
A JURIDIC REDEFINITION OF MARRIAGE



At the recent meeting of the Bishops of the American Church, Archbishop Brendan O'Brien, President of the Canadian Conference of Catholic Bishops, gave an important address on the family. In this final series of excerpts from his talk, he discusses the subject of the coming new definition of marriage, which comprises the most radical threat to the Canadian family. Has the C.C.C.B. intervention before Canada's Supreme Court, in October 2004, shed all the light required in these circumstances?

A RAPID EVOLUTION

The social revolution that has occurred in Canada about the recognition of same-sex relationships has been largely driven by the courts. As a result of a series of legal challenges that began about 15 years ago, the provincial human rights codes in all the provinces and the Canadian Human Rights Act have been amended to prohibit discrimination on the grounds of sexual orientation in the areas of employment; the provision of goods, services or facilities customarily available to the public; and accommodation. These gains were then used to challenge the historical understanding of spouse and to obtain health, pension and other benefits available to married and heterosexual common-law couples. Most provinces and the federal government have now given to same-sex partners almost the same economic benefits and responsibilities as previously reserved to common-law and married couples.

CONTESTED RIGHTS

The Ontario Court found that the three specific purposes of marriage identified by the Government of Canada were not pressing and substantial so as to justify overriding the equality rights of persons in same-sex relationships. It said that the purpose of uniting the opposite sexes favours one form of relationship over another, suggesting that uniting two persons of the same sex is of lesser importance, thereby demeaning the dignity of same-sex couples. The Court also found that the second purpose of encouraging the birth and raising of children was found not to be a reason for maintaining marriage as an exclusively heterosexual institution. In the Court's view, heterosexual couples will not stop having or raising children because same-sex couples are permitted to marry, and same-sex unions can have children by other means such as adoption, surrogacy and donor insemination. The Court also noted that a law that restricts marriage to opposite-sex couples on the basis that a fundamental purpose of marriage is the raising of children suggests that same-sex couples are not equally capable of child rearing. The Court said that the objective is based on a stereotypical assumption which is not acceptable in a free and democratic society that prides itself on promoting equality and respect for all persons. The Court held that the third objective of promoting companionship perpetuates the view that persons in same-sex relationships are not equally capable of providing companionship and forming lasting and loving relationships.

FUNDAMENTAL DIFFICULTIES

The Government of Canada has stated that it promotes allowing same-sex partners to marry because it reflects values of tolerance, respect and equality consistent with the Canadian Charter of Rights and Freedoms. At the same time, the government has stressed that religious groups are free to refuse to perform marriages which are not in accordance with their religious beliefs. This gives the impression that faith groups that oppose marriages between people of the same sex do not believe in tolerance, respect or equality. The government has also managed to position the redefinition of marriage as a religious issue, rather than a social issue. In our country, the definition of an issue as religious usually results in its being marginalized or banished from the public square. Many, particularly those who are young, do not understand why two people cannot marry if they love each other. They do not readily see that marriage recognizes not only love and commitment, but also the natural capacity to create children, and that there is a fundamental difference between a relationship which has the potential to create a child and one that does not.

OPPOSING FORCES

The strong individualism in Canada has paved the way for an approach to many moral questions - be it abortion, assisted suicide or marriage - in which individual practices govern, rather than principles or ideals. Therefore, many Canadians assert that procreation is no longer a valid objective to marriage because not all married couples have children, and same-sex partners can have children through the new technologies or adoption. For these Canadians, exceptions redefine the purposes of an institution. The argument is also made that there is little point in trying to save an institution when fewer and fewer people are choosing it and when many do not live up to its ideals. It is as though failure to live up to ideals is reason to abandon them.

MAJOR STAKES

It is often claimed that the marriage of same-sex partners will have no impact on traditionally married couples. This reflects a common failure to differentiate between the individual and societal perspective. We do know, however, that we would no longer have an institution that symbolizes our commitment as a society to our future: our children. Instead, we would have an institution that symbolizes our commitment to the present needs and desires of adults. When all is said and done, however, surveys show that the Canadian population is quite divided on this matter. There is no doubt that the cultural elites – media, public servants and the courts – support the redefinition of marriage and are doing their utmost to shape public opinion. But they may have miscalculated or disregarded where many people are on this question. I believe that I have given you a glimpse of the principal challenges faced by the traditional family unit in Canada today. These challenges compromise the very existence of the family and are part of the worrying trend of secularization in Canada. Because the family is the first place in which today's children learn how to become the women and men of tomorrow, it is essential that re-evangelization begin here.

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