



Organisation pour la Sauvegarde des Droits des Enfants Organization for the Protection of Children's Rights

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Same sex marriage, what about the children?

Mr. Minister:

The recent judgment rendered by the Ontario Court of Appeal on June 10th, 2003 regarding the legality of same-sex marriages raises many serious questions, particularly, with respect to the rights and well being of Canadian children who may be involved in such unions. It is not a question of judging the parental abilities of an individual based solely on his or her sexual orientation. One could even agree that, in some cases, children raised by same-sex parents receive as much care and attention as those raised by heterosexual parents. However, the social and legal implications of children's well being raised by this new dynamic are serious matters that need to be addressed.

What definition will marriage undertake in a few years? For example, we could end-up having three or even four individuals within the same marriage? Where will children stand and how will their rights be respected? The fact is that not enough studies have been conducted to date in order to make a fair and adequate assessment. The preamble of the *Convention on the Rights of the Child*, which Canada ratified in December 1991, which stipulates: *Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding* can serve as a starting point for initial discussions on the matter. Furthermore, article 3.1 of the *Convention* stipulates: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

The current application and interpretation of the *Divorce Act* by provincial courts too often lead children to become pawn victims of the legal system despite the fact that they don't have any responsibility in the matter and in most cases are not even asked for their opinion within the debate.

It is inevitable that in the near future a new law will define the scope and form that marriage will take in Canada. In my opinion, which is shared by a growing majority of Canadian citizens, this law will have to specifically address the issue of children rights versus the individual right to a family. Therefore, it is important, not only to enact legal provisions to ensure children's rights in same-sex marriages, but to also correct the loopholes within the current system that already adversely affect parents and children of heterosexual and recomposed families.

The essential question is how to reconcile the individual right to a family with the current provisions of the *Charter of Rights and Freedoms* that guarantees the rights and freedoms of every child as an individual?

Should we open another Pandora's box when we still don't have a legal framework and tools to help non-traditional family to provide adequately for their children?

Mr Minister, I invite you to consider the recommendations that have been put forward by the Organization for the Protection of the Children's Rights:

1. Putting into place family mediation services that are free, mandatory and non-judicial for all couples experiencing marital difficulties or going through divorce proceedings. Such services should also be available for grandparents and other family members in crisis;
2. The creation of a system of family reconciliation that would be available at all times for couples and families in crisis;
3. The elimination of terms that create friction between the parties. For instance, replace the expressions "legal custody" by "parental responsibilities", "support orders" by "financial responsibilities of parents" and "parenting orders" by "parenting responsibilities". We are pleased to see this recommendation, which we put forward as early as in 1984, in the current version of Bill C-22;
4. The creation of a court specializing in family matters where judges have an extensive background in family law as well as in psychosocial matters;
5. The creation of an office of formal complaints;
6. The creation of courses at the elementary and secondary level in order to educate and sensitize students about parental responsibilities. The goal being to ensure that the next generation may adequately understand and assume its role as parents.

These recommendations are only a starting point in guaranteeing the rights of the child. They must be followed up on and be adapted to the changing social realities. The solution to this dilemma, Mr Minister, must take into account the rights of the child.

Mr Minister, as we proceed to define marriage, our society would benefit tremendously from an in-depth analysis of the implications and consequences of Bill C-22 (Divorce Act). Especially in view of the fact that this law, although of federal jurisdiction, is applied by provincial courts which possess variable interpretations from one province to another. This situation results in a number of parents, grandparents and especially children, finding themselves in a legal turmoil. To ensure the well being of children trapped in the midst of such dilemma, it is important to restructure the entire Canadian

family policy in the best interest of the child and harmonize it among all provincial jurisdictions so that only one family policy exists throughout Canada.

Canada is one of the countries most often quoted worldwide for its respect of individual rights and liberties. Isn't it about time that all individuals have the same rights regardless of their race, national or ethnic origin, colour, religion, sex, age or mental or physical disability?

For the love of our children!

Riccardo Di Done
Founding President
Organization for the Protection of Children's Rights