

Court File No.

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)**

BETWEEN:

INTERFAITH COALITION ON MARRIAGE AND FAMILY
Applicant (Party Intervener)

-and-

**HEDY HALPERN and COLLEEN ROGERS
MICHAEL LESHNER and MICHAEL STARK
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/Moving Parties
(Respondents)

-and-

THE ATTORNEY GENERAL OF ONTARIO
Respondents (Appellants)

-and-

EGALE CANADA INC.
Respondent (Party Intervener)

-and-

THE ASSOCIATION FO MARRIAGE AND THE FAMILY IN ONTARIO
Respondent (Party Intervener)

AFFIDAVIT OF REVEREND DR. BRENT HAWKES
Sworn August 22nd, 2003

I, REVEREND DR. BRENT HAWKES, of the City of Toronto, in the
Municipality of Metropolitan Toronto, MAKE OATH AND SAY THAT:

1. I am the senior Pastor of the Metropolitan Community Church of Toronto (“MCCT”), and as such have knowledge of the matters contained in this affidavit.

2. My education consists of a B.Sc., Mount Allison University, B.Ed., Mount Allison University; M.Div. (honours), University of Toronto, Trinity College; D.Min., University of Toronto, Trinity College.

3. I became the Senior Pastor of MCCT in 1977.

Metropolitan Community Church of Toronto

4. MCCT is part of the Universal Fellowship of Metropolitan Community Churches (UFMCC). UFMCC was established in Los Angeles, California by the Reverend Elder Troy Perry in October, 1968. Reverend Perry believed that Christianity and homosexuality were compatible, and set out to reconcile gays and lesbians to the Christian Church, and the Christian Church to gays and lesbians. From that first tiny gathering, UFMCC has grown to over 300 churches in 16 countries, including 10 churches in Canada. It is one of the fastest growing Christian denominations in the world.

5. MCCT is the largest UFMCC Church in Canada, and the third largest in the denomination. We have approximately 450 members in our congregation. I would estimate that about 85 % of our congregation self-identify as gay or lesbian. We welcome all people and the heterosexual component of our congregation is growing.

6. We hold two regular services on Sunday at our Church at 115 Simpson Avenue in the east end of Toronto, one service at 9 and the other at 11. Our typical Sunday attendance is about 575 persons. We also hold special services at different times every year, including a special service on the Sunday morning of Lesbian and Gay Pride Day that has

recently been held in the open air on Church Street. We are very proud of our Christmas Eve Services held annually at Roy Thomson Hall. The late evening service grew to fill the Hall.

7. Our Church is located in premises purchased from the United Church, and looks like many other conventional churches in Toronto, with a steeple, a sanctuary, an altar, a pulpit, stained glass windows, a choir loft and an organ. We also have a large community center that is used by lesbian and gay community groups like PFLAG and the Triangle School program, as well as by groups not affiliated with the lesbian and gay community like the Girl Guides of Canada.

8. Many people in our congregation are persons who previously regularly attended a church but left for a period of time, often because they were disillusioned by their church's teaching about homosexuality. As a result, our liturgy draws on the liturgies of many traditions so as to be as inclusive as possible, but especially from the Catholic, Anglican and United traditions. Similarly our music ministry, on which we are often complimented by visitors, draws on the rich traditions of many faiths and also includes contemporary Christian music, some written especially for or by gay and lesbian Christians.

9. Although not all of our congregation consists of couples, there is a large number of lesbian and gay couples in our Church. All of them enjoy being able to share their love for each other during their Christian worship, and many walk to the communion rail holding hands and take communion together. Many of our couples have been in long-term relationships. One of our choir members recently announced that he had been in a relationship with his male spouse for 35 years. A lesbian couple in our congregation has been together for over 40 years. It is a testament to their love for one another that these relationships endured through a time of enormous discrimination and hostility, and little or no social or legal recognition.

10. I have borne witness to discrimination many times, and our churches have been the targets of discrimination. To cite but a few examples:

- (1) one of the facilities used by one of our churches in the American South was burned in a hate-crime with a loss of lives of congregation members, including the pastor;
- (2) during the debate on Bill 167, I was forcibly removed from the legislature by security guards who were wearing rubber gloves;
- (3) our congregation and I have received death threats, and I had to appear at Lesbian and Gay Pride Day wearing a bullet-proof vest;

11. Through it all, our Church has maintained an unswerving and courageous commitment to social justice.

12. One example of our Church's work for equality for gays and lesbians was our intervention in support of Jim Egan and Jack Nesbitt at the Supreme Court of Canada. We believed that it was very important that the Court recognize sexual orientation as a prohibited ground of discrimination under the Charter, and that such protection should extend to protection from discrimination against gay couples. We were pleased that both of those principles were established in that case.

13. The struggle for equality has been a gradual process, step by step. For me and for many in our congregation, one of the most important legal objectives has been the legalization of same sex marriage. Perhaps because of my conservative fundamentalist Baptist background, I have always supported the cautious approach that has been taken to date of winning small victories rather than pursuing the ultimate goal of marriage from the

outset. These small victories have kept hope alive in our communities. I believe that our biggest enemies are fear and ignorance, and that through this gradual process of change, Canadians have come to realize that they have nothing to fear from our communities. They have come to know that society can continue to function, and indeed has flourished, while gay and lesbian couples have earned greater and greater legal recognition.

Homosexuality and Christianity

14. Given the roots of our Church, I have studied closely the question of Christian teaching and homosexuality. Because of my fundamentalist upbringing, I have been particularly interested in understanding what the Bible says about homosexuality. I have come to the conclusion that the interpretations that I was taught when I was young were wrong, and that the Bible condemns neither homosexuality nor gay and lesbian relationships as we understand them today. While I have respect for those who hold a different view, there are many scholars and people of faith who support our interpretation in other denominations.

15. Others have maintained an interpretation of Scripture that continues to condemn homosexual acts as a sin, such as the recent pronouncements of the Pope on this subject. The Catholic Church first burned a gay man at the stake in 1294, a tradition they continued for many centuries and for which the Vatican has never expressed any regret. Some extremists who call themselves Christian still view homosexuals as deserving of death.

16. In our Church, we have rejected these traditional teachings about sexuality and Christianity. We accept the Old and New Testaments as parts of the Bible. However, we do not take the Bible literally. Indeed, it is inappropriate to do so, because the Bible we read is a translation into English by authors who are influenced by their own historical social

context, their use of language and their understanding of the meaning of the texts they were interpreting.

17. Christian teaching on moral issues has evolved over the centuries. Many Christian churches, perhaps most, now believe that it is acceptable to have female priests or ministers, and for those clergy to marry. The Roman Catholics, of course, do not agree. The church also used to support slavery, as the Bible clearly does in Leviticus, but some Christians came to realize that slavery was against the principles that Jesus taught and so fought hard to end it.

18. It is noteworthy in connection with marriage that the Bible was used to support apartheid and miscegenation laws. The fact that God created the races was said to be proof that God did not want them to mix. To my mind, this is akin to the argument I hear today that because God made Adam and Eve, God intended for heterosexuals alone to be permitted to marry. Of course, God did not create Adam and Eve to be lawyers or ministers either, and yet they form important parts of our society; we do not know the race of Adam and Eve, and yet we are blessed with racial diversity. We believe that God blessed us with the diversity of God's creation. God seems to have created ample numbers of heterosexuals to ensure the future of the human race.

19. When Europeans colonized our continent, they brought with them their theological convictions about homosexuality, as well as their legal systems. As the sociologist Professor Walter Williams has shown in his work, "The Spirit and the Flesh", the evangelizing impulse resulted in a brutal suppression of native cultures that had been tolerant of homosexuality. For example, Williams notes that it was proudly reported to the King of Spain that Balboa had his dogs attack and devour natives who were "sodomites", praising the killing as "a fine action of an honorable and Catholic Spaniard".

Williams, W., The Spirit and the Flesh,
(Boston, Mass.: Beacon Press, 1992), p. 137

20. There is a range of views among Christians today on the subject of homosexuality. Our Church is certainly at the more liberal end of the spectrum. There are others who do not condemn homosexuals so long as they remain celibate. Others hold more extreme views.

21. One of the more notorious antigay pastors is Reverend Fred Phelps, who maintains a website at www.godhatesfags.com. He is so extreme that he condemns the Roman Catholic Church as evil and labels it a “fag church”, because it permits homosexuals to be members and non-practicing homosexuals to be ordained.

22. Even Phelps, however, claims to stop short of advocating violence against us. Others would advocate killing gays in the name of God as justified. An anonymous caller threatened me, saying, “if Christ were alive today, he would cut off your head”. Sadly, there appear to be some self-professed Christians who, like Balboa, feel that it is their Christian duty to kill gays and lesbians.

23. I understand and respect those who believe that homosexuality is a sin. I pray for them daily. I believe that homosexuality is not a sin. I believe that homophobia is a sin.

The Importance of Marriage

24. There are many reasons why we decided to bring legal action to change the law of marriage in Ontario. Marriage is an important Christian rite of great antiquity. I have attended and presided at many heterosexual weddings. It has struck me as ironic that one of the frequently read passages at such weddings is the Song of Ruth, a confession of love and devotion from one woman to another that some believe evidences a same sex union.

25. Some Catholics and others believe that the highest state of grace for a Christian is celibacy. However, for most Christians in Canada the most desirable state to achieve in life is to be married. Marriage is glorified in the Church and in our society at large as the ultimate goal and achievement of two people who love each other. Love is the fundamental basis of all Christian teaching.

26. Because of their Christian heritage, their current faith and for many, their current loving relationships, access to marriage has always been desired by many in our congregation. In fact, blessing same sex unions was one of the first types of services provided by UFMCC when it was founded over 30 years ago. At that time, it was a rare phenomenon.

27. Since MCCT was established, we have performed many same sex union ceremonies. I estimate that I personally have performed about 250. For many years we called them Holy Unions as distinct from marriages, because we thought that marriage was not available to us under the law. Recently, we have begun calling them weddings because we believe that it is not right to make distinctions between heterosexual couples and same sex couples.

28. MCCT has performed marriages for heterosexual couples for many years as well. The Ontario law imposes a requirement for newly established churches that they are not licensed to perform marriages until they have been established for 25 years. Although this seems onerous, we endured it and had a United Church Minister officially wed couples at our church during those first years. We are now licensed to marry couples independently, and have done so.

29. One of the practical issues facing same sex couples are the various waiting periods before couples of the same or opposite sex will be recognized by law as a common-law spouse. Whereas heterosexual couples have always had the option of marriage, which eliminates this waiting period, homosexual couples have not had this option. This is a blatant example of discrimination. Heterosexual couples who are married by the Anglican church,, for example, have immediate access to the full legal rights and benefits of marriage, whereas same sex couples wishing to marry in our church have had to wait two years for those rights to have effect.

30. Many same sex couples that asked us for holy unions expressed a preference to be legally wed. The ceremonies were identical, except there was no marriage license and therefore no marriage certificate. We had understood that the marriage license was under the control of the City and that they would not be issued to same sex couples. We also believed that one day the Courts might force a change in this restriction at an appropriate time. We have been encouraged by the trend in the jurisprudence, especially the landmark *M. v. H.* case.

The Publication of Banns

31. In the summer of 2000, I had brought to my attention section 5 of the *Marriage Act* of Ontario. I learned that through publication of banns we might marry same sex couples legally without the obstacle of a municipal clerk who was uncertain about issuing a license. I took this matter to our Board, and they agreed to institute this procedure and to offer marriage by banns to same sex couples.

32. We began with the publication of banns for two couples, Kevin Bourassa and Joe Varnell, and Elaine and Anne Vautour, on Sunday, December 10, 2000, International

Human Rights Day. The form of banns was based on the one used by the Anglican Church. The banns were published on the two following Sundays, and no objections were made that I believed to be a valid impediment to the proposed marriages. However, the process required that we not only allowed the voices of our opponents to be heard, they had to be heard in our own sanctuary. Among others, a Catholic friar and Rev. Ken Campbell, perhaps Canada's most notorious Christian anti-gay, stood up and gave vent to their views as part of this process. Enduring this anti-gay vituperation in our own sanctuary was very distressing to our congregation.

33. On January 14, 2001, the couples were wed in a beautiful and spiritual ceremony that took place in a packed sanctuary. The reaction from our congregation to this development has been joyful and universally positive.

34. This event was highly publicized. It is noteworthy to me that the response has been overwhelmingly positive, including supportive editorials in the Globe and Mail and the Toronto Star and even some positive coverage in the more conservative National Post and the Toronto Sun. Kevin and Joe have written a book about their experiences, and have been invited to appear as Grand Marshals at Pride Parades all over our country. They have been enthusiastically received everywhere by the lesbian, gay, bisexual and transgendered community, as well as in mainstream venues such as various law schools.

35. For our part, at MCCT we continued to marry people pursuant to the publication of banns. We made no secret of our activities in this regard, and no one took any legal action against us to try to stop us. Since January of 2001, we have married over 34 same sex couples at MCCT, and we have been booked for weddings at a rate of 1-2 per week ever since. I am informed by my counsel and believe that over 400 marriage licenses have been issued to same sex couples in the Greater Toronto Area since June of this year.

Attached and marked as Exhibit "A" to this my affidavit is a copy of a report detailing the number of same-sex couples in the City of Toronto alone who have been issued marriage licenses as of July 15, 2003. At least 68 of these couples have come from countries other than Canada to obtain a marriage license. I understand that 73 such couples have been married in B.C.

36. I do not believe that the majority of Canadians agree with those who object to these marriages. I believe that most Canadians either support our right to marry, that is, they accept same sex marriage. Many others believe that the state has no business in telling us that we may not do so even though such persons may not personally believe in same sex marriage, that is, they believe that Canadians should tolerate same sex marriage. I also believe that the majority of Canadians cherish freedom of religion as a fundamental right in our society. Most Canadians would agree that one group in society should not impose its religious beliefs on another group with a different view. This move to a more secular society that does not seek by law to impose the majority's religious views on others was well evidenced for me in the changes around Sunday shopping.

37. We do not believe that the state should refuse to recognize the marriages of any denomination because it disagrees with their religious teachings about marriage. This type of state preference for the marriages of select religions is a relic of past discriminatory times.

38. For greater clarity, we accept and support the fact that other faiths should be free to decline to marry same sex couples if it is offensive to their beliefs, just as both a Catholic priest and an Orthodox rabbi have the right decline to marry a Catholic to an Orthodox Jew. We simply ask that they allow us the same free exercise of our religion in the

conduct of marriages in our Church. That was our position in the Courts, and it was our position before the Justice Committee.

39. Although Catholics may now constitute the majority in our society, it was not always so. I understand that in the early years of this province, when Catholics were in the minority, Catholic marriages were not legally recognized. Jewish marriages were also not recognized. That was wrong, and fortunately that legal discrimination ended a long time ago.

40. A fair consideration of Christian tradition makes it clear that, even for conservative mainstream Churches, revelation has continued. Anti-Semitism has a lengthy history in the Christian tradition, but is now rightly condemned. Many traditional Christians once supported slavery, citing unequivocal biblical passages. The traditional religious basis of those practices did not make either of them morally correct. Discrimination is traditional.

Living in Faith in a Secular Society

41. Christ Himself recognized the fact that people of faith may have to adapt to the reality of living in secular society. In Matthew chapter 22, verses 17-21, when asked if it was lawful to pay taxes to the pagan Roman ruler, Jesus said “Show me the money for that tax”. They brought him a coin, and Jesus said to them “Whose likeness and inscription is this?” They said, “Caesar’s”. And He said to them, “Render therefore to Caesar the things that are Caesar’s, and to God the things that are God’s”.

42. We live in a diverse secular society where no one’s religious beliefs should be imposed on others, and where all should be free to hold and practice their private beliefs. The notion that same sex marriage is a singular example of departing from traditional religious beliefs in our law is disingenuous.

43. In a pluralistic society, people of faith must make accommodations every day. Traditional Catholics must live with the availability of abortion and divorce for those who do not share their beliefs. Fundamentalist Muslims must live with the fact that *Shari'ah* is not the law of the land, so that polygamy is not possible and homosexuals are not outlawed. Orthodox Jews must live with the fact that non-kosher food is sold and consumed every day all around them. Old Order Mennonites may drive horse-drawn buggies, but they must share the road with others driving cars. Even fundamentalist Protestants have had to accommodate themselves to people working on Sundays.

The Divisional Court Proceeding

44. When the Applicants (hereinafter the “Applicant Couples”) in the companion action of *Halpern* launched their case, MCCT quickly sought and was granted leave to intervene. Thereafter, we launched our own litigation when the Registrar General of Ontario refused to register the 2001 weddings. The two actions were joined together.

45. In our litigation, two groups composed of social and religious conservatives were granted intervener status with our consent. One of these groups was the Interfaith Coalition for Marriage and the Family (“Coalition”). I have seen no evidence to establish that this group is incorporated, but our efforts to verify this have been hampered by the effects of the recent blackout. While we disagree fundamentally with the Coalition, we acknowledged they had a right to be heard. They filed evidence and were represented by very able counsel during the proceedings.

46. When we consented to intervener status, it was for the purpose of allowing the voices of these groups to be heard within the context of our litigation. Our claim was against the governments, not against them. We did not understand them be seeking any

independent right to appeal any decision in our favour. If they had sought such power, we would have opposed it most strenuously. It was very painful to read some of the things said by these parties, and frustrating to have them participating in our litigation, but we believed it was the right thing to do to give them a voice. A voice, not control over the litigation. We did not believe that they had the right to hijack our litigation.

47. The secondary nature of the role of these parties was underlined by the restrictions put on their facts and oral argument, although I am informed by our counsel and verily believe that they exceeded their allotted time.

48. Our case was based both on sexual orientation discrimination and freedom of religion. We filed evidence from a leader of the Reform Rabbis, an Orthodox Rabbi, the President of the Canadian Unitarians, the retired Anglican Primate of Scotland, a United Church Minister, a Quaker and a Catholic theologian, all of whom supported our right to equal legal recognition of same sex marriages in our Church. Our position was supported by the Coalition of Liberal Rabbis. It is ironic that the groups seeking leave who claim their freedom of religion would be infringed by the new common law rule argued strenuously that our freedom of religion was unaffected by the old rule.

49. The Divisional Court released its decision on July 12, 2002. It ruled in our favour on the question of sexual orientation discrimination, but found that freedom of religion was unaffected by the old common law rule. Despite the finding on freedom of religion, we were very pleased with the victory and especially the moving language of Justice LaForme.

The Court of Appeal

50. The federal government chose to appeal the Divisional Court ruling; the provincial government chose not to do so. The same opposing interveners were permitted to intervene again. Once again, limits were imposed on the length of their facts and oral argument. The time limits for their arguments were more strictly enforced.

51. On June 10, 2003, the Court of Appeal released its ruling. In a more detailed analysis, it confirmed that freedom of religion was unaffected by the old common law rule. However, it found in our favour on the grounds of sexual orientation discrimination. The Court granted immediate relief, and gave legal recognition to the 2001 marriages. The marriages of Kevin and Joe and Elaine and Anne have been registered with the Province, and we continue to submit registration documents for couples married at MCCT.

52. Since the ruling, many more couples have been married at MCCT, and in other churches, synagogues, a Buddhist temple and other places of worship, and in civil ceremonies. Since the ruling, same sex couples have been issued marriage licenses, which gives me the authority to marry them through a much less onerous process than the publication of the banns. The banns process was more time consuming, is not available to persons who are not in regular attendance at our Church, and is not available to anyone who had been previously married and divorced.

53. Since the ruling, MCCT has received hundreds of calls from people around the world seeking to come to Ontario to be married. Several of these couples have obtained marriage licenses and have traveled to Ontario to be married. Thanks to the Court of Appeal ruling, the founder and moderator of our denomination, Rev. Troy Perry of Los Angeles, California, was married by me to his long time partner, Phillip De Blicek at MCCT on July

16, 2003. I personally found the event to be very moving, as did all those who were present. Rev. Perry expressed his joy and gratitude at being able to legally marry by exclaiming at the end of the ceremony, "Thank God for Canada!" He expressed his intention of returning to the United States to carry on the struggle for equality there and around the world. Many in our congregation told me after the ceremony that they could not have been more proud to be Canadian on that day.

Proposed Legislation

54. I appeared before the House of Commons Standing Committee on Justice and Human Rights with our counsel. I made it clear there as we had in Court that while I insisted on the right to marry same sex couples, I would defend the right of clergy to continue to refuse to do so. We had to endure a presentation that day from a Catholic women's organization that said some very objectionable things about gays and lesbians. It is my understanding that many such presentations were made, accusing gays and lesbians of all manner of evil including a desire to have sex with babies.

55. Shortly after the Court of Appeal released its decision, the House of Commons Standing Committee on Justice and Human Rights voted to endorse the new common law rule and reject further appeals. It is noteworthy that none of the members of the Committee who filed affidavits in support of the Coalition mentioned this vote. Rather, in a most misleading manner they have suggested that the Courts were responsible for ending their consideration of the issue. Mr. Lee was not present for the vote, but he was surely aware of its outcome.

56. We were delighted when the federal government announced that it would not appeal the Court of Appeal ruling, but would move to introduce a Bill embracing the new common law definition and seek a Reference to the Supreme Court of Canada.

57. The rights of religious and social conservatives to object to same sex marriage began at least as soon as when they first appeared in our Church and were given an opportunity to publicly express their objections in our sanctuary to the proposed marriages. The rights of religious and social conservatives have been and will be protected by the process of changing the common law rule as follows:

- a) they were given an opportunity to participate in our litigation by filing evidence, and making written and oral arguments;
- b) they were given opportunities to present to the Commons Committee, and have done so;
- c) they were given an opportunity to make submissions to the Canada Law Commission during its study of the question;
- d) they will have an opportunity to seek to participate in the proposed Reference;
- e) there will be a free vote in Parliament, and I understand that they are making a concerted effort to defeat the Bill there; and,
- f) although all Courts have ruled that their religious rights are protected, they will have the benefit of express protection in the Bill and a ruling on the point during the Reference.

58. MCCT objects to the Coalition's attempt to hijack our litigation. If the interveners do not like the new law, their remedy is to do what we did when we objected to the old law: initiate litigation.

59. This litigation has been stressful for MCCT and for the persons married by us since 2001. Many members of my congregation have expressed fear and anger at the prospect of having to return to court to argue the case yet again. Some who have been

married in our church are now concerned about the status of their marriages, and are worried that their marriages will be in limbo if the case goes to the Supreme Court and the Court of Appeal's order is stayed.

60. This litigation has also been financially burdensome to MCCT and our counsel. Although we were awarded costs in both levels of courts, the costs have not been paid to us as yet. The interveners were insulated from any costs award. If they pursue this appeal, we may not have the ability to recover our costs because neither adverse party is seeking an appeal, and the interveners were insulated from any costs award at the courts below.

Religious opponents rights

61. Mr. Clemenger's appears to have had a recent conversion to the importance of the Supreme Court pronouncing on this matter. He and his organization have been consistently critical in the role of the Supreme Court in adjudicating on matters of gay and lesbian equality, or have insisted that this matter belongs in Parliament, not the Courts.

62. Mr. Clemenger's affidavit is somewhat inaccurate with respect to the history of interventions of the Coalition. They did intervene in the BC marriage case and our case. However, it was a different set of religious conservatives that intervened in the Quebec case. In addition, it was not the Coalition but some of its constituent organizations that intervened in *M. v H.* It is fair to say that Mr. Clemenger's group has strenuously opposed not just equal marriage rights, but every effort to protect gays and lesbians from discrimination.

63. Mr. Clemenger suggests that there is a backlash against his group and that they are being silenced. In fact, it is our community that has been experiencing the backlash. It is my information and belief that the Coalition and its members and allies have been

bombarding Members of Parliament with emails, letters and other entreaties. They appear to have garnered the support of substantial members of the governing party, although not the Cabinet. There has been widespread media coverage of their views, which were hardly a secret prior to the June 10 ruling.

64. The Vatican recently published a document advocating against the trend toward legalizing same-sex relationships around the world. In part, the document reads, “Those who would move from tolerance to the legitimization of specific rights for cohabiting homosexual persons need to be reminded that the approval or legalization of evil is something far different from the toleration of evil.” The document goes on to say that “Allowing children to be adopted by persons living in such unions would actually mean doing violence to these children, in the sense that their condition of dependency would be used to place them in an environment that is not conducive to their full human development.” It is appalling to me that this document of approximately 3,000 words in providing advice on how Christians should treat homosexuals never once uses the word “love.” The full text of this document is attached and marked as Exhibit “B” to this my affidavit.

65. The Vatican document also directs Catholic politicians, such as the Attorney General of Canada and the Prime Minister, to vote against laws granting legal recognition to same sex couples. Calgary Bishop Fred Henry publicly criticized the Prime Minister, Mr. Chrétien, saying his support for same sex marriage would cause him to “put at risk his eternal salvation. I pray for the Prime Minister because I think his eternal salvation is in jeopardy. He is making a morally grave error and he's not being accountable to God.” It is my understanding that the Bishop of Ottawa privately issued a similar admonition to the Prime Minister.

66. In my view, these are expressions of hatred that should not be tolerated in our society. However, I do believe that making legitimate attempts to influence members of Parliament is an acceptable means of achieving one's political objectives in a democracy. Despite their attempt to portray themselves as a vulnerable minority, the members of the Coalition have considerable influence including the power to threaten the Prime Minister himself with excommunication and eternal damnation. I have no such influence.

67. It is true, of course, that there has also been criticism of their views by others. At least three Catholic priests tried to publicly dissociate themselves from the Vatican's document, although two were rebuked by their bishops. Numerous Catholics have advised me that they consider both the comments in the statement and the attempt to impose a private religious agenda on the civil law to be an embarrassment to them as Catholics. Granting leave in this case will not silence those expressions of concern.

68. With respect to the Mennonites, they represent a wide range of religious views and practices. A number of my parishioners are former Mennonites or of Mennonite descent, including our counsel in this case. They believe that the religious tolerance that Mennonites sought and received in this country is well-exemplified by the expansion of legal recognition of marriage.

69. I have heard repeatedly the argument made by the affiant David Wiebe that clergy are facing coercion in reliance on the *Hall* case. That case had nothing to do with religious practices, it had to do with a prom. Our opponents always omit reference to the *Trinity Western* case which makes clear that their religious rights will be protected by the Courts. More importantly, the Courts considering marriage itself have already been unanimous in their view that there will be no coercion of religious opponents of same sex marriage. In addition, the proposed Reference will confirm this reality. There is no need for

an appeal of the lower court ruling to address this point since it was the subject of favourable comment.

70. There can only be three explanations for these continued allegations that clergy are imperiled by the expanded definition of marriage: 1. There remain some who are ignorant of the law on the point, which seems unlikely to me at this juncture; 2. Some people hold an irrational but sincere belief that this legal threat exists in the face of overwhelming evidence to the contrary, or 3. This argument is advanced dishonestly by those who do not sincerely hold this belief as a “scare tactic” to whip up religious opposition to our cause. I recall that similar dire predictions were made following *M v H* by religious conservatives and no such coercion happened. Similar allegations are being made by them about proposed hate crimes legislation.

71. During the long struggle for equality for our community, we have frequently heard the refrain of judicial activism from social and religious conservatives. Now that the constitutional dialogue has resulted in a decision by Parliament to act, these same judicial critics now express dissatisfaction with the legislative process and wish to artificially prolong the judicial process at our expense. In truth, they simply wish our community to be denied equality and for the law to reflect their religious beliefs, and nothing less will satisfy them. They do not wish to be heard, they wish to be obeyed.

SWORN before me at)
 the City of Toronto, in the)
 Province of Ontario,)
 on the 22nd day)
 of August, 2003.)

REVEREND BRENT HAWKES

A Commissioner for Taking Affidavits