

STATEMENT  
BY THE  
CANADIAN LABOUR CONGRESS

TO THE  
STANDING COMMITTEE ON JUSTICE  
AND HUMAN RIGHTS

REGARDING  
THE ISSUE OF LEGALIZING  
SAME-SEX MARRIAGE

April 11, 2003



**Canadian Labour Congress**

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**Congrès du travail du Canada**

## **Statement by the Canadian Labour Congress to the Standing Committee on Justice and Human Rights on the Issue of Legalizing Same-sex Marriage**

April 11, 2003

We are pleased to present the views of the Canadian Labour Congress (CLC) on this important social and legal question. The Canadian Labour Congress strongly supports the extension of access to civil marriage to same-sex couples and we urge this Committee to recommend that the Government of Canada act swiftly to amend the legislation.

The CLC represents 2.5 million working people in Canada. Unions affiliated to the CLC represent workers in the public and private sector, in every province and territory in Canada; we represent women workers, men workers, and lesbian, gay, bisexual, transgender and heterosexual workers. The CLC's position flows from general policy decisions made over the years, from extensive practical experience and represents the commitment of union members across the country to fairness and justice for all people in this country.

As long ago as 1980, the CLC adopted a policy opposing discrimination on the grounds of sexual orientation.

Convention resolutions in 1986 and in 1990 extended our determination to lobby for legislative change in human rights laws in all jurisdictions, to develop a policy on lesbian and gay rights, to make same-sex benefits a collective bargaining priority and to reaffirm labour's opposition to homophobia in all areas.

In 1994, the Congress Convention adopted a major policy paper on Sexual Orientation which furthered our analysis of discrimination and extended our policy. In that paper we called upon our unions to negotiate equal benefits and protections and upon governments to institute laws establishing equal rights in all areas.

Our affiliates have attempted to bargain collective agreement language to win non-discriminatory language and to ensure equal benefits to gay and lesbian individuals and couples. Many unions have been successful and have made same-sex benefits a bargaining priority. Unions worked hard to negotiate a wide variety of non-discrimination and equality provisions into collective agreements.

We also have a long record of fighting for equality through grievances and arbitrations. Some of these cases will be familiar to you as they ended up in the courts and have made legal history – the case of Rosenberg and CUPE on the issue equal pension benefits for same-sex couples is a most recent example.

We have also initiated grievances for access to special leave to care for an ill partner, for access to medical and dental benefits for gay partners and the children of same-sex partners, for pension

and survivor benefits, for access to bereavement leave for the families of gay and lesbian partners, to give a few examples.

The labour movement took up the question of equal rights and benefits for the same-sex partners of our gay and lesbian members before the laws were brought into conformity with equality rights. We have a history of support for the right to equality and recognition of same-sex relationships.

Our policy paper established a Solidarity and Pride Working Group, representing gay, lesbian and bisexual members at the national level, which has furthered our work in this area. (More recently the Group included issues faced by transgender workers within this mandate.) We sponsor national and regional conferences for lesbian, gay, bisexual and transgendered trade unionists and allies, as do many affiliates and federations of labour. Hundreds and hundreds of people participate. A prevailing concern at all of these gatherings is challenging discrimination and access to equality for lesbian and gay workers and their partners. The Working Group is now in the middle of a major educational campaign designed to tackle homophobia and ensure equality, acceptance and respect.

The CLC understood in 1994 when our major policy statement was adopted, as it understands now that: “Labour must play a significant role in helping to create a context in which gay men and lesbians can achieve equality in society. One cannot be equal in the workplace but unequal outside it. The forces which rob lesbian, gay and bisexual members of their collective agreement entitlements are exactly the same forces which make the world outside the workplace oppressive and often dangerous.”

As part of our responsibility to confront discrimination in the society in which our members live and work, the CLC has presented numerous briefs and petitions to amend legislation federally and has supported this work by federations of labour provincially. The CLC was one of the groups involved in discussions with the federal government House of Commons and Senate Committees on the issue of amending federal laws which discriminated against same-sex couples. Our position then, as now, is that all couples, whether same or opposite sex, whether married or common-law, deserve the same legal rights and the same respect.

In our brief to the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-23 in May 2000, the CLC stated: “We were initially pleased when the Liberal government introduced Bill C-23, which we saw as finally affirming the equality and dignity of same-sex couples. Our national anti-homophobia campaign makes the argument that discrimination is not to be tolerated, that lesbian and gay workers deserve respect and have the right to live and work with dignity. We saw that Bill C-23, by according equal rights to same-sex couples, was making the same point. Lesbians and gay men as individuals must not be subjected to discrimination; similarly, same-sex couples must not be devalued and accorded less dignity and status.”

At that time, we also stated our opposition to the government’s amendment to that Bill which introduced an exclusive heterosexual definition of marriage into the legislation, which we believed was unnecessary and contradictory to the goal of establishing a climate of equality for lesbian and gay citizens of this country.

We are here to urge this Committee to build on the commitment to equality which is widely shared by Canadians and to recommend that gay and lesbians who so choose, be allowed access to the legal institution of marriage.

Our reasons for this position are straightforward and centre on the notion of fairness. It is not fair to prevent same-sex couples, who have achieved equal access to a number of important social benefits and have accepted a number of social responsibilities, from having their marriages legally recognized. It is in fact, overt, direct discrimination. Equality requires legal equality, including access to legal marriage.

We believe that the Government of Canada should be bound by its own equality guarantees, including the Charter of Individual Rights And Freedoms and by its stated commitments to human rights nationally and internationally. The government also has a positive obligation to promote equality and acceptance of all people in this country, including gay and lesbian citizens. Denial of access to marriage for same-sex couples contradicts these commitments and runs contrary to the promotion of equality.

Failure to amend federal legislation to allow same-sex marriage will further attitudes of prejudice and discrimination as the clear message will be that gay and lesbian couples are unworthy. When a distinct group of citizens are denied equal access to the law, the message can only be that there is a legitimate reason for the denial. Does the Canadian government really want to suggest that there are valid reasons to continue to discriminate against individuals and couples on the basis of their sexual orientation – when to do so is in violation of laws the Canadian government itself has passed? The symbolic impact of the denial of recognition of gay and lesbian marriages cannot be overstated. Now is the time for the government to further the Canadian equality agenda and state its clear opposition to discrimination in all its forms.

Canadians are ahead of the government on this question. While the extension of human rights to disadvantaged groups should not be determined by popularity contests, it is worth noting that the percentage of Canadians who support the right of same-sex couples to marry has been steadily rising over the last decade. Several recent polls indicate a growing majority of Canadians support same-sex marriage rights: for example, an Environics poll in 2001 indicates 55% support, while a Leger Marketing 2001 poll puts the support rating at 65.4%. These and other polls indicate that support for equality rights is higher among women and among young Canadians. The Canadian government in our view, has a responsibility to encourage and strengthen Canadians' support for equality and human rights.

We have heard no convincing argument against the access of lesbian and gay couples to the institution of marriage. In the government's discussion paper a spectrum of viewpoints are reviewed.

Some of those opposed to same-sex marriage base their opposition to outmoded views on the centrality of procreation to the institution. Fertility tests are not required to obtain a marriage licence. It is misleading to suggest that all heterosexuals who marry have children, want to have children or can have children. Marriage licences are not denied to heterosexuals who are past childbearing age. Additionally, many children are born to women who are not married and who

may or may not live in common-law relationships. Many lesbians are mothers, many gay men are fathers and increasing numbers of children are being raised by lesbian couples and gay couples. Procreation is not tied to marriage and is not a requirement of marriage.

Others opposed to legal marriage for same-sex couples have stated that gay and lesbian marriage will somehow “devalue” the institution. Apart of the blatant homophobia of such a statement, it makes no logical sense. When the partners and families of gay and lesbian employees won the right to access company dental plans, this did not make going to the dentist any more or less painful for the partners and families of their heterosexual co-workers. It doesn’t and shouldn’t make any difference to heterosexual married couples if same-sex couples have the right to marry.

We understand that several religious groups are opposed to the extension of legal marriage rights to gays and lesbians in Canada. Access to civil marriage has no bearing or impact on the rights of religious groups to sanctify marriage within the rites of their particular creeds. It has been many decades since one religious denomination had a monopoly on marriage rights in this country. Such domination is no longer tolerated or accepted in Canada. There are religious denominations in this country which welcome lesbian and gay congregants and are prepared to offer religious marriage to them. The religious beliefs of some groups should not be state-sanctioned to the extent that other religions are prevented from marrying gay and lesbian members of their congregations or to the extent that civil legal rights and human rights are denied to a group of citizens who historically have faced discrimination. The separation of church and state is an important part of Canadian democracy. Civil marriage is the issue here and gays and lesbians should have access to the same civil rights as others in Canada.

The exclusionary status quo of legal marriage as a preserve of heterosexuals is clearly discriminatory under our Charter and will lead to ongoing legal challenges in the courts. Instead of delaying and wasting time and taxpayers’ dollars fighting this issue through the courts, the government should simply meet its legal obligations now by legislating an end to the exclusion of gay and lesbian people from marriage.

The alternative options canvassed in the Department of Justice Discussion Paper, namely a new registry deemed equivalent to marriage or leaving marriage to the religions, are both problematic and appear to be attempts to side-step the need to bring the marriage laws into conformity with equality rights. A domestic partnership registry which applies to same-sex couples and leaves marriage as an exclusive right for heterosexuals establishes two categories of citizens. So-called “separate-but-equal” doctrine was finally eliminated from the books of American legislation several decades ago and has no place in the legal tapestry of our country. Eliminating legal civil marriage as an option would satisfy no one and would take away a perceived right many Canadian heterosexual couples now enjoy. This is not a solution proposed by any segment of the Canadian population and should be dropped from consideration by this Committee.

Some gay and lesbian people want to have their relationships recognized by formal marriage. Others do not. Like heterosexual Canadians, how lesbian and gay people determine their relationships and how they want to have those relationships recognized is varied and a highly personal matter. The question here is choice. Gay and lesbian people in this country are denied a fundamental choice which is open to all heterosexual Canadians. All relationships, whether same

or opposite sex, whether married or common-law require acknowledgement and respect. The same legal choices must be available to all regardless of sexual orientation. That is the issue.

We urge this Committee to do the right thing, the socially and legally responsible thing, and recommend to Parliament the amendment of Canada's laws to allow lesbian and gay couples access to civil marriage.

This document is respectfully submitted on behalf of the Canadian Labour Congress:

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