

Introduction

The Right to Life Association of Toronto and Area would like to thank the Justice Committee for the opportunity to hear our views and concerns surrounding the issue of marriage and same-sex unions.

The Right to Life Association is a non-denominational, not-for-profit organization that was formed in 1971. We have a membership of over three thousand. Our mandate is to promote respect for human life at all its stages, from conception to natural death. We hold that all human life is sacred. All children have the inherent right to a father and a mother, and that the most stable and healthy place for the begetting of new human life is within the family unit constituted by the committed union of one man and one woman in marriage. We look to the law to uphold the unique and fundamental institution of marriage as the place where human life is most likely to be respected and protected. The begetting of children outside of the sanctuary of the family with the use of reproductive technologies lends itself to gross abuses of human life. As this is the only way that same-sex couples can pro-create, we very strongly support the institution of marriage as it has always been understood, that is the union of one man and one woman.

A. What is Marriage?

- a. To know what marriage is we look to anthropological, historical, social, legal, psychological and religious practice and belief.
- b. In all of these areas it appears that there is a universal recognition of the nature of marriage that precedes the law, that is not defined by the law, but is recognized and protected by the law for the greater good of individuals and society.
- c. Under all these aspects marriage has been and continues to be a foundational institution within society whereby a man and a woman are joined together by a vow, publicly expressed, for the sake of their mutual benefit and for the pro-creation and education of the children that may spring from their union.
- d. This reality has been upheld in all democracies throughout recorded history. Canada is no exception. In a recent Supreme Court decision, Nova Scotia (Attorney General) v Walsh on December 19, 2002, Mr. Justice Gonthier said the following:

Marriage and family existed long before any legislature decided to regulate them. For centuries they have been central to society, contributing to its social cohesion and fundamental structure...

Marriage and the family promote the psychological, social and economic well being of all members of the family unit.

The House of Commons also affirms this in its vote of June 8th 1999 where support for the common law definition of marriage as the union of a man and a woman was 216 to 55:

That, in the opinion of this House, 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.

- e. The pro-creative aspect of the marital union is what gives marriage its unique character. Though human life can be conceived outside of marriage, and some couples who are married cannot conceive, these are exceptions that do not define or constitute marriage. Marriage is what it is by virtue of the exclusive union of the sexes with the very real potential of creating human life. The power to bring forth new human life cannot be separated from the meaning and reality of marriage.
- f. In the Egan v Canada Supreme Court Case, 1995, Mr. Justice LaForest wrote that the "ultimate raison d'être" of marriage is...

firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual.

B. What are the benefits of marriage for society?

- a. Marriage forms the most basic and fundamental institution within the social order. It is the fabric that underlies any healthy society. According to Statistics Canada, out of a population of 31,413,990, almost half are married, 15, 018, 130. In the last census of 2001, of the 8.4 million families in Canada, 5.9 million or 70% were married, while only 1.2 million or 14% were common law and 34,200 or 0.5% were same-sex partnersⁱ.
- b. Again, one of the greatest benefits to society from marriage is the generation of children, which provide society with its future. 68% of children aged 0-14 live with married parentsⁱⁱ.
- c. Married couples add to the economic prosperity and health of society. Together spouses significantly increase their wealth and spending.

C. How has altering laws concerned with marriage affected society and individuals?

- a. The greatest attacks on marriage have been divorce and common law unions. Both of these have had negative effects on individuals, in the way in which society understands marriage and, in particular, on the children that have resulted from common law unions.
- b. Marriage is by far the most stable and healthy place whereby children can be conceived and reared. In a 2003 study done by The Vanier Institute of the Familyⁱⁱⁱ, statistics showed that children born to a married couple who had not co-habited prior to marriage were the least likely to experience marital break up (13.6%). However a huge 63.1% of children whose parents were unmarried or common law experienced family breakdown, most of them before the age of four. 25% of children whose parents had lived together before marriage also experienced the trauma of family break-up.
- c. Common-law unions that do not turn into marriage have about a 50% breakup rate within five years. Even those that do result in marriage are still more likely to break down than marriages where the couple did not live together prior to marriage.^{iv}
- d. Statistics Canada found that women in common-law unions were four times more likely to suffer spousal abuse than those in a legally recognized marriage. Similarly, women in common law unions were eight times more likely to be the victims of spousal homicide.^v

- e. Canadian Law recognizes the importance of marriage as opposed to common law unions. In a recent Supreme Court decision, *Walsh v Nova Scotia*, regarding Nova Scotia's Matrimonial Property Act, Mr. Justice Bastarache wrote for the 8 to 1 majority, that "with married couples there is a permanent and reciprocal life commitment. Unmarried couples do not make that same commitment and rights and duties akin to marriage should not as a result follow." Both the Ontario and Alberta governments who intervened in the case supported the decision.
- f. Legislators claimed that the no-fault divorce law that was passed in 1968 by the House of Commons would have little or no impact on healthy marriages. In *It Takes Two: The Family in Law and Finance*^{vi}, it was reported that within five years of its passing the divorce rate soared to three times its usual rate and has remained there since. The impact of this has been most sorely felt by children. "Children of divorce face higher probabilities of virtually every social ill one can think of relative to children from intact marriages, even when such marriages are 'bad'."^{vii}

D. The homosexual experiment.

- a. Legislation on marriage has been put in place for the purpose of protecting the bond, because there are social consequences to the sexual activity of a man and a woman, namely the begetting of human beings. If the law seeks to recognize homosexual relationships as equal to marriage, by what criteria would it base its recognition? The fact that two men or two women love each other cannot be sufficient. Siblings or friends that live together for many years often love and support each other. Would they too be able to make the same legal claim? As was stated above, it is the power of the sexes to procreate that gives marriage its special character and that allows the state to have a vested interest in the institution of marriage.
- b. It is impossible by nature for homosexual couples to bring new life into being. To achieve this end they must turn to reproductive technologies that take conception out of its natural place.
- c. Human reproductive technologies, such as in vitro fertilization, are ethically questionable and medically dangerous. A basic principle of good medicine is that it exist for the sake of assisting the body in its natural processes, not that it totally replace them. IVF seeks to replace the natural process of conception with the use of technology.

- d. In vitro fertilization takes away from the newly conceived human being the most basic right to be conceived in a natural way that will least likely affect the health and well being of that newly formed individual. In vitro fertilization for homosexual couples also denies the child the basic right to a father and a mother, and creates a situation whereby the child exists for the fulfillment of the wishes and interests of the adult couple.
- e. Children do not exist for the sake of satisfying the needs of their parents. Parents do not have the right to mandate the existence of their children at any cost to their child, be that at the expense of the child's health or their psychological well-being.
- f. It is not well known what the psychological consequences will be on children who are raised by two mothers or two fathers that live together in a same-sex union. In a 2002 American study of children of homosexual couples in *Psychological Reports*, it was noted that^{viii}:

The childhood of children of homosexuals were considered more difficult than the childhood of children of heterosexuals. In 92 percent of homosexual-parented families, children mentioned having one or more problems or concerns. Of the 213 "score problems," 94 percent were attributed to the homosexual parent(s). Among appellate cases, the courts attributed 97 percent of the "harms" to children to the homosexual parent.

- g. In vitro fertilization is fraught with complications and difficulties.
 - 1. The following was reported in the New England Journal of Medicine, 2002^{ix}.

Twenty-six of the 301 infants conceived with intracytoplasmic sperm injection (8.6 percent) and 75 of the 837 infants conceived with in vitro fertilization (9.0 percent) had a major birth defect diagnosed by one year of age, as compared with 168 of the 4000 naturally conceived infants. As compared with natural conception, the odds ratio for a major birth defect by one year of age was 2.0. Infants conceived with use of assisted reproductive technology were more likely than naturally conceived infants to have multiple major defects and to have chromosomal and musculoskeletal defects. Conclusion: Infants conceived with use of

intracytoplasmic sperm injection or in vitro fertilization have twice as high a risk of a major birth defect as naturally conceived infants.

2. Another study reported in the New England Journal of Medicine, 2002, concluded that "the use of assisted reproductive technology accounts for a disproportionate number of low-birth-weight and very-low-birth-weight infants in the United States, in part because of absolute increases in multiple gestations and in part because of higher rates of low birth weight among singleton infants conceived with [in vitro fertilization]."^x
3. Health risks and dangers to the mothers who must undergo severe hormonal adjustments in order to have their eggs harvested for IVF purposes are also a concern. The Washington Post reported in December of 2001 that women commonly suffer "PMS-like symptoms such as bloating, abdominal pain, nausea and moodiness" and "in 3 to 5 percent of cases, hyper stimulation of the ovaries occurs, causing severe abdominal pain; on rare occasions, surgery is required and the patient can be left infertile. Other risks of retrieval include lacerations, ovarian trauma, infection and anesthesia-related complications."^{xi}
4. The loss of human life in the practice of these reproductive technologies is staggering. In a story reported in the Toronto Star, February 23, 1998, called the "Human Egg Trade," statistics from the Human Fertilization and Embryology Authority in England revealed that the IVF success rate per attempt ranged from 4.9% to 23.7%, with a national average of 14.5%. Of the 20,000 British women who had test-tube baby treatments that year, there were approximately 3,500 live births resulting from the treatments. Each treatment requires the transfer of at least 2 to 3 embryos, such that there were some 60,000 embryos created of which only 3,500 live births resulted. 56, 500 human embryos were lost in the process.
5. In a 1999 National Center for Chronic Disease Prevention report^{xii}, American figures showed that there were 86, 822 transfers with approximately 3 embryos per transfer. That totals some 260, 466 human embryos created for the process of which only 30, 285 live

births resulted. Approximately 230, 181 human embryos died in the process.

6. The Canadian Fertility and Andrology Society reported for 2001^{xiii} that there were 5, 188 IVF cycles with 2-3 embryos transferred for each cycle. Approximately 15, 564 embryos were created which resulted in 1,452 live births. Again 14, 112 embryos did not survive the procedure.

h. Giving same-sex unions legal recognition would further promote homosexuality within our society, taking more and more people away from the opportunity of having healthy marriages and offspring. Canada's fertility rates cannot afford the cost of this human experiment. The Globe and Mail on Sept. 26, 2002 reported the Statistics Canada census^{xiv} saying "327,882 babies were born in Canada in 2000, the lowest level in 56 years.... the data released yesterday reflects a world-wide trend that is pushing the median age in developed countries beyond 40. The statistics serve to reinforce government assertions that increased immigration is necessary to maintain a viable work force." The Toronto Star, Sept. 26, 2002, reported "The number of babies born in Canada in 2000 hit its lowest level since 1946, driving the country's fertility rate to a record low" of 1.49 children per woman^{xv}. Significantly contributing to this crisis is increased infertility as women get married later in life, and make use of contraception and abortion on demand. In Canada, one in three pregnancies will end in abortion. The promotion of homosexuality through legal recognition would not assist this national dilemma of low replacement rates in any way.

Conclusion

In view of the studies done, by homosexuals themselves^{xvi}, regarding the very tenuous nature of their relationships and the many aspects of their lifestyle that would not be conducive to properly rearing children, to change the definition of marriage to include homosexual unions is again making an experiment of the lives of children that may be brought into the "marriage". It is not the responsibility of the law to give psychological affirmation to same-sex relationships, but rather to protect an institution fundamental to the common good of society. To accept homosexual unions as marriage would diminish the importance of the role in society of procreation within a natural, stable and legally

protected institution. It would further diminish society's understanding of the role of marriage, as the law is one of the most powerful teachers.

Society needs the law. Marriage between one man and one woman needs legal recognition because it serves the best interest of all people within society to have marriage protected and upheld. The law has an enormous impact on the behaviour and attitudes of people, and thus carries with it the weight of a very great responsibility. We appeal to this Committee and the Government of Canada not to pass on this essential duty to religious institutions and not to change the definition of something that the law has not the power to define. Protect what has already been given to the human race by nature, and do not make an experiment of the next generation.

ⁱ *Profile of Canadian families and households: Diversification continues*, Statistics Canada, October 22, 2002.

ⁱⁱ *ibid*

ⁱⁱⁱ Nicole Marciel-Grattton, . "Growing up with Mom and Dad?" in Transition, The Vanier Institute of the Family, Spring, 1999, pp 5-6

^{iv} Anne Milan, *Canadian Social Trends*, Statistics Canada, Spring 2000

^v Valerie Pottie Bunge and Andrea Levett, *Family Violence in Canada: A Statistical Profile 1998*, Statistics Canada, May 1998 p.29.

^{vi} Douglas W. Allen, John Richards, editors, *It Takes Two: The Family in Law and Finance*, Toronto: CD Howe Institute, 1999, p.x.

^{vii} *ibid*

^{viii} Paul Cameron, and Kirk Cameron; "Children of Homosexual Parents Report Childhood Difficulties"; Psychological Reports. Vol. 90, Number 1. February, 2002. Page(s) 71-82

^{ix} Michèle Hansen, M.P.H., Jennifer J. Kurinczuk, M.D., Carol Bower, M.B., B.S., Ph.D., and Sandra Webb, Ph.D. , *The Risk of Major Birth Defects after Intracytoplasmic Sperm Injection and in Vitro Fertilization*, The New England Journal of Medicine; Volume 346:725-730, March 7 2002

^x Laura A. Schieve, Ph.D., Susan F. Meikle, M.D., Cynthia Ferre, M.S., Herbert B. Peterson, M.D., Gary Jeng, Ph.D., and Lynne S. Wilcox, M.D. "Low and Very Low Birth Weight in Infants Conceived with Use of Assisted Reproductive Technology", The New England Journal of Medicine, Volume 346:731-737, March 7, 2002, Number 10

^{xi} Martha Frase-Blunt; "Ova-Compensating? Women Who Donate Eggs To Infertile Couples Earn a Reward -- But Pay a Price" Special to the Washington Post; Tuesday, December 4, 2001; Page HE01

^{xii} National Center for Chronic Disease Prevention and Health Promotion, 1999 Assisted Reproductive Technology Success Rates, <http://www.cdc.gov/nccdphp/drh/ART99/section1.htm>

^{xiii} The Infertility Awareness Association of Canada, *Assisted Reproductive Live Births Rates for Canada*, September 25, 2002, <http://www.iaac.ca/english/articles/ARLBR.asp>

^{xiv} *Components of Population Growth*, Statistics Canada, <http://www.statcan.ca/english/Pgdb/demo33a.htm>

^{xv} The Daily, *Births*, Statistics Canada, September 26, 2002, <http://www.statcan.ca/Daily/English/020926/d020926c.htm>

^{xvi} Submission to the House of Commons Standing Committee On Justice and Human Rights presented by REAL Women of Canada.