

Court File No. 684/00

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:**HALPERN et al.,****Applicants****- and -****CANADA (ATTORNEY GENERAL) et al.,****Respondents**

Court File No. 30/2001

A N D B E T W E E N:**METROPOLITAN COMMUNITY CHURCH OF TORONTO,****Applicant****- and -****CANADA (ATTORNEY GENERAL) et al.,****Respondents**

AFFIDAVIT OF DR. ADÈLE MERCIER

I, Adèle Mercier, professor, of the City of Kingston in the Province of Ontario, **MAKE OATH AND SAY:**

1. I hold M.A.'s in Philosophy from the University of Ottawa and the University of

California at Los Angeles (UCLA), an M.A. in Linguistics from UCLA, a Ph.D. in Philosophy from UCLA as well as a C.Phil. (Ph.D. minus dissertation) in Linguistics from UCLA. UCLA is internationally recognized as one of the best universities world-wide for the study of logic, philosophy of language and mind, and linguistics. I did two years of post-doctoral work at the Center for Studies in Language and Information at Stanford University in California, as well as at the Centre de Recherche en Epistémologie Appliquée of the Centre National de la Recherche Scientifique in Paris, France. I am currently a Queen's National Scholar and tenured Associate Professor in the Department of Philosophy at Queen's University. I am cross-appointed to the Linguistics Program, and have several, related, areas of expertise.

2. My work as a philosopher is principally in the philosophy of language and the philosophy of mind. My work as a linguist is principally in the semantics and pragmatics of natural language. I have an unusually broad background in both philosophy and linguistics. I am competent in a wide range of areas within these disciplines, including semantics and syntactic theory, ethics, metaphysics, epistemology and logic.

3. The philosophy of language is a branch of philosophy that deals with such questions as: how words acquire meanings and how speakers succeed in transmitting them to each other; whether and how we know the meanings of the words in our language; what the relation is between the meaning of the word and the objects in the world to which the word refers; how we can refer to things that don't or no longer exist; under which conditions linguistic usages are sexist or racist; whether *kinds* of things (biological kinds like dogs, chemical kinds like water, social kinds like marriage, functional kinds like chair, and so on) are objective or natural or constructed by language; and other questions of this sort. I have published numerous articles and written a large number of papers dealing with all of these topics. I am currently writing a book on what a word, what a language and what a linguistic community fundamentally are.

4. The philosophy of mind is a branch of philosophy close to the philosophy of language which deals with such questions as: what concepts are and how they are acquired; what role

experts play in our acquisition of concepts; what social norms are, how they come to be, and how we know them; whether and how we know the contents of our own thoughts; what kind of objects thoughts are; how thought and language are related; how we succeed in thinking about objective things in the world; how conceptual change comes about and how that is related to linguistic change; whether and how language shapes perceptions of reality; and other questions of this sort. I have published articles dealing with all of these topics. One of my published articles on language and mind was awarded a Special Distinction at one of the yearly meetings of the American Philosophical Association.

5. The study of the semantics and pragmatics of natural language is both a theoretical and an empirical study which treats of such questions as: how, in natural languages (i.e. those spoken by humans, as opposed to formal languages like mathematics, and computer languages) different kinds of words mean what they mean; how one and the same linguistic expression can be used in different senses or to perform different functions; how speakers and hearers communicate certain kinds of information that remain unstated in the sentence; what role context plays in what is said; what distinction exists between what is meant and what is said; and other questions of this sort. My linguistic expertise always influences my work in philosophy.

6. On the basis of my analysis of the affidavits filed in this matter by Professor Susan Ehrlich and Professor Robert Stainton, it is my opinion that Professor Stainton's criticisms of Professor Ehrlich are based on faulty reasoning: his arguments are either question-begging, irrelevant or based on a significant misstatement of Professor Ehrlich's position.

7. In his affidavit filed in response to Professor Ehrlich's affidavit, Professor Stainton rejects her position, concluding that extending the definition of 'marriage' to include lesbian and gay couples would have to alter the very meaning of the term, which "is in conflict with the normal use and development of language." (para. 64) In this affidavit, I review each of Professor Stainton's arguments and demonstrate why, in my professional opinion, his analysis cannot be supported.

ON PROFESSOR STANTON'S PART II: WHAT THE WORD 'MARRIAGE' MEANS

Preliminaries

8. Only sound reasoning leads to true conclusions. Reasoning is *sound* if and only if (a) its premises are *true* and (b) the conclusion follows from the premises by correct application of the principles of logic. I will show that Stainton's argument in his affidavit is *unsound*, as it violates time and again *at least* condition (b) above. I will show that Stainton's views are either *tautological* (i.e., *question-begging*), *fallacious*, or *irrelevant*.

9. An argument *begs the question* when the conclusion it purports to *derive* from the premises is itself one of the premises. Question-begging arguments establish nothing at all. *Of course* if you assume that the moon is made of green cheese, you can prove that the moon is made of green cheese. P *always* entails P.

10. I will show that most of Stainton's arguments are question-begging. Most implicitly have the form:

If a marriage is only between a man and a woman, (plus some other considerations,) then a marriage is only between a man and a woman.

Tautologies like this teach us nothing whatsoever about anything, least of all about the meaning of the word 'marriage' in contemporary English, or about the nature of marriage in contemporary North American society.

11. I will show that the rest of Professor Stainton's arguments are either fallacious or irrelevant. An irrelevant argument can easily be spotted because it typically has the form: P *does not* entail Q.

Eg. From the fact that I can ride a bicycle, it doesn't follow that I can ride a motorcycle.

This is true. But the problem with an argument of this form is that:

From the fact that I can ride a bicycle, it doesn't follow that I *can't* ride a motorcycle.

If from the fact that I can ride a bicycle, it neither follows that I can, nor that I can't, ride a motorcycle, then riding a bicycle is strictly irrelevant to riding a motorcycle. Many of Professor Stainton's arguments are irrelevant.

Review and critical analysis of Professor Stainton's reasoning:

12. In paragraph 9 of his affidavit, Professor Stainton states his argument thus:

It is part of the present meaning of the word 'marriage' in our common tongue that it applies only to male-female conjugal unions. In which case, given the present meaning, it is a necessary truth that same-sex couples cannot marry.

This argument is guilty of several confusions, the most egregious being that of conflating what a word *means* and what objects in the world it *refers* to.

Meaning and *reference* are importantly distinct: The words 'unicorn,' 'the mountain made of gold,' 'the round square', all have a *meaning* -- but they do not *refer* to anything in the world.

13. I doubt that the word 'marriage' has never been used to refer to same-sex couples. There are anthropologists, *who describe their findings in ordinary English*, who maintain that certain cultures (in Africa, for example) permit women to marry other women. (Note moreover that, because of recent events in the Netherlands, as of April 1st (and closer to home), it is no longer the case that the word 'marriage' refers only to pairs of men and women.) Since I am not an anthropologist but a philosopher of language, let me say only this: *Even if it were true* that the word 'marriage' had *referred* in the past only to pairs of men and women, that would *in no way* constitute an argument about the word's *meaning*, nor an argument that the word 'marriage' cannot refer to pairs other than of men and women. It was true before women were allowed into law school that the words 'judge' and 'lawyer' then *referred* only to men. To see the flaw in Professor Stainton's argument, one need only imagine someone a century ago objecting thus to

the admission of women into law school:

The word 'lawyer' in our common tongue currently applies only to men. In which case, it is a necessary truth that a woman cannot be a lawyer.

14. The *meanings* of all words of all languages, with the exception of personal proper names (which refer all and only to well-defined *single* objects, i.e. to a person), *always* stretch beyond their current *reference*. The word 'Canadians' currently applies to a different group of people than it applied to a hundred years ago, and than it will apply to a hundred years hence. As Canadians are born and die, the word 'Canadian' undergoes a reference change. Words can undergo reference changes without a change in meaning, *unless* we are prepared to say that what we *mean* by 'Canadians' is just the group of people to whom it has ever applied (in which case it is a necessary truth that none of our descendants, nor any new immigrants, can be Canadians). But words just don't work like that.

15. If there never have been and currently are no citizens of Canada who come from, say, Myanmar, that is no argument that it is a necessary truth that Canadians cannot come from Myanmar. Since before Emancipation, the word 'citizen' had never been applied to Blacks in the US, it would follow from Professor Stainton's claim that, as a matter of necessity, Blacks cannot be citizens. Professor Stainton's claim commits him to the view that Emancipation, by extending its reference, *changed the very meaning of the word 'citizen'*. That is, he is committed to the view that, after Emancipation, even whites were no longer citizens according to the usual meaning of that term in the language.

16. Professor Stainton's argument misrepresents the relationship between meaning and reference. If I live on an island where there are only maples and pines, and so I have only applied the word 'tree' to maples and pines, that nowise means that when I visit the mainland and bump into a beech, I cannot, or even ought not, call it a tree. Just because swans have always been white does not mean that it is of necessity that swans be white, so that the first black swan,

though begotten from swans, *cannot* be a swan. Just because what we've been calling 'cars' for the last century were all and only automobiles with combustion engines does not mean that electric automobiles, or automobiles fired by cow manure, aren't cars! Some of the things we call 'shoes' in North America today (high-top adidas, eight-inch thick platform shoes, ...) are unrecognizably different from some of the things we would unhesitatingly call 'shoes' in other parts of the world or at other times in history (those curly things the Dutch wear in Bruegel paintings, and so on). Some of the things we will be calling 'shoes' in the future we cannot now even fathom! The cases are absolutely ubiquitous, because it is in the *nature* of words, *while retaining their meaning*, to have elastic boundaries with respect to what counts as satisfying that meaning, i.e. what the word can successfully refer to.

17. I agree with Professor Stainton that 'being unmarried' is part of the *meaning* of the word 'bachelor'. However, Professor Stainton makes the further claim that truths by definition ("All bachelors are unmarried") state necessary truths. With this, I must disagree. The philosophical literature is replete with examples of truths-by-definition which state only *contingent* truths: e.g. "I am here now," by definition, is true whenever I say it, but the truth it expresses (that Adèle Mercier is at that place at that time) is *not* a necessary truth: I could have been elsewhere on that day, indeed, I could have died at birth. So to say that "All bachelors are unmarried" is true by definition is only a fancy way of making the purely logical point that you can't change the *meaning* of the word 'bachelor' without thereby turning it into a *different* word 'bachelor' (a homonym of the original, if you will). This is saying no more than that identical sequences of sounds that have distinct meanings count as distinct words, because we individuate words, we identify them, by their meanings. It is importantly *not* to make any necessary claims about reality.

18. Be that as it may, Professor Stainton's argument begs the question when he asserts that "it is part of the present *meaning* of the word 'marriage' in our common tongue that it applies only to male-female conjugal unions".

19. The question at hand is precisely: *Is it part of the present meaning of the word 'marriage' that some may represent it as applying only to men and women, or is it rather simply a contingent fact about to whom it may have in the past applied? Of course if you determine in advance that the meaning is past application, then the meaning does not stretch beyond past application. It is no surprise, nor is it very useful to know, that from P, you beget P.*

20. Similarly, Professor Stainton makes several incorrect and question-begging claims in paragraph 14.

The common parlance term 'marriage' can only be sensibly applied to male/female pairs. Exactly why this is the case is complex. Notice, for instance, that the marriage ceremony involves a bride (female) and groom (male), each of whom typically has gender-specific vows. Also, after the ceremony, there is a wife (female) and a husband (male). English does not allow us to say 'I now declare you husband and husband'.

This is spurious reasoning. We can see this clearly by stating Stainton's argument premise by premise:

- (i) Brides and wives are female. / Grooms and husbands are male.
- (ii) A marriage ceremony involves a bride and a groom.
- (iii) After the ceremony, there is a wife and a husband.

Therefore, Same-sex couples cannot be married without changing the meaning of the term 'marriage'.

Suppose for the sake of argument that it *were* the case that, as Stainton claims, (i) follows from the semantic rules of our language. Nothing whatsoever would follow from this about marriage. For premises (ii) and (iii) beg all the central questions. The questions to which we are here seeking answers are precisely whether or not it is necessary that *each and every* instance of a marriage have a bride and a groom, and that *each and every* instance of a marriage result in a wife and a husband.¹ If lesbian and gay couples can be married, then just as obviously, (ii) and

¹Professor Stainton also maintains that "English does not allow us to say 'I now declare you husband and husband'." There is a simple explanation that can account for the mild feeling that there is something off-putting about this sentence that does not rest on there being a conceptual or semantic problem with being a husband-husband couple *at all*: the simple explanation is that English shuns *any* construction of the form "an *x* and an *x*" where *x* are the same. For example, if Martha is looking for a husband and Mary is looking for a husband, there is

(iii) are wrong, or else (i) is.

21. In paragraph 10 of his affidavit, Professor Stainton concludes that

"matrimony *just is* the union of a man and a woman."

He has made no argument in support of this conclusion. All he has done is assert that "the current semantics of our common language simply rule out" even asking sensibly whether or not same-sex couples should be allowed to be married. I doubt this case would be before the Court if Stainton were right that *we can't even make sense* of the question.

22. If a child asked me whether or not boys can be sisters or bachelors can be married, I would conclude that they had not mastered the concepts of sisterhood and bachelorhood. The questions are almost unintelligible: since there is nothing to being a bachelor other than being unmarried, if a bachelor gets married, there is nothing left of the bachelor, so what exactly are they asking? If you devoid a sister of her femaleness, then all that is left is a sibling, and yes, boys can be siblings, but that's not what the kids are asking. It is like asking whether the number two could be the number three, or whether a number could be a tree. Those questions are what linguists call *semantically anomalous*. Like the sentence "Green ideas sleep furiously" we can't make much sense of them at all.

23. But even the question whether or not visitors from outer space could be married is at least *intelligible*. If highly intelligent beings with a self-reflective consciousness and free wills, capable of understanding the concept of a promise, and capable of manifesting their wills, landed on earth for a quick wedding, Las Vegas style, a judge might wonder about the political wisdom

no conceptual or semantic difficulty whatsoever. Yet English is no more comfortable with saying: "Martha and Mary are looking for a husband and a husband respectively." English prefers that we pluralize and reduce the conjunction by saying: "Martha and Mary are looking for husbands." Similarly, *English* has no problem with "I now declare you husbands."

and legal implications of marrying them, but surely we could make *sense* of what it is they want. If they applied for admission to law school, we would also understand precisely what they want, despite the fact that none but humans have ever been admitted to law school. If Michael Leshner and Michael Stark were before this Court seeking to be called 'sisters', or 'orangutans', the Court should sentence them to remedial English. But surely this case would not be in Court if everyone did not understand perfectly well what Michael Leshner and Michael Stark are requesting, to wit, the right to have their intimate union legally sanctioned by the state.

24. In paragraph 11, Professor Stainton concludes that to extend the reference of 'marriage' to include also lesbian and gay unions "would be a change equivalent to changing the meaning of the term 'bachelor' to also include married men." In adjudicating whether or not marrying gays and lesbians "changes the meaning (or nature) of 'marriage'" the Court need only ask itself whether allowing women to the bar changed the meaning (or nature) of 'lawyer'. Though I'm sure it has had some effects on the profession, that is not because it made being a lawyer anything essentially different from what it was before. These two instances of extensions of reference are logically, semantically and philosophically *exactly* on a par.

25. In paragraph 12, Professor Stainton quotes from the *Oxford Canadian Dictionary* "which dictionary is commonly accepted as reflecting common usage in Canada, as of 1998." The dictionary definition to which Professor Stainton appeals in determining the necessary properties of marriage is: "the legal or religious union of a man and a woman in order to live together and often to have children."

26. Professor Stainton is committed to the view that since the current definition of 'marriage' states a necessary truth, it *cannot* be altered. *All* we can do, according to him, is to create a brand new word 'marriage' with a new meaning (a homonym of the original, if you will). So, what has just happened in the Netherlands, according to Professor Stainton, is that the Dutch government has *replaced* the old word 'marriage' by a new word (let's call it) 'marriage*', a word defined as "...an intimate union usually between a man and a woman...". This means that, since the Dutch

no longer recognize a difference between the marriages of opposite-sex couples and the marriages of same-sex couples, as of April 1st 2001, every married Dutch couple has *ceased* to be married and has become *married**. If Professor Stainton is right, *Canadians at the moment can no longer speak about married Dutch couples*. That is because Dutch couples are henceforth *married**, but English *does not have a word for that concept* (that is not what our word 'married' means, according to him, and we don't have another word waiting in the wings to express the concept of *marriage**).

27. The dictionary approach is analytically faulty² as a means of discerning the essential meaning of a term, let alone necessary truths. One of the most notorious difficulties in writing a dictionary is precisely to delineate strictly *lexical information* (the essential meaning of the word which posits necessary conditions for satisfying it) from more general *encyclopedic material* (facts commonly associated with these words but not essential to their meaning). Dictionaries typically provide both, but many so-called definitions found in dictionaries are thick in encyclopedic material and extremely thin in lexical information.

28. For example, my *Merriam-Webster Dictionary* (1989) defines 'kangaroo' as: "any of several large leaping marsupial mammals of Australia with powerful hind legs and a long thick tail." Obviously, as a merely lexical definition, this is astoundingly false. The kangaroos born at the Toronto Zoo are not from Australia but they are not, for all that, lesser kangaroos. Nor is it essential to any kangaroo's being such that its hind legs be powerful, indeed that it have any legs,

² It is also fraught with numerous practical problems:

- (a) Dictionaries take decades to compile. It is a platitude among linguists that no matter how descriptively accurate they aim to be about current usage, they are always systematically behind the times when they are published.
- (b) Dictionaries are often wrong and sometimes egregiously wrong. For example, my Oxford English Dictionary (1971), surely the most prestigious English dictionary in existence, defines 'car' in a myriad of odd ways, and states "In the United States the term has become restricted almost entirely to vehicles designed for travelling on railways (in Great Britain known as carriages, trucks, wagons, etc.) or to those used on tramways."
- (c) Dictionaries are not scientific documents, as is evident from their methodology. The Oxford Canadian Dictionary was in large part compiled by answers its editor received from whichever member of the public bothered to respond to postcards sent around requesting examples of uniquely Canadian uses of words.
- (d) Dictionaries do not typically aim simply to describe common acceptance. The great majority of dictionaries perceive their task as prescribing what ought to be commonly accepted.

that its tail be thick, that its tail be long, and that it be able to leap. If pollutants in their food supply universally made them unable to leap, they would perhaps be sickly kangaroos, but no less kangaroos for all that.

29. It is Professor Stainton's guess, but that's all it is, that the dictionary's "union of a man and a woman" is meant as strict lexical information and hence stating a necessary condition rather than meant simply as encyclopedic material. It is also Professor Stainton's guess, but that's all it is, that the dictionary's "union of a man and a woman" implicitly contains the word '*only*'. That what the definition *really* is saying is that a marriage is a "union *only* of a man and a woman". But if the definition of 'kangaroo' implicitly means "*only* any of several large leaping marsupial mammals of Australia with powerful hind legs and a long thick tail", then sickly kangaroos are, of necessity, not kangaroos at all.

30. Even a Canadian dictionary is committed to representing the fact that the meaning of the word 'marriage' *for Canadians* extends well beyond what marriages look like *in Canada*. This is what allows Canadians to speak naturally of "an arranged *marriage*" or "the third marriage of the Sultan" despite the fact that such legally sanctioned intimate unions there bear little similarity to those familiar to us. Though Professor Stainton's views commit him to the contrary, the following is, as a matter of fact, a well-formed sentence of Canadian English, one which every competent speaker of Canadian English *as it currently exists* is perfectly capable of understanding: "Some married couples in the Netherlands are of the same sex." This *entails* that the definition of a marriage as a union only between members of the opposite sex has become, strictly speaking, *obsolete*. At the very least, future dictionary entries will *have* to include a same-sex caveat, on pain of being straightforwardly inaccurate.

31. The dictionary definition of 'marriage' cited by Professor Stainton is also an egregiously bad one. It fails to capture an enormous number of relationships that we actually do and otherwise would countenance as *bona fide* marriages, and captures an enormous number of

relationships that we would only very dubiously if at all count as marriages.³

32. *None* of the elements of the dictionary definition of 'marriage' cited by Professor Stainton, taken separately or together, amount to the elaboration of either necessary or sufficient conditions for what counts, in ordinary parlance as well as under the laws of Canada, as a marriage. It is *very difficult* (read: practically impossible) to define terms by stating necessary and sufficient conditions. That is precisely why dictionaries contain so much encyclopedic material. That is also precisely why dictionary definitions have to be checked against common usage, *and not the other way around*. The definition cited by Professor Stainton itself fails to meet his own standards that "describing the difference [between linguistic meaning and other associations] with subtlety and care is at the heart of good linguistics." Without even considering gays and lesbians, the definition he cites is incorrect as it applies to what Canadians actually count as marriages.

33. Professor Stainton also claims that the marriage ceremony is the method for becoming life partners which "has a faith-based history". This is arguable: Simone de Beauvoir and John Stuart Mill are just a few who have traced the roots of the institution to the selling and bartering of women, and to protection of property and lineage. Be that as it may, the fact that an institution has a history has no bearing at all on what the institution represents today in the consciousness of individuals. Many universities and schools are institutions which have religious roots, yet that in no way compels them to be religious institutions today.

34. In paragraph 15 of his affidavit, Professor Stainton reasons as follows:

There are two senses of the word 'marriage': the literal and the metaphorical ("a close

³ For example, the expression 'legal or religious union' entails that a merely religious union counts as a marriage. This is false in Canada, where at least some religious unions must be sanctioned legally in order to count in law as marriage. The union 'of a man and a woman' would appear to preclude something common in many cultures: the union of a boy and a girl. Canadians use the word 'marriage' with a meaning that can encompass such unions. Married couples may not anticipate living together. Nor does the criterion that a marriage is a union in order (often) to have children fare any better. It is perfectly possible, without in any way modifying what we mean by marriage, that all married couples should decide not to have children and only non-married couples decide to have children.

association" that bears some resemblance to marriage without being one, like "a marriage of minds"). Let us call these 'marriage¹' and 'marriage²', respectively, and agree that 'marriage¹' is the only relevant sense that matters here. The expression 'same-sex marriage' is therefore ambiguous. It *could* mean 'same-sex marriage²'.

There are several serious problems with this statement:

35. The only sensible reply to this form of reasoning is: Sure. Note however, that it *could just as well* mean 'same-sex marriage¹'. In short, an argument like this proves nothing. It is irrelevant.

36. Another irrelevant argument appears as he continues in paragraph 15 of his affidavit:

[E]ven if the sense of 'marriage' at play in 'same-sex marriage' were 'wedlock'/'matrimony', rather than 'close association', our speaking of "same-sex marriage", which involves the use of the adjective at all times in addition to the noun, would still not show that 'marriage' (in the sense of "wedlock") actually applied to gay and lesbian unions.

Perhaps, but it would still not show that 'marriage' (in the sense of "wedlock") actually *did not* apply to gay and lesbian unions. To say that P does not show Q is *not* to say that P shows not-Q.

37. Professor Stainton provides no evidence that our speaking of same-sex marriage involves the use of the adjective at all times. Surely if gays and lesbians could legally marry, there would be no need at all for the qualifier. "Mr and Mrs. P and Q request the pleasure of your company at Mary and Sue's wedding" and "Hans and Derk have had a fulfilling marriage since being legally allowed to be married" are not sentences that lack a word. The reason for the current use of a qualification is precisely because people recognize that gay and lesbian marriages are not yet recognized by Canadian law.

38. Later in this section, Professor Stainton discusses the sort of adjective which semanticists call *nonrestricting adjectives*, an example of which is 'fake'. A fake diamond is not a diamond, fool's gold is not gold, a plastic tree is not a tree. (By contrast, a restricting adjective respects the following entailment: A tall surgeon *is* a surgeon. A bad lawyer *is* a lawyer. An Albanian

philosopher *is* a philosopher.)

39. Professor Stainton then suggests that perhaps 'same-sex marriages' and 'gay marriages' are not intended in common parlance to mean 'marriage'⁴; witness the fact that the adjectives 'same-sex' and 'gay' *might* be understood by their users as nonrestricting adjectives, in which case a same-sex marriage would no more be a marriage than a fake gun is a gun.

40. Perhaps some speakers use 'same-sex' and 'gay' as nonrestricting adjectives. But *then again and just as much, perhaps not*. In my professional opinion, most people do not use these terms as nonrestricting adjectives.⁴ But in any event, the argument is irrelevant. Imagine running the same argument with other qualifiers of marriage, like 'interracial marriage', or 'second marriage', where the mere *possibility* that 'interracial' and 'second' *might* be understood by their users as nonrestrictive adjectives would be held as a reason to doubt that an interracial marriage is really a marriage, or that a second marriage is really a marriage. There was a time when interracial marriages were illegal in some parts of North America, but legal in others. There were people then who did treat 'interracial' as a nonrestrictive adjective because they couldn't fathom

⁴ There is a positive presumption in favour of speakers not using 'same-sex' and 'gay' as nonrestricting adjectives. Let me quote from Edward Keenan, one of the most distinguished scholars in natural language semantics: "There are a number of nonrestricting adjectives, such as *alleged* and *fake*. However, there is a sense in which the prototypical function of a modifying expression is to be restricting; and, statistically, nonrestricting adjectives certainly appear to be a small minority, limited to a few particular classes of expressions. Therefore, it does not seem incorrect to regard the set of restricting adjectives as being 'almost' the whole set of adjectives." See, Edward Keenan and Leonard Faltz, *Boolean Semantics for Natural Language*, Reidel/Kluwer, 1985, p. 310.

Moreover, as has been amply demonstrated in the linguistic literature (cf. Tim Stowell from UCLA and Noam Chomsky from MIT), nonrestrictive adjectives are a varied lot, and most of them do not have the implicational pattern of 'fake'. For example, in the sentence: "The lucky Parisians live in the most romantic city of all," the adjective 'lucky' is being used nonrestrictively. The sentence, in the reading in which I intend it at least, means: "The Parisians, being so lucky, live in ..." and is attributing luck to Parisians generally. It does not mean (does not have to be read as meaning) what it would mean were the adjective to be used restrictively, namely: "Those among the Parisians who are lucky live in ..."

But even in its nonrestrictive use, the adjective does not follow the implicational structure of 'fake'. A fake gun is not a gun, but the lucky Parisians are Parisians. So even if some speakers were using 'same-sex' and 'gay' as nonrestrictive adjectives, it still would not follow that they do so because they consider same-sex marriages not to be marriages.

that an interracial marriage could be a *bona fide* marriage any more than a fake diamond could be a bona fide diamond. (We call them racists.)

41. Professor Stainton is right when he states in paragraph 16 that "given its semantics, 'marriage,' in the sense in question, does not refer to just any intimate union". Strictly speaking, (at least in Canada now) 'marriage' means: a *legally sanctioned* intimate union.

42. However, he is mistaken that, as a matter of *meaning*, 'marriage' currently applies only to male/female pairs. The *best* he could say (but it is of questionable empirical accuracy) is that, as a matter of *reference*, 'marriage' *may* have applied in the past only to male/female pairs. As I have shown, *even if this were true*, it would *in no way* preclude the application of the term to gays and lesbians henceforth. Until the 1880s, as a matter of reference, 'lawyer' had applied only to males. *Meaning is distinct from reference.*

43. In paragraph 18 of his affidavit, Professor Stainton states:

Even though in common parlance we may refer to ... common-law relationships as "common-law marriages" they are *not* marriages in sense 1 any more than a "same-sex marriage" would actually be a marriage.

Professor Stainton is right that common-law marriages are not marriages¹ in the sense of being created through stipulated legal processes. (Of course, this does not prevent people from thinking of common-law marriages *as if* they were marriages¹.) Although common-law marriages are intimate unions, they are not strictly speaking legally created in the same way as 'marriages'¹ (though the law may recognize some legal dimensions to them), and the meaning of 'marriage'¹ in Canada now is: *legally sanctioned* intimate union.

44. What we call 'common-law marriages' are *necessarily* common-law marriages². By definition, there *could not be* common-law marriages¹. That is because, *by definition*, a common-law marriage is an intimate union that is not created through a ceremony known as 'marriage.'
That is, the moment those in a 'common-law marriage' go through a 'marriage' ceremony, they are

no longer common-law; they are married.

45. By contrast, the moment you legalize a same-sex marriage, it is *not* the case that you are no longer same-sex. This shows that 'common-law' and 'same-sex' are not the same kind of qualifiers.

46. To be in a 'common-law marriage' (i.e., not to have gone through a 'marriage' ceremony) while being married (i.e., while having gone through a 'marriage' ceremony) is a contradiction *in terms*. That is why it states an impossibility: contradictions are impossible; their opposites are necessary. But there is no contradiction *in terms* in having a same-sex couple go through a 'marriage' ceremony. That's why 'same-sex marriage' does *not* state an impossibility, nor is its opposite a necessity.

47. To say that common-law marriages are not marriages¹ "any more than a 'same-sex marriage' would actually be a marriage" is entirely question-begging. Again, *if* same-sex marriages were legally sanctioned, they *would be bona fide* marriages. It is *only* as long as they are not that they are not. Once again, P begets P. Professor Stainton reaches the conclusion which he has presupposed to be the case at the outset.

48. In paragraphs 19 and 20 of his affidavit, Professor Stainton states without evidence that:

The key distinguishing feature of marriage is its history, including in recent history, its religious origin.

I seriously doubt that it is within the purview of a linguist or of a philosopher, and least of all of a cognitive scientist, to make such an assertion. Professor Stainton's account denies the reality that there are legally valid marriages which are entirely secular in approach. Moreover, to say that marriage is a descendent of older traditions, religious or otherwise, is a perfect truism. Every person, thing, place, indeed the whole universe are descendent from their past. Nothing ever erases its origins. However, to say that "marriage just *is* a descendent of a practice with religious

roots" (provided it is true, which is doubtful) is exactly like saying that "English just *is* a descendent of Old Norse". However true it may be that English is a descendent of Old Norse, *I* don't speak a word of Old Norse.

49. When Professor Stainton claims that "an understanding of the term 'marriage' necessarily entails this long and rich history", that "to look at marriage as divorced from religion is to miss the meaning of *marriage* altogether", and that "it is essential to understanding precisely what the word 'marriage' (in sense 1) actually means that we cannot divorce our understanding of the term from its history", he is precisely failing to practice his own preaching (paragraph 8 of his affidavit) on the "important difference between linguistic *meaning* and other *associations*".

50. Our word 'sofa' has its origins in cushions that used to be placed on the backs of camels. Our word 'assassin' has its origins in hashish eating, from the Hashishim, a cruel bunch of ruffians who traditionally ate hashish before going on murderous rampages. To say that because of this history, the *meaning* of 'sofa' *for us today* in any way involves camels, and the *meaning* of 'assassin' *for us today* in any way involves hashish is simply preposterous.

Yet that is exactly the argument of Professor Stainton: *because of its history*, the *meaning* of 'marriage' for us today must involve religion.

51. The term 'marriage', like the concept of marriage which it denotes, is no more *of necessity* linked to its religious or woman-bartering history *in contemporary consciousness* than the concept of wedding gifts is of necessity linked to the institution of dowry, itself linked to the practice of selling women, from whence it derives its origins.

52. People are free to make any *association* they like with the concept of marriage. They are free to think it a good thing, a bad thing, an essential demonstration of commitment, and inessential demonstration of commitment, a moral prerequisite for doing good by one's children, an irrelevant prerequisite for doing good by one's children, an importantly religious institution, an

importantly non-religious institution, what have you. These associations in no way impinge on the essence of a marriage in contemporary Canadian consciousness, which is *the formal recognition through legal sanction of an intimate union*. Even love and sex, though surely part of the *associations* that Canadians nearly universally make with the notion of an intimate union, are not essential components of the meaning of 'intimate union'. Though it is hoped that people who marry love each other, it is not a requirement of the state, nor do people cease to be legally married just because they cease to love each other. Though it is expected that people who marry will have sex with each other, people do not cease to be legally married when they cease to have sex with each other.

53. It is no doubt true that most people today *associate* marriage with a man and a woman, for the very same reason that people used to, and to an unfortunate extent still do, *associate* being a lawyer and being a judge with being a man. But being a man is part of the essence of neither being a lawyer nor being a judge.

What, exactly, is the issue

54. I would like to finish my comments on section II of Professor Stainton's affidavit by emphasizing a point which he has failed to acknowledge.

Professor Stainton has distinguished two senses of 'marriage' -- the *literal* sense (our 'marriage¹') and the metaphorical sense (our 'marriage²') ("a marriage of Chrysler and Benz"). He has accordingly pointed out that the only sense of 'marriage' relevant to the current petition is 'marriage¹'. What he has failed to acknowledge is the following:

55. It seems to me entirely correct to say that, in contemporary consciousness in Canada, there are in fact *two* concepts of marriage¹. There is the *religious* concept of marriage¹ and there is the *legal* concept of marriage¹ (I will call the latter 'legal marriage¹' and 'civil marriage¹' interchangeably.) These two are properly distinct, not only in contemporary consciousness but in

the religious and legal institutions that are commonly understood to underlie such concepts. That is demonstrated by the fact that a religious marriage¹ is not recognized by Canadian law as a legal marriage¹ unless it is authorized by the state to *be* a legal marriage, and that not all legal marriages¹ are recognized as religious marriages¹.

56. Various grounds suffice for a religious marriage¹ to be annulled in some religions; but an annulment even by the Pope does not constitute in and of itself the dissolution of a legal marriage¹.

57. The Anglican Church did not recognize as a religious marriage¹ the Duke of Windsor's civil marriage¹ to Mrs. Simpson because she had previously divorced. Many religions do not recognize as religious marriages¹ the legal (or religious) marriages¹ of one of their members with someone of a different religion.

58. It is one of the foundational principles of logic (known as Leibniz's law from the philosopher of the same name) that two things are identical if and only if they have all and only the same relevant properties. Religious marriages¹ and civil marriages¹ have some but not all of their relevant properties in common. Hence they are distinct.

59. There are some countries, for example Egypt, where religious marriages¹ and legal marriages¹ are *not* distinguished. I have an Egyptian muslim friend who laments the fact that she cannot marry her Egyptian copt boyfriend because they are disallowed by law, because of their religion, to marry. Egypt can do that because Egypt is a *religious state*. Canada is not such a state, as far as I know.

60. There are people who associate the concept of 'marriage' so intimately with the concept of 'the sacred' as to take them to be inextricably linked. But sacredness is an essentially religious concept.⁵

⁵ According to the *Oxford English Dictionary* at least:

61. To the extent that the concept of the sacred belongs to the essence of marriage, it clearly belongs only to the concept of *religious* marriage. There is an inalienable (non-religiously) spiritual dimension to *my* commitment to my civil marriage; but there is nothing, strictly speaking, sacred about it, and civil marriages need not have such a deeply spiritual dimension. The philosophical question to be asked is why marrying gays and lesbians would in any way desacralize marriage in the first place.

62. There may well be people, indeed many people, who *associate* in their minds, sometimes confusedly, the concept of religious marriage¹ and the concept of civil marriage¹. That does *not* make those concepts the same, *even* in *their* minds. Sometimes I have trouble distinguishing an African elephant from an Indian elephant, a beech from an elm, and potato soup from cauliflower soup. Nevertheless, my concept of an African elephant (hence what I mean by that term) is distinct in my own mind from my concept of an Indian elephant (hence what I mean by that term), my concept of a beech distinct in my own mind from my concept of an elm, my concept of potato soup from my concept of cauliflower soup.

63. It is my contention that in the consciousness of most Canadians, there co-exist *two* concepts of marriage¹, witness the fact that they are capable of distinguishing them in thought. At least anyone who has understood -- not agreed with, necessarily, just *understood* -- the above paragraphs has demonstrated the existence in their minds of that distinction.

64. Whether 'marriage¹,' civil or religious, is a concept that extends to gays and lesbians is a matter of whether or not we include them in our respective concepts of civil and religious community. The Catholic Church has decreed that gays and lesbians, at least sexually active gays

sacred: 1. of the Eucharistic elements: consecrated
 2. esteemed especially dear or acceptable to a deity
 3. set apart for or dedicated to some religious purpose, and hence entitled to veneration or religious respect; made holy by association with a god or other object of worship; consecrated, hallowed

and lesbians, are excluded from the community of Catholics. In fact, not just gays are excluded, but also non-gay priests who openly object to this exclusion, many of whom have been excommunicated over the issue. Whether our common concept of a civil marriage¹ extends or not to gays and lesbians is exactly a matter of whether or not we include gays and lesbians in our concept of civil community.

65. The next time the *Oxford Canadian Dictionary* sends me a postcard requesting my input about the meanings of words for Canadians, I will send in the following as my best summation of what is *essential* to the concepts Canadians have of a civil marriage¹ according to my professional philosophical and linguistic judgment, and notwithstanding whatever other associations Canadians may entertain about marriage:

marriage: 1. civil (*Noun*)

An intimate union freely entered into by a couple, each partner of which is capable of taking a vow and of manifesting it publicly, and cognizant of so doing at the time, which is sanctioned by the laws of a country.

It is an *empirical* issue, not one of norms, whether gays and lesbians have the capacities required for marriage.

ON PROFESSOR STANTON'S PART III: LANGUAGE AND THE PERCEPTION OF SOCIAL GROUPS

66. In this Part, Professor Stainton mis-characterizes Professor Ehrlich's position that, "courts would be helping to shape a social reality in which gays and lesbian unions are not stigmatized and marginalized" by extending the reference of the term 'marriage' to gays and lesbians. Professor Ehrlich is approaching the question from a sociolinguistic angle, alerting us to the fact that which word we use for what is not without consequences. I agree with Professor Stainton that Cognitive Science has not yet *explained* to us exactly *how* the words we use influence our

thoughts. But phenomena exist before the science that explains them.”

67. In his paragraph 22, Professor Stainton purports to reconstruct in his own terms Professor Ehrlich's views. I take serious issue with Professor Stainton's reconstruction. ~~Allow me to present what I take to be her reasoning in an effort to show how Professor Stainton's criticisms based on his reconstruction do not apply to her views. Here is Professor Ehrlich's argument, as I see it:~~

- ~~—— (1) — There is homophobia in our culture — (This premise is left implicit.)~~
- ~~—— (2) — Because of (1), gays and lesbians are not recognized as a dominant group.~~
- ~~—— (3) — Dictionary writers who frame our definitions come from dominant groups and reflect their interpretation of our common language.~~
- ~~—— (4) — Because of (2), dictionary definitions do not reflect gay and lesbian interpretations of our common language.~~
- ~~—— Sub-conclusion: — We should not trust dictionary entries. — (This is left implicit.)~~
- ~~—— (5) — What language means depends on the context in which it is found and on the practices which underlie it.~~
- ~~—— “You think like a woman” is an insult in a boxer's locker room.~~
- ~~—— “You think like a woman” is a compliment in a women's studies class.~~
- ~~—— (6) — If we (or the law) call same-sex unions by a different word than what we (or the law) call heterosexual unions, we (or the law) entrench a difference between those unions.~~
- ~~—— (7) — Because of (1) and (5), this difference is harmful to gays and lesbians. In particular, it devalues their unions as compared to heterosexual unions.~~
- ~~—— Conclusion: — We should treat same-sex unions the same as heterosexual unions and reflect this in our language.~~

68. ~~Professor Stainton completely misrepresents Professor Ehrlich's argument. For example,~~

⁶ To think otherwise is to be guilty of precisely the fallacious thinking of the social constructivists about reality which Professor Stainton rightly laments in his paragraphs 50 and 51, where he misconstrues Professor Ehrlich as a social constructivist about reality. Professor Ehrlich is not a social constructivist about reality. In fact, she explicitly disavows this interpretation of her views: “To say that linguistic forms help to shape and build social realities is not to say that there is no reality beyond language.” [para. 2].

~~Professor Stainton interprets Professor Ehrlich's phrase: "in recognizing a definition of the term 'marriage' that includes gay and lesbian couples within its purview," as saying that the *only* way to recognize a definition of the term 'marriage' that includes gay and lesbians couples would be to *change* the current meaning of the term. What Professor Ehrlich is recommending to the Courts is that they recognize that the *current* definition in the *Canadian Oxford Dictionary* is empirically inadequate (as I have extensively argued to be the case) and that revising it to better reflect what Canadians mean by 'marriage' would not merely be a semantic exercise dedicated to the truth contents of dictionaries, but a semantic exercise with important social consequences.~~

69. Professor Stainton claims that the General Premise he ascribes to Professor Ehrlich--to wit, that language influences our perceptions and our social reality-- is insufficiently supported by current cognitive science to bear any weight in a Court of Law [para. 23]. I strongly disagree with Professor Stainton. Our language is a mirror of our attitudes, in exactly the following way:

70. The fact that we exclude gays and lesbians from the word 'marriage' and from the institution of marriage which it stands for not only *influences* what we think about them but actually *reflects* it. All those who think that the word 'marriage' *cannot* apply to gays and lesbians because of the sacredness of the institution, for example, *reflect* the fact that, in their thinking, marrying gays and lesbians would de-sacralize marriage. It is a point of logic that someone who thinks sacred unions can't apply to gays and lesbians thinks that such unions are *too* sacred (or not sacred enough) to apply to gays and lesbians.

71. I will offer another example. In Canada, we do not allow children to vote. This *reflects* an attitude on our society's part that children lack certain requirements (responsibility, understanding of the world, what have you...) that we think are essential to voting. Children who grew up at a time when their mothers could not vote, learned that their mothers lacked, or at least were considered by society to lack, the properties deemed necessary for voting. Children who grew up at a time when their Black mothers and fathers did not count as citizens learned that their mothers and fathers lacked, or at least were considered by society to lack, the properties

deemed necessary for citizenship. Given human history, it is of unspeakable bad faith to maintain that such influences are innocuous.

72. Children who grow up in a society where gays and lesbians are banished from a normal practice in which most people engage are not only likely but causally determined to believe, at the very least as children, that gays and lesbians lack, or at least are considered by society (and the Courts) to lack, the properties deemed necessary for marrying. The *only* differences a child of same sex parents can perceive between her parents' relationship and my heterosexual relationship are (1) that we are allowed to be married but her parents are not, and (2) that we are heterosexual and her parents are not. The child is bound to reason that, since marriage is a good thing, but her parents are barred from it because they are lesbians, there must be something not-so-good about being lesbian.

73. In his paragraph 26, Professor Stainton renders Professor Ehrlich's point about the relation between meaning and *context* thus:

To use Professor Ehrlich's example, people who believe that dry rivers have life spirits *will be more likely to say* things like 'The river had been dry for a long time. Everyone attended the funeral.' People who do not share this belief in river spirits, and funerals for dry rivers, are far *less likely to utter* these words. Beliefs influence speech, speech influences beliefs. [my emphasis]

Professor Stainton has not understood the *sociolinguistic* relationship between meaning and context. That is, there is an aptitude that humans undoubtedly possess, to infer the *not-said* from what is said, an aptitude that is socially conditioned. For instance, if a professor writes a letter of recommendation for Law School in which he lauds all and only the student's beautiful handwriting and great cooking skills, he has not *said* that the student is not meant for Law School but that is exactly what anyone familiar with Law School applications is going to understand. If marriage is an institutional acknowledgment of a significant union from which gays and lesbians are barred, it won't be strictly speaking *said* that gay and lesbian unions are less-than-significant but that is exactly what children, and adults, will understand.

74. In paragraphs 30 to 32, Professor Stainton appears to believe that the idea that language shapes our beliefs is an understandable but false consequence of our misrepresenting "thinking as a kind of speaking to oneself". Language shapes our beliefs because language reflects our attitudes, and our attitudes shape our beliefs. The attitude towards children born out of wedlock was reflected in the term 'illegitimate' used to refer to them. When this language is transmitted from parents to their children, the children learn from the vocabulary used in referring to children born out of wedlock to have the same attitudes as their parents towards them. Thus it is that language perpetuates attitudes. By changing the *vocabulary* by which the law refers to such children, the Law did more than tinker with words. It instituted legal *practices* (such as treating no-longer-called 'illegitimate' children *as* legitimate children born out of wedlock, thereby extending to them the same legal privileges as those extended to legitimate children born into wedlock).

75. *It would not have been sufficient* for the Court to say to children born out of wedlock: "We will extend to you all the same rights and protections afforded to children born into wedlock, but we will continue to call you 'illegitimate children'." It would have been, apart from cruel, simply inconsistent. One of the protections afforded children born into wedlock is precisely a protection with respect to *standards* of how people are to be expected to think of them and to refer to them, viz. as legitimate children rather than as bastards. Similarly, one of the protections afforded wedded people is precisely a protection with respect to the *standards* of how people are to be expected to think and refer to them, viz. as married people rather than as anything else.

76. At paragraphs 37 to 39, Professor Stainton employs a strategy that in logic is called a *Straw Man* argument. Professor Stainton interprets *his own* General and Specific Premises in extreme terms, only to criticize them for being extreme. Then he admits the point Professor Ehrlich was making, that language *does influence thought*, albeit moderately. In paragraphs 40 to 44, Professor Stainton pursues the Straw Man strategy by the foisting of a disreputable theory --

the Sapir-Whorf Hypothesis -- onto the original view expressed by Professor Ehrlich.⁷ Nothing Professor Ehrlich has said even remotely suggests that she is committed to the Sapir-Whorf Hypothesis, however it is understood. Moreover, as I have shown, the present petition does not rest on any kind of extreme interpretation of the view that language influences thought. In fact, it needn't rest on any such view at all.

77. In paragraphs 45 to 47, Professor Stainton offers the examples of Williams syndrome and aphasia to show that *some* thinking is unaffected by language. It is a straightforward logical fallacy to move from '*some* thinking is unaffected by language' to '*all* thinking is unaffected by language'.

78. Professor Stainton points out in paragraph 45, point (2), that "efforts in the United States to change the use of racial terms" have failed "to overcome racism". It is sadly true that *merely* changing words does not rid the world of odious attitudes. But extending the definition of 'marriage' would not change a word, it would change an important social *practice*, which in turn would affect reality.

79. Professor Stainton concludes Part III stating that "we cannot know that it is *the definition of the word* 'marriage' in law [his emphasis] which has contributed semantically to a negative reality for gay and lesbian Canadians." Again, Professor Stainton misses the point. The case before the Court is not a semantic one about words. The case before the Court hangs not a bit on how the *word* 'marriage' affects, or will affect, or won't affect thoughts. It hangs on how extending its *reference* will affect *reality*. It will change reality because gays and lesbians will be recognized as eligible for marriage, which is not now the case. Presumably this will further change reality because some gays and lesbians will actually get married. Obviously, extending the reference of 'person' to include women has shaped a social reality which has influenced for

⁷ The Sapir-Whorf Hypothesis is a view that no one (not even its proponents) has ever clearly articulated, hence that no one understands except in the fuzziest terms, but that everyone knows to be too extreme whatever it says, and that everyone loves to ascribe to their opponents. It has the tenure of a philosophical insult.

the better the way people think about women.

COMMENTS ABOUT PROFESSOR STANTON'S PART IV: IMPOSITION OF A NEW DEFINITION CREATES CONFUSION

80. In paragraphs 54 to 59, Professor Stainton is entirely right to claim that the meanings of words (with the exception of technical jargon) cannot be successfully decreed. This is true for the *meaning* of words; it is importantly not true for the *reference* of words. The current petition does not involve changing the *meaning* of the term 'marriage' at all, but only its *reference*. Meaning is distinct from reference.

81. In paragraph 60, Professor Stainton maintains that 'marriage' is "a word reflecting a well-understood social concept in our common language". It seems to me quite obvious that we are *not* in fact, all of us, fully clear about the concept of marriage. The present circumstances in and of themselves reveal that to be the case. In fact, it is virtually impossible *ever* to define our concepts once and for all, as a dictionary definition is expected by some, as by Professor Stainton, to do. This is because it is virtually impossible to determine once and for all what we might eventually count as satisfying the concept in anticipation of all possible facts we might find relevant in formulating our own intuitions about it. Let me give you an (I hope) simple but illustrative example. My *Webster's Dictionary* defines "the earth" as: "The planet upon which we live and which being about 93 million miles from the sun is the third in order of distance from the sun and which having a diameter at the equator of 7927 miles is the fifth in size among the planets." Now, I think everybody *means* the same thing as everybody else when we say that the earth is home to humans, or that we must protect the earth's ozone layer. We can have the concept of the earth without fully appreciating what this concept is about.

82. Marriage is no different in this from kangaroos or the earth. This is something which Professor Stainton himself acknowledges in paragraph 52 when he claims, rightly, that even "social constructs must, after all, be thoroughly objective and real." It is exactly correct that,

though 'marriage' is a term that denotes a social concept, *which* social concept it denotes is nevertheless an objective question. That means that there is an objective fact of the matter -- albeit a social fact of the matter -- about what marriage is. But the key feature of objective facts of the matter is that *we can be mistaken about them*. There is an *essential* difference between what we *take* objective facts to be, and what they *are*.

83. Aristotle had the same concept of Earth as we do, but he misrepresented to himself and to others what that concept in effect was (he thought the Earth was a flat surface under a dome). I have the same concept of a kangaroo as zoologists have but I couldn't tell a kangaroo from a kangaroo-look-alike if it leapt in my face. Professor Stainton represents to himself our common concept of a marriage as inherently committed to heterosexual couples, and I have provided numerous arguments to show that his representation of our communal concept of marriage is in fact a *misrepresentation*.

COMMENTS ON PROFESSOR STANTON'S PART V: SUMMARY AND CONCLUSION

84. I take myself to have demonstrated that Professor Stainton is wrong in his claim in paragraph 62 that applying the word 'marriage' to gays and lesbians would change its meaning. The term 'marriage' can be extended in its *reference* without altering its *meaning*. I agree with Professor Stainton that meanings of terms cannot be legislated. But meanings are distinct from references. References can be legislated, indeed often and regularly are.

85. Dictionary definitions of terms are not meanings. They are *representations* of meanings. They are our best guess, at the moment they are written, of what we *think* our concepts are. We are not always accurate in describing our own concepts. For this reason, dictionary definitions are often inaccurate, and can be revised without altering the essential meanings of the terms they define. Indeed definitions of words are *constantly* being revised as we progressively gain new

understanding about the concepts which they are defining.

86. The current definition of 'marriage' in existing dictionaries merely reflects what we have hitherto, and perhaps mistakenly, *thought* was essential to our concept of 'marriage'. Dictionary definitions do not dictate the content of our concepts, but the other way around. Appealing to dictionary definitions to substantiate claims about our concepts is therefore misguided.

87. By seeking to be included in the reference of the term 'marriage', gays and lesbians are forcing us to think about what is really essential to our concept of a marriage. If Canadians continue, after April 1st 2001, to refer to Queen Beatrix of Holland as 'married', either they should acknowledge that they are wrong to do so and invent a new word for Dutch marriages, or they are right to do so and this constitutes *conclusive* evidence that Canadians *mean* by 'marriage' the same thing as the Dutch mean by 'huwelijk', to wit, a legally sanctioned intimate union.

88. Professor Stainton himself agrees that language influences thought "moderately," but never tells us why even a moderate influence of language on thought would not at least reduce harm to gays and lesbians.

89. Changes in practice change reality. Changes in reality affect thought. The case before the Court is structurally, logically, semantically, ethically and philosophically *identical* to the case of the extension of 'person' to women, the extension of 'citizen' to Blacks, the extension of 'Canadian' to potential immigrants from Myanmar, and, conversely, to the non-extension of 'voter' to children.

90. This puzzle illustrates the subtle ways in which language replicates pernicious assumptions:

A man and his son are driving on the highway and get into a terrible accident. The father is killed immediately. The son is rushed to the hospital. The doctor takes one look at the boy and says: "I can't operate on this boy. He's my son!"

(No, the solution is not far-fetched, and no, they are not gay.)

91. Our language is often a reflection of our prejudices, and that is not without consequences. We may not understand precisely how this happens to us, but the puzzle in the above paragraph illustrates exactly that it does.

SWORN BEFORE ME AT
the City of Kingston in the
Province of Ontario this 3rd day
of August, 2001

)
)
)
)

Adèle Mercier
Dr. Adèle Mercier

[Signature]
A Commissioner etc.

⁸ If you cannot solve the puzzle, keep trying. If you give up, the answer is on the back of this page.