

Submission to the House of Commons Standing Committee on Justice and Human Rights on the Issue of Marriage and the Legal Recognition of Same-Sex Unions

4 April 2003

Steinbach, Manitoba

Presented by Janet Baldwin, Chairperson, and Elliot Leven, Commissioner

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The Manitoba Human Rights Commission would like to thank you for the opportunity to appear before you at these hearings with respect to marriage and same-sex unions. We hope that the federal government will take immediate action to address this important issue.

It is the mandate of The Manitoba Human Rights Commission to enforce the anti-discrimination provisions of *The Human Rights Code* and to educate the public as to *The Code's* provisions. We also promote the principle that we are all free and equal in dignity and rights, and we further the principles of equality of opportunity and equality in the exercise of civil and legal rights, regardless of status.

We discharge these responsibilities mindful of the *Charter* and of the international instruments that Canada has entered into, such as the Universal Declaration of Human Rights. As our *Code* states, the principle underlying these undertakings is “the individual worth and dignity of every member of the human family”, and implicit in this principle “is the right of all individuals to be accorded equality of opportunity with all other individuals.”

The exclusion of same-sex couples from marriage undermines this principle. The recent *Halpern*, *Hendricks*, and *EGALE* decisions all found that the exclusion of same-sex couples from marriage violates the equality provisions of the *Charter*, although *EGALE* found this to be justifiable under section 1. It is the view of The Manitoba Human Rights Commission that the exclusion of same-sex couples from marriage is discrimination on the basis of sexual orientation, and a violation of the equality rights of gays and lesbians.

Human rights legislation and the equality provisions of the *Charter* exist because of the historical disadvantage and prejudice that members of minority groups have faced. Safeguarding these equality provisions requires legislators to take measures that preserve the dignity and rights of all Canadians.

As Justice Blair stated in the *Halpern* case:

“...the constitutional and *Charter*-inspired values which underlie Canadian society today dictate that the status and incidents inherent in the foundational institution of marriage must be open to same-sex couples who live in long-term, committed, relationships – marriage-like in everything but name – just as it is to heterosexual couples. Each is entitled to full and equal recognition, and the law must therefore be adapted accordingly.”

The Manitoba Human Rights Commission urges this Committee to recommend to the Government of Canada that it legislate to remove the opposite-sex requirement for parties to a marriage, thereby permitting same-sex couples to legally marry. In our view, this is the option under consideration, which is required to eliminate the discrimination on the basis of sexual orientation in the current marriage provisions.

The Commission has long worked to eliminate discrimination on the basis of sexual orientation and other protected grounds in Manitoba. Since the passage of *The Human Rights Code* in 1987, we have investigated, mediated and litigated a number of complaints based on sexual orientation. With the *Vogel* case, for example, we successfully challenged our then provincial government’s denial of spousal benefits to the same-sex partner of an employee.

The Commission recently appeared before The Legislative Assembly of Manitoba Standing Committee on Law Amendments to voice our support for *The Charter Compliance Act* and *The Common-Law Partners’ Property and Related Amendments Act*. These acts and the earlier *An Act to comply with the Supreme Court of Canada in M.v.H* addressed a number of issues of discrimination on the basis of marital or family status and sexual orientation. They eliminate much of the systemic discrimination that common-law partners, and in particular, same-sex common-law partners, have faced in Manitoba.

Nevertheless, as we have stated before The Review Panel on Common-Law Relationships in Manitoba, before The Legislative Assembly of Manitoba Standing Committee on Law Amendments, and directly to the Minister of Justice of Manitoba, many of the legal and social inequalities faced by gays and lesbians flow from the legal barrier that precludes same-sex couples from marrying.

We would now like to address the option set out in the Department of Justice's discussion paper that would retain marriage as an "opposite-sex institution" but establish a system of civil union or domestic partnership for "other conjugal relationships". Our position is that this is not sufficient to eliminate the discrimination based on sexual orientation in the current federal law with respect to marriage, and would not adequately address the equality concerns under section 15 of the *Charter*.

As Chief Justice Beverly McLachlin of the Supreme Court of Canada said on March 7 of this year, while speaking at the LaFontaine-Baldwin lecture in Halifax:

"Formal declarations of equality are not enough to remove discrimination and exclusion. Indeed, they may perpetuate them. Formal equality is the equality of "separate but equal". The group is hived off, labeled "different", and told that they are equal with one important qualification – equal within their designated sphere."

Let us not create another example of what she calls the "façade of formal equality", by limiting same-sex partners to a scheme of domestic partnerships or civil unions, while continuing to bar them from the choice to marry.

The Manitoba Human Rights Commission also rejects any approach that would remove all federal references to marriage, create a neutral registration system for all conjugal relationships, and leave marriage to the exclusive purview of individuals and their religious institutions. This would not only continue to exclude most same-sex couples from marrying, but would also exclude opposite-sex couples who were not participants in a religious congregation from choosing to marry.

Thank you. We would, of course, be happy to answer any questions that Committee members may have.