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SEXUAL ORIENTATION AND LEGAL RIGHTS: A CHRONOLOGICAL OVERVIEW

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INTRODUCTION

In the past 20 years, the legal rights of lesbians and gay men in Canada have generated considerable activity in the political, legislative and judicial spheres. The following survey provides a selective chronology of significant developments. A more detailed discussion covering a broad range of subject matters can be found in *Sexual Orientation and Legal Rights*, Current Issue Review 92-1, prepared by the Parliamentary Information and Research Service.(1)

CONSTITUTIONAL PROVISIONS

A. 1867

- Subsection 91(26) of the *Constitution Act, 1867* gives Parliament jurisdiction over marriage and divorce.

- Subsections 92(12) and (13) give the provinces jurisdiction over both the solemnization of marriage, and property and civil rights.

B. 1985

- Section 15, the equality rights provision of the *Canadian Charter of Rights and Freedoms* (the Charter), came into effect.

(1) This document is available on-line *via* the Library of Parliament Web site at http://lpintrabp.parl.gc.ca/lopimages2/PRBpubs/cir1000/921-e.asp.

JUDICIAL DECISIONS

A. 1992

- In *Haig* v. *Canada*,[2] the Ontario Court of Appeal found the omission of sexual orientation as a prohibited ground of discrimination under the *Canadian Human Rights Act* (CHRA)[3] violated section 15 of the Charter. The Court ordered that sexual orientation be "read in" to the Act.

B. 1993

- In *Canada (Attorney General)* v. *Mossop*,[4] the Supreme Court of Canada ruled that "family status," as a prohibited ground of discrimination in the CHRA, should not be interpreted as extending to couples of the same sex.

- In *Layland* v. *Ontario (Minister of Consumer and Commercial Relations)*,[5] a majority of the Ontario Divisional Court ruled that the common law limitation of marriage to persons of the opposite sex does not violate section 15 of the Charter.

C. 1995

- The Supreme Court of Canada released its first section 15 Charter decision dealing with sexual orientation and same-sex benefits issues. In *Egan* v. *Canada*:[6] the full Court found sexual orientation to be an "analogous" [comparable] ground of discrimination for section 15 purposes; a majority ruled that the opposite-sex definition of spouse in the *Old Age Security Act* violated section 15; a differently constituted majority also found the violation justified under section 1 of the Charter.

D. 1998

- In *Canada (Attorney General)* v. *Moore*,[7] the Federal Court of Canada upheld Canadian Human Rights Tribunal decisions requiring the federal government to extend spousal benefits to the same-sex partners of its employees.

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(2) (1992), 94 D.L.R. (4th) 1.

(3) R.S. 1985, c. H-6.

(4) [1993] 1 S.C.R. 554.

(5) (1993), 104 D.L.R. (4th) 214.

(6) [1995] 2 S.C.R. 513.

(7) [1998] 4 F.C. 585 (T.D.).

- The Supreme Court of Canada decided unanimously, in *Vriend* v. *Alberta*,[8] that the omission of sexual orientation from Alberta's *Individual Rights Protection Act* infringed section 15 of the Charter, and ordered that it be "read in" to the legislation.

- In *Rosenberg* v. *Canada (Attorney General)*,[9] the Ontario Court of Appeal found that the opposite-sex definition of "spouse" in the federal *Income Tax Act* was not justified under section 1 of the Charter and ordered that the definition be enlarged, through the reading-in remedy, to include same-sex spouses for purposes of pension plan registration.

E. 1999

- The Supreme Court of Canada, in *M.* v. *H.*,[10] ruled that the opposite-sex definition of "spouse" in Part III of Ontario's *Family Law Act* was an unjustified violation of section 15 of the Charter. The Court suspended its order that the definition be severed from the Act to enable Ontario legislators to develop an appropriate remedy, and stressed that its decision was not concerned with marriage.

FEDERAL LEGISLATION

A. 1995

- Bill C-41[11] amended *Criminal Code* sentencing provisions, setting out an aggravating sentencing factor for crimes motivated by bias, prejudice or hate based on listed personal characteristics, including sexual orientation (section 718.2).

B. 1996

- Parliament enacted the *Act to amend the Canadian Human Rights Act* (Bill C-33),[12] which added "sexual orientation" to the CHRA's prohibited grounds of discrimination.

C. 1999

- Parliament adopted the first federal legislation to provide explicitly for same-sex benefits. The *Public Sector Pension Investment Board Act* (Bill C-78)[13] replaced opposite-sex

(8) [1998] 1 S.C.R. 493.

(9) (1998), 158 D.L.R. (4th) 664.

(10) [1999] 2 S.C.R. 3.

(11) *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, S.C. 1995, c. 22.

(12) S.C. 1996, c. 14.

(13) S.C. 1999, c. 34.

"surviving spouse" entitlement to benefits with gender-neutral "survivor" entitlement in the major public service pension statutes. A "survivor" is one who "establishes that he or she was cohabiting in a relationship of a conjugal nature with the contributor" for at least a year preceding the latter's death.

D. 2000

- The *Modernization of Benefits and Obligations Act* (Bill C-23)(14) was adopted; it amended 68 federal statutes to effect their equal application to unmarried heterosexual and same-sex couples. The legislation adds the gender-neutral designation(s) "common-law partner" and/or "survivor" to those statutes and restricts the term "spouse" to married couples. In response to opposition to the bill, the government added an interpretive amendment stating that "[f]or greater certainty, the amendments made by this Act do not affect the meaning of the word 'marriage,' that is, the lawful union of one man and one woman to the exclusion of all others."

E. 2004

- In April, Bill C-250(15) amended *Criminal Code* hate propaganda provisions, expanding the definition of "identifiable group" to include any section of the public distinguished by sexual orientation. The legislation also added good faith expression of opinion based on a belief in a religious text to the list of defences against a charge of wilful promotion of hatred.

PROVINCIAL LEGISLATION

All provincial and territorial jurisdictions have enacted legislation to explicitly extend at least some legal rights to individual gays and lesbians and/or same-sex partners. The following represents a non-exhaustive listing of significant statutory reforms in this area.

A. 1977

- Quebec became the first jurisdiction to prohibit discrimination on the basis of sexual orientation in its human rights legislation, the *Charter of Human Rights and Freedoms*.(16) All Canadian jurisdictions now provide for this prohibition. In Alberta, the prohibition results from the Supreme Court of Canada ruling in the *Vriend* decision discussed above. In Nunavut, the legislated prohibition in the new *Human Rights Act*(17) took effect in November 2004.

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(14) S.C. 2000, c. 12.

(15) *An Act to amend the Criminal Code (hate propaganda)*, S.C. 2004, c. 14.

(16) R.S.Q. c. C-12.

(17) S.Nu. 2003, c. 12.

B. 1992

- The British Columbia *Medicare Protection Act*[18] became the first of numerous groundbreaking B.C. statutes through 1999 to extend the definition of "spouse" to persons of the same sex living in "marriage-like" relationships in a number of areas, including family relations[19] and maintenance.[20]

C. 1999

- Quebec's Assemblée nationale unanimously adopted the *Loi modifiant diverses dispositions législatives concernant les conjoints de fait*,[21] giving same-sex couples the same status, rights and obligations as unmarried heterosexual couples. The definition of *de facto* spouse [conjoint de fait] was amended in 28 laws, not including the Quebec *Code civil*, and related regulations.

- The Ontario Legislative Assembly adopted the omnibus *Act to amend certain statutes because of the Supreme Court of Canada Decision in M.* v. *H.*,[22] which entitled "same-sex partners" to the same statutory rights and responsibilities as were available to opposite-sex common law spouses. The legislation preserved the existing opposite-sex definition of "spouse."

D. 2000

- British Columbia's Legislative Assembly adopted the *Definition of Spouse Amendment Act, 2000*.[23] It extended the spousal definition to same-sex couples in about 20 additional provincial statutes and standardized that definition in these and previously amended provincial laws.

- The Nova Scotia Legislative Assembly enacted the *Law Reform (2000) Act*.[24] It added a gender-neutral definition of "common-law partner" to a number of laws, restricting the term "spouse" in those statutes to married individuals, and established the first registered domestic partnership scheme in Canada. Under this initiative, "two individuals who are cohabiting or intend to cohabit in a conjugal relationship" may register their partnership by means of a declaration, provided neither person is a minor, married or in a prior domestic partnership, and both are ordinarily resident or property owners in Nova Scotia. Upon registration, each

(18) R.S.B.C. 1996, c. 286.

(19) *Family Relations Act*, R.S.B.C. 1996, c. 128.

(20) *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127.

(21) *Act to amend various legislative provisions concerning de facto spouses*, S.Q. 1999, c. 14.

(22) S.O. 1999, c. 6.

(23) S.B.C. 2000, c. 24.

(24) S.N.S. 2000, c. 29.

partner immediately assumes the rights and obligations of a [married] spouse under designated provincial statutes. The benefits of registration as domestic partners are available only within Nova Scotia.

E. 2001

- The Manitoba Legislature adopted *An Act to Comply with the Supreme Court of Canada Decision in M.* v. *H.*[25] The bill introduced a gender-neutral definition of "common-law partner" in ten provincial statutes relating to support rights and obligations and pension and death benefits.

- The Legislative Assembly of Saskatchewan enacted the *Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001* and the *Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2).*[26] The bills amended 24 provincial laws, expanding the definition of "spouse" either to include same-sex partners in programs thus far restricted to married and unmarried opposite-sex couples, or to extend to same-sex and unmarried opposite-sex partners benefits and obligations that had been available only to married couples. Areas covered by the bills include pension and insurance schemes, family maintenance, spousal adoption, and matrimonial and other categories of property.

- The Newfoundland House of Assembly adopted the *Same Sex Amendment Act*,[27] amending 11 statutes to enable opposite-sex and same-sex "cohabiting partners" to acquire rights and obligations in relation to public-sector pension benefits, workplace compensation survivor benefits, and other matters.

F. 2002

- Quebec's Assemblée nationale unanimously adopted the *Loi instituant l'union civile et établissant de nouvelles règles de filiation* (Bill 84).[28] The bill amended the *Code civil* to: entrench the conjugal status of same-sex and unmarried opposite-sex couples; create a new optional institution for them, in which unrelated adult partners may enter into a formal "civil union" contract ["union civile"] that entails the rights and obligations of marriage; and clarify the joint parental rights of same-sex spouses in civil and *de facto* unions. Bill 84 amended over 50 additional provincial statutes to incorporate the civil union regime and make related consequential changes.

- The Manitoba Legislature adopted the *Charter Compliance Act*,[29] which amended over 50 laws covering a broad range of subject-matters to expand the statutory rights and

(25) S.M. 2001, c. 37.

(26) S.S. 2001, c. 50 and 51.

(27) S.N.L. 2001, c. 22.

(28) S.Q. 2002, c. 6.

(29) S.M. 2002, c. 24.

responsibilities of same-sex couples, including joint and spousal adoption rights. The *Common-Law Partners' Property and Related Amendments Act*(30) was also enacted. It deals with the rights of common law partners to division of property, and provides for "registration of common-law relationships" under the province's *Vital Statistics Act*. As of 30 June 2004, when the legislation took effect, common law couples may register their relationships, resulting in immediate entitlement to the benefits and imposition of the obligations for which non-registered couples must satisfy prior cohabitation requirements.

- In Alberta, the *Adult Interdependent Relationships Act*(31) amended several family-related provincial statutes to establish the rights and obligations of persons in a variety of non-married but not necessarily conjugal relationships involving interdependency. Under the legislation, the term "spouse" refers exclusively to married partners. A person is an "adult interdependent partner" of another if the two have lived in a relationship of interdependence for prescribed periods, or have entered into an adult interdependent partner agreement. A "relationship of interdependence" is one outside marriage in which two persons of the same or of the opposite sex, including non-minor relatives, share their lives, are emotionally committed and function as an economic and domestic unit.

SAME-SEX MARRIAGE

In the wake of Supreme Court of Canada decisions, and subsequently federal Bill C-23, same-sex marriage issues have assumed steadily increasing prominence:

A. 1999

- Following the *M*. v. *H*. decision, by a vote of 216-55, the House of Commons adopted an opposition motion that "it is necessary, in light of public debate around recent court decisions, to state that marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament will take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition of marriage in Canada."(32)

B. 2000

- The Legislative Assembly of Alberta adopted the *Marriage Amendment Act, 2000*.(33) It defines marriage as one between a man and a woman, and contains a notwithstanding clause. The legislation has been described as having little effect owing to federal jurisdiction over marriage.

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(30) S.M. 2002, c. 48.

(31) R.S.A. 2000, c. A-4.5.

(32) House of Commons, *Debates*, 8 June 1999.

(33) S.A. 2000, c. 3.

C. 2001

- The British Columbia Supreme Court dismissed a challenge to the province's refusal to issue marriage licences to same-sex couples.(34) The judge ruled, among other things, that Parliament may not legislate to extend the legal meaning of marriage to same-sex unions; that "marriage," as a federal head of power under the Constitution, is not open to Charter scrutiny; and that even if it were, any section 15 violation flowing from the restricted nature of marriage was justified under section 1 in light of the significance of opposite-sex marriage as a core institution in the Canadian context. The federal government appealed the decision.

D. 2002

- In July, in a second same-sex marriage challenge involving denial of licences and non-recognition of religious ceremonies, the Ontario Superior Court of Justice (Divisional Court) ruled unanimously that the common law rule defining marriage as the union of one man and one woman represents an unjustifiable Charter infringement.(35) The Court rejected arguments that the 1867 Constitution precludes Parliament from modifying the legal meaning of "marriage," as well as the notion that a "separate but equal" regime offering equivalency of benefits under a term other than "marriage" offered an equitable solution for same-sex couples. In the Court's view, constitutional values require equal access to the rights and benefits associated with marriage by right of entry to the institution. The Ontario Court suspended its declaration invalidating the common law rule for 24 months to enable Parliament to remedy the law of marriage, failing which the rule would be reformulated in gender-neutral terms. The federal government appealed the decision.

- The Cour supérieure of Quebec ruled that the characterization of marriage as a heterosexual institution in section 5 of the federal *Federal Law-Civil Law Harmonization Act, No. 1*, which applies only in Quebec, also represents an unjustified violation of Charter equality rights.(36) The judge shared the Ontario Court's view that Parliament is competent to modify the definition of marriage to reflect the evolution of that institution, and that procreation may no longer be considered the defining characteristic of marriage so as to justify excluding same-sex couples. She concluded that while the province's new civil union regime achieved a certain recognition of the legitimacy of same-sex conjugal relationships, it was not equivalent to the institution of marriage. The judge declared inoperative section 5 of the harmonization statute, as well as equivalent provisions in the federal *Modernization of Benefits and Obligations Act* and the *Civil Code*, and suspended the declarations for a two-year period.

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(34) *EGALE Canada Inc.* v. *Canada (Attorney General)* (2001), 88 C.R.R. (2d) 322, 2001 BCSC 1365.

(35) *Halpern* v. *Canada (Attorney General)* (2002), 95 C.R.R. (2d) 1.

(36) *Hendricks* c. *Québec (Procureur général)*, [2002] R.J.Q. 2506.

E. 2003

- In May, the British Columbia Court of Appeal unanimously reversed the lower court judgment that had upheld the common law bar to same-sex marriage.(37) The ruling agreed that Parliament has the constitutional authority to legislate a modified definition of marriage and that the current opposite-sex definition effects substantive discrimination. It found that the resulting section 15 infringement is not justified under section 1 of the Charter, in part, because procreation no longer represents a sufficiently pressing objective to justify restricting marriage to opposite-sex couples. The Court noted that La Forest J.'s comments on traditional marriage in the 1995 Supreme Court of Canada *Egan* decision were written for the minority in the section 15 portion of that ruling, and did not preclude Parliament from changing the existing definition of marriage. The Court suspended its gender-neutral reformulation of the common law definition until July 2004, the expiration of the suspension in the Ontario decision. In view of subsequent developments, the Court lifted this suspension in July, making its expanded definition of marriage effective in British Columbia immediately. In view of subsequent developments, the Court lifted this suspension in July, making its expanded definition of marriage effective in British Columbia immediately.

- On 10 June, the Ontario Court of Appeal unanimously upheld the Divisional Court's decision finding the existing common law definition of marriage an unjustified violation of section 15 of the Charter.(38) It explicitly endorsed much of the reasoning and conclusions of prior decisions to that effect, asserting, in part, that

  - "marriage" in subsection 91(26) has the "constitutional flexibility to meet … changing realities" without a constitutional amendment;
  - it is not enough to say marriage "just is" heterosexual, rather it is the opposite-sex component that requires scrutiny in order to determine its impact on same-sex couples;
  - when compared to married couples, same-sex couples are not afforded equal treatment in matters of benefits and obligations owing, for example, to specific cohabitation requirements or the unevenness of benefits under provincial legislation, as well as exclusion from the fundamental institution of marriage.

  The Court ruled that none of the purposes of marriage advanced by federal lawyers – uniting the opposite sexes, encouraging the birth and raising of children, and companionship – is a pressing objective of maintaining marriage as an exclusive heterosexual institution. Further, the common law rule excluding same-sex marriage is not rationally connected to those objectives, and does not represent minimal impairment of the rights of same-sex couples. In the Court's view,

  > Allowing same-sex couples to choose their partners and to celebrate their unions is not an adequate substitute for legal recognition. This is not a case of the government balancing the interests of competing groups. Allowing same-sex couples to marry does not result in a corresponding deprivation to opposite-sex couples.

(37) *EGALE Canada Inc.* v. *Canada (Attorney General)* (2003), 38 R.F.L. (5th) 32, 2003 BCCA 251.

(38) *Halpern* v. *Canada (Attorney General)* (2003), 36 R.F.L. (5th) 127.

> Nor is this a case of balancing the rights of same-sex couples against the rights of religious groups who oppose same-sex marriage. Freedom of religion … ensures that religious groups have the option of refusing to solemnize same-sex marriages. The equality guarantee, however, ensures that the beliefs and practices of various religious groups are not imposed on persons who do not share those views.

The Court modified the Divisional Court's remedy: invalidation of the existing common law definition of marriage and reformulation to refer to the "voluntary union for life of two persons" became effective in Ontario immediately.

- On 17 June, then Prime Minister Chrétien announced that the federal government would not appeal Ontario and B.C. appellate decisions supporting the lifting of restrictions against same-sex marriage, and would discontinue its appeal of the Quebec Superior Court ruling. The government's phased approach to legalizing same-sex marriage would involve (1) draft legislation to recognize same-sex marriage and acknowledge religious organizations' authority to abide by the precepts of their faith in relation to marriage, (2) an immediate reference of the draft legislation to the Supreme Court of Canada for a non-binding opinion as to its constitutionality and (3) a free vote in the House of Commons. On 17 July, the government did refer draft legislation to the Supreme Court of Canada, requesting that the Court consider whether: the draft bill falls within Parliament's exclusive legislative authority; the bill's extension of the capacity to marry to persons of the same sex is consistent with the Charter; the Charter's freedom of religion guarantee shields religious officials from being forced to perform same-sex marriages contrary to their religious beliefs.(39)

- On 8 July, with the consent of the federal Attorney General, the British Columbia Court of Appeal lifted the suspension of remedies it had imposed, making its gender-neutral reformulation of the common law definition of marriage in British Columbia effective immediately.(40)

- On 16 September, an Opposition motion identical to that of June 1999, expressing Parliament's support for the opposite-sex definition of marriage, was defeated in the House of Commons by a vote of 137-132.(41)

F. 2004

- On 28 January, the federal Minister of Justice, citing the importance of a full and informed debate, referred an additional question to the Supreme Court of Canada for its opinion. The question was not directly related to the July 2003 draft legislative proposal; it asked whether

(39) Department of Justice Canada, "Reference to the Supreme Court of Canada," *Backgrounder*, Ottawa, 17 July 2003.

(40) *EGALE Canada Inc.* v. *Canada (Attorney General)* (2003), 42 R.F.L. (5th) 341, 2003 BCCA 406.

(41) House of Commons, *Debates*, 16 September 2003.

the current opposite-sex requirement for civil marriage was consistent with the Canadian Charter. In making this announcement, the Minister expressed the government's continued support for principles of equality and religious freedom as set out in the draft legislation.(42)

- On 19 March, the Quebec Court of Appeal ruled unanimously that a religious organization that had intervened before the Cour supérieure lacked legal standing to appeal that Court's 2002 Charter decision finding opposite-sex marriage provisions contrary to section 15 of the Charter.(43) The Court allowed a motion to reject the appeal and, in doing so, declined to exercise its discretion to render judgment on its merits. In its view, the appeal duplicated the reference to the Supreme Court of Canada for which the organization had also been granted intervener status, and in which the same constitutional issues it wished to address would be debated. Noting the acquiescence of the federal Attorney General, the Court lifted the suspension of remedy imposed by the lower court, thus enabling same-sex couples to marry legally in the province with immediate effect.

- In July, the Supreme Court of Yukon ruled that the common-law definition of marriage was unconstitutional and modified that definition to a gender-neutral one. The judge refused to adjourn the case pending the Supreme Court reference on the basis that delay would perpetuate a "legally unacceptable result".(44)

- On 16 September 2004, Manitoba became the fifth jurisdiction to legalize same-sex marriage when the Manitoba Court of Queen's Bench declared the opposite sex definition of marriage unconstitutional and reformulated it as a voluntary union of two persons. The federal government did not oppose the judge's Order, which was consented to by the provincial Attorney General.(45)

- On 24 September, the Nova Scotia Supreme Court followed suit, ordering that the common law definition of marriage in the province be altered to "the lawful union of two persons" and further finding that same-sex marriages performed in Ontario are valid in Nova Scotia. The federal government did not intervene in the application.(46)

- On 5 November, the Saskatchewan Court of Queen's Bench also allowed a Charter application seeking the reformulation of the common-law definition of marriage and issued an order authorizing same-sex marriage in the province.(47) Neither the provincial nor the federal Attorney General opposed the application.

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(42) Department of Justice Canada, "Government of Canada Reaffirms Its Position on Supreme Court Reference," *Press Release*, Ottawa, 28 January 2004.

(43) *Ligue catholique pour les droits de l'homme* c. *Hendricks* [2004] J.Q. No. 2593 (Q.L.).

(44) *Dunbar & Edge* v. *Yukon (Government of) and Canada (A.G.)*, 2004 YKSC 54, 14 July 2004.

(45) *Vogel et al*. v. *Attorney General of Canada et al*., File No. FD 04-01-74476, 16 September 2004.

(46) *Boutilier* v. *Nova Scotia (Attorney General)*, [2004] N.S.J. No. 357 (Q.L.), 24 September 2004.

(47) *W. (N.)* v. *Canada (Attorney General)*, 2004 SKQB 434, 5 November 2004 (Sask. Q.B.).

- The Supreme Court of Canada heard arguments in the reference case on 6 and 7 October. It issued its ruling on 9 December,[48] finding that:
  - The provision in the draft bill authorizing same-sex marriage is within Parliament's exclusive legislative authority over legal capacity for civil marriage under subsection 91(26) of the *Constitution Act, 1867*.
  - The provision is consistent with the *Canadian Charter of Rights and Freedoms* and, in the circumstances giving rise to the draft bill, flows from it.
  - However, the declaratory clause relating to those who perform marriages, and therefore within the provincial constitutional authority over solemnization of marriage, was *ultra vires* Parliament;
  - The religious freedom guarantee in subsection 2(*a*) of the Charter is sufficiently broad to protect religious officials from state compulsion to perform same-sex marriages against their religious beliefs.

  The Court declined to answer the fourth question concerning whether the opposite-sex requirement for marriage is consistent with the Charter. It found, in part, that the federal government intended to proceed with legislation irrespective of the Court's opinion, and that married same-sex couples relying on the finality of judicial decisions in jurisdictions authorizing such marriages had acquired rights that deserved protection.

- On 21 December, the Chief Justice of the Supreme Court of Newfoundland and Labrador's Trial Division ordered that the common-law definition of civil marriage in the province be stated in gender-neutral terms.[49]

G. 2005

- On 24 February, the Ontario Legislature adopted Bill 171, An Act to amend various statutes in respect of spousal relationships. The legislation amends the province's laws to reflect the Ontario Court of Appeal's June 2003 same-sex marriage ruling. Bill 171 amendments to the Ontario *Human Rights Code* and *Marriage Act* explicitly provide that registered religious officials for whom same-sex marriage is contrary to their religious beliefs are not required to solemnize such marriages.

- On 1 February, Bill C-38, the Civil Marriage Act, was introduced in the House of Commons. The bill will, for the first time, codify a definition of civil marriage in Canada as a gender-neutral institution, "the lawful union of two persons to the exclusion of all others." From 11 May through 14 June, the Legislative Committee to which the bill was referred following second reading heard divided testimony on the merits of the legislation from witnesses seeking either to defend the traditional definition of marriage on various grounds, or to expand on that definition on equality rights grounds and extend civil marriage to conjugal couples of the same sex.

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(48) *Reference re Same-Sex Marriage*, 2004 SCC 79, 9 December 2004.

(49) *Pottle et al.* v. *Attorney General of Canada et al.*, 2004 01T 3964.

- On 16 June, Bill C-38 was reported back to the House of Commons with one substantive government amendment and one opposition amendment to the bill's preamble. Following a one-day debate, the legislation was adopted at report stage on 27 June with one additional substantive opposition amendment. Bill C-38 passed the House of Commons on 28 June by a vote of 158-133, 32 government members opposing.

- On 23 June, New Brunswick became the eighth province to legalize same-sex marriage when a Court of Queen's Bench Charter ruling redefined civil marriage in the province in gender-neutral terms.(50)

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