

IN THE SUPREME COURT OF CANADA
(On Appeal from the Ontario Court of Appeal)

BETWEEN:

THE INTERFAITH COALITION ON MARRIAGE AND FAMILY

Applicant
(Party Intervener)

- and -

**HEDY HALPERN and COLLEEN ROGERS,
MICHAEL LESHNER and MICHAEL STARK,
MICHELLE BRADSHAW and REBEKAH ROONEY,
ALOYSIUS PITTMAN and THOMAS ALLWORTH,
DAWN ONISHENKO and JULIE ERBLAND,
CAROLYN ROWE and CAROLYN MOFFATT,
BARBARA McDOWALL and GAIL DONNELLY and
ALISON KEMPER and JOYCE BARNETT (the "Respondent Couples"), and
METROPOLITAN COMMUNITY CHURCH OF TORONTO**

Respondents
(Respondents)

- and -

**THE ATTORNEY GENERAL OF CANADA
THE ATTORNEY GENERAL OF ONTARIO and
NOVINA WONG, THE CLERK OF THE CITY OF TORONTO**

Respondents
(Appellants)

- and -

EGALE CANADA INC.

Party Intervener
(Party Intervener)

**AFFIDAVIT OF BRUCE CLEMENGER
ON BEHALF OF THE APPLICANT
THE INTERFAITH COALITION ON MARRIAGE AND FAMILY**

AFFIDAVIT OF BRUCE CLEMENGER

I, BRUCE CLEMENGER, of the City of Ottawa, Province of Ontario, MAKE OATH AND SAY:

1. I am the president of the Evangelical Fellowship of Canada ("the EFC"), a national association of evangelical Christians which is comprised of over 115 denominations, ministry organizations and educational institutions, and nearly 1,000 church congregations.

The EFC is one of the partner organizations that comprise the Interfaith Coalition on Marriage and the Family ("the Interfaith Coalition"). As such I have knowledge of the facts and matters hereafter deposed to, except where such matters are stated to be based upon information and belief, and where so stated I believe them to be true.

2. The Interfaith Coalition is comprised of the following organizations:

- The Islamic Society of North America;
- The Ontario Conference of Catholic Bishops;
- The Catholic Civil Rights League;
- The Evangelical Fellowship of Canada

3. The Interfaith Coalition has had a long-standing interest in public policy debates regarding marriage, including the legal status of spouses and marriage in Canada, and the freedom of religious bodies and persons to hold and act on their religiously mandated beliefs about marriage. The Interfaith Coalition has participated as an intervener before this Court in *Egan v. Canada*, [1995] 2 S.C.R. 513 and *M. v. H.*, [1999] 2 S.C.R. 3. The

Interfaith Coalition also intervened in the British Columbia same-sex marriage case, *EGALE Canada Inc. v. Canada (Attorney General)*, 2003 B.C.C.A. 251, both at the British Columbia Court of Appeal and the British Columbia Supreme Court. Additionally, the EFC and the Catholic Civil Rights League also intervened in the Québec same-sex marriage case *Hendricks v. Québec (AG)*, [2002] J.Q. No. 3816 (S.C.) before the Superior Court of Québec, and have been granted leave to appeal the decision of that court to the Québec Court of Appeal, and have been granted carriage of that appeal.

4. In *Halpern v. Canada* the Interfaith Coalition was granted the right to intervene as an added party in the Ontario Superior Court of Justice, Divisional Court. A copy of the reasons of the Honourable Madam Justice Lang, dated January 19, 2001, granting the Interfaith Coalition the status of party intervener is attached as **Exhibit 1**. The Interfaith Coalition was also granted intervener status at the Ontario Court of Appeal by consent order dated December 17, 2002. A copy of that order is attached as **Exhibit 2**.

5. The Interfaith Coalition was an active participant at both the Divisional Court and the Court of Appeal, presenting written and oral argument in both courts. At the Divisional Court, the Interfaith Coalition also filed affidavit evidence and provided written answers to interrogatories. The Interfaith Coalition's evidence was directed towards presenting the court with an understanding of the conceptions of marriage held by various religious communities in Canada, the significance of marriage within those communities, and the

impact that same-sex marriage would be expected to have on those religious communities.

The Interfaith Coalition filed the following affidavits:

- a. Daniel Cere, the Director of the Neuman Institute of Catholic Studies at McGill University, provided a Roman Catholic ethical and religious perspective on marriage and its context in civil society, and the implications for society of any extension of the category of marriage beyond heterosexual relationships. Dr. Cere deposed that in Catholic teaching, marriage is a sacrament of the Church. The Catholic tradition believes and teaches that the matrimonial covenant can only be between a man and a woman, and that God Himself is the author of marriage. Dr. Cere argues that a conception of marriage that includes same-sex unions must exclude aspects of marriage that are central in the Catholic tradition.¹ The inclusion of same-sex marriage is not an extension, "but a fundamental deconstruction of the existing category of marriage".² Dr. Cere attests to the impact on religious communities, stating that the "legal affirmation of 'same-sex marriage' will lead to fundamental disconnect between religious communities and law on the question of marriage. There have been tensions in the past, but never a fundamental disconnect".³ A copy of Dr. Cere's affidavit, sworn April 12, 2001, is attached as **Exhibit 3**;

¹ Affidavit of Daniel Cere, sworn April 12, 2001 ("Cere Affidavit"), paragraph 8

² Cere Affidavit, paragraph 69

³ Cere Affidavit, paragraph 53

- b. Ernest Caparros, Professor of Law at the University of Ottawa, provided an affidavit attesting to the meaning of "marriage" under Canon Law within the Catholic Church, and attesting to the impact on society, including religious communities, of modifying the univocal sense of marriage to include same-sex relationships. Similar to Dr. Cere, Dr. Caparros attested that "in Canada there is only one marriage and one solemnization".⁴ It is thus not possible, Dr. Caparros attested, "to view 'civil' marriage as completely distinct from 'religious' marriage given the intermeshed nature of the civil and religious interrelationship in Canada".⁵ Dr. Caparros attested that "same-sex union is simply not an option for Catholics or many other religious groups in Canada because it is completely opposed to our understanding of our moral, religious, social and legal traditions, including the purpose of creation itself".⁶ Furthermore, he argued that "the accommodation of the claimant group in this case will necessarily exclude us from our own institution as a result of our religious faith and traditions". Professor Caparros's affidavit, sworn July 16, 2001, is attached as **Exhibit 4**;

⁴ Affidavit of Ernest Caparros, sworn July 16, 2001 ("Caparros Affidavit"), paragraph 11

⁵ Caparros Affidavit, paragraph 11

⁶ Caparros Affidavit, paragraph 14

- c. Rabbi Professor David Novak, the J. Richard and Dorothy Shiff Chair of Jewish Studies at the University of Toronto, provided an affidavit attesting to the concept of same-sex marriage from within the Jewish tradition (an institution exclusively defined as a union between one woman and one man), and the expected impact on the Jewish community if marriage were redefined to include same-sex unions. Rabbi Professor Novak attested that:

"Jews can agree to also participate in the institution of civil marriage because its requirements do not fundamentally conflict with the requirements of Jewish marriage. If the state radically redefines marriage to include homosexual unions, then many religious Jews will avoid civil marriage altogether since its new requirements violate what Jews regard as morally binding of all humankind. Civil marriage would then no longer be an institution in which religious Jews could participate in good faith because it would conflict with their religious beliefs".⁷

Further attesting to the impact of the legal recognition of same-sex marriages, Rabbi Professor Novak attested that the refusal of Jews to recognize same-sex marriages, would, in the minds of many:

"imply that religious Jews, religious Christians and members of a number of other faith communities, are "un-Canadian" or perhaps even "anti-Canadian" ... this in turn could lead to the exclusion of the Jewish community from and discrimination against Jews in the public sphere. As a consequence, the multicultural fabric of Canada would be strained".⁸

⁷ Affidavit of David Novak, sworn April 17, 2001 ("Novak Affidavit"), paragraph 16

⁸ Novak Affidavit, paragraph 17

Rabbi Professor Novak's affidavit, sworn April 17, 2001, is attached as **Exhibit 5;**

- d. Abdalla Idris Ali, the Director of the Centre of Islamic Education in North America, provided an affidavit on the Islamic perspective on same-sex unions, including the religious basis for the restriction of marriage in Islam to heterosexual unions, and the impact on the Islamic community if marriage were to be redefined to include same-sex unions. Imam Ali attested that in the Islamic perspective, the marital unit is made up of a man and a woman, and that until a man and a woman unite in marriage, each spouse's Islamic personality is incomplete.⁹ Imam Ali attested that a:

"redefinition of marriage would result in a situation where the state would impose acceptance of same-sex unions on its citizens through a law which would be directly contrary to, and invalidate our, religious beliefs. A law that would validate same-sex marriage in the public sphere would be inconsistent with our religious teachings and beliefs. It would become harder for Muslims to participate in Canadian society if that society insisted on acceptance of unions that our religion teaches us are an affront to Allah".¹⁰

Imam Ali further deposed that the redefinition of marriage to include same-sex unions would "result in the isolation of Muslims from full participation in

⁹ Affidavit of Abdalla Idris Ali, sworn April 19, 2001 ("Ali Affidavit"), paragraph 8

¹⁰ Ali Affidavit, paragraph 11

Canadian society".¹¹ Imam Ali's affidavit, sworn April 19, 2001, is attached as **Exhibit 6**;

- e. Dr. Craig Gay, Professor of Interdisciplinary Studies at Regent College, a graduate school of Christian studies affiliated with the University of British Columbia, provided an affidavit explaining the evangelical Christian understanding of marriage. Dr. Gay explained that evangelicals and conservative Protestants "affirm marriage to be an institution ordained by God and properly basic to created moral order" which cannot, in that tradition, include same-sex unions.¹² He further attested "conservative Protestants have grown increasingly concerned about our nation's commitment to religious freedom - and the marriage challenge cuts to the heart of these concerns."¹³ "A decision to redefine the word "marriage" to include homosexual unions would almost certainly be "deconstructive" in the sense of subverting long-standing, religiously-based, moral traditions".¹⁴ Professor Gay's affidavit, sworn April 13, 2001, is attached as **Exhibit 7**.

6. The affidavits filed on behalf of the Interfaith Coalition, and the written answers to interrogatories, attest to concerns within four major religious communities of the effects that

¹¹ Ali Affidavit, paragraph 13

¹² Affidavit of Craig Gay, sworn April 13, 2001 ("Gay Affidavit"), paragraph 5

¹³ Gay Affidavit, paragraph 8

¹⁴ Gay Affidavit, paragraph 15.

the redefinition of marriage would have on them. They are concerned not only about the prospect that they could be faced with human rights complaints for refusing to perform same-sex wedding ceremonies and refusing to recognize same-sex unions as marriages, but also about the prospect of being marginalised from full participation in Canadian public life on account of their inability to recognize a same-sex relationship as a marriage. This is of particular concern to those religious communities that are small and have historically suffered discrimination in Canada and elsewhere, such as religious Jews, Muslims, and some smaller Christian denominations such as Mennonites. There are signs of such a scenario already playing out, as objections to same-sex marriage made by religious bodies and individuals provoke newspaper columns and letters to the editor complaining that the opinions of religious persons have no place in the public sphere.

SWORN before me at the City)
of Toronto)
in the Province of Ontario)
this 11th)
day of August , 2003.)



BRUCE CLEMENGER



Bradley M. B.
A Commissioner for taking affidavits, etc.