."
5. Finally, we suggest an amendment to allow an appeal period similar to that for other divorces in Canada.

We trust that our suggestions will be helpful, and appreciate the opportunity to comment on Bill C-32.

Yours truly,

*(original signed by Gaylene Schellenberg for Kelly D. Jordan, Marck L. Berlin, and Amy Sakalauskas)*

Kelly D. Jordan  
Chair, National Family Law  
Section

Mark L. Berlin  
Co-Chair,  
Sexual Orientation & Gender  
Identity Conference

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<sup>2</sup> The *Civil Marriage Act*, *ibid.*, included consequential amendments to, for example, the *Divorce Act*, the *Modernization of Benefits and Obligations Act*, and the *Income Tax Act*.

<sup>3</sup> The *Divorce Act* permits a divorce upon a breakdown of the marriage, which can be established by separation of one year, adultery, or physical or mental cruelty.