

# Does the Supreme Court Interpret Canada's Charter Too Liberally?

MEMBER OF PARLIAMENT



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In his January message to the Calgary diocese, Bishop Henry made some controversial statements, which have been subject to much criticism. This article will shed light on the interplay between constitutional law, religious tradition, and judicial interpretation.

Bishop Henry's recent pastoral letters to his Calgary diocese have been controversial, in the eyes of some. These pastoral letters are grounded in a broadly-held belief that marriage, as traditionally defined, and the family, as traditionally understood (two opposite-sex heterosexual, married and most living together with children) remain the cornerstones of society. A principal reason for this is because it is through this form of family unit that children "are naturally brought into this world and nurtured as they grow to adulthood". His further view is that the family, as traditionally understood, is a more fundamental institution than the state, and that marriage as

traditionally understood is rooted in natural law, particularly relating to procreation. All of these perspectives are debatable, but are nonetheless phrased in such a way as to invite reasoned debate. It so happens that I agree with these particular views. Others may not, pointing to the number of single-parent families or other forms of supportive relationships between adults and children. Others may wish to debate approaches to procreation through artificial means.



Located in the nation's capital, the Supreme Court of Canada is called upon to interpret Canada's Constitution and Charter of Rights and Freedoms.

Underlying all such debates are various perspectives as to how a healthy future for Canadian society is best assured. For those who advocate alternatives to the traditional family and traditional marriage, there is much evidence that both adults and children

in society are not better off as a result of moving away from these models. Many breakdowns in social order that have been encountered over the past thirty years are traced by many to the breakdown, through divorce, in the security and stability once



commonly associated with Canadian family life. For example, the vast majority of divorces involve erosions to the wealth and lifestyle positions of all parties, particularly children, since it is economically impossible for most people to maintain the same lifestyle when there are two homes rather than one. The astounding increase in the number of single parent families is directly correlated to increases in child poverty. The vast majority of young persons in trouble with the law do not come from stable, traditional family relationships. My point here is that it is one matter to advocate alternatives to tradition; it is quite another to be able to provide empirical support that the erosion of tradition has made most people, and hence society, better off. I would like to think that this is Bishop Henry's principal sentiment.

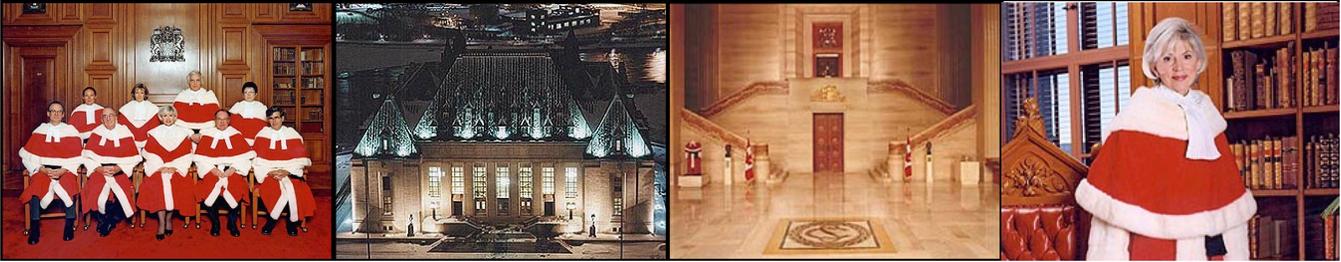


Bishop Henry is very vocal concerning his beliefs in support of encouraging stronger family values and the traditional definition of marriage.

It is against this backdrop of challenges to tradition, absent of empirical support as to overall societal betterment, that we might best examine the debate over same-sex marriage. What we see, time and again, is that challenges to long-held traditions and beliefs—traditions and beliefs that have been shown over long peri-

ods of time to have benefited most people—lead to further questions and further challenges, and less well-being for all. For example, we now live in what many regard as an unacceptable age of moral relativism, where the term “judgmental” is regarded as describing the “heinous” behaviour of expressing an opposing opinion. What is refreshing about Bishop Henry's views is that he reminds us that we DO live in a world where moral choices are made, and some choices involve, or should involve, general acceptance as to their recititude. In some areas, there are no shades of grey in relation to what is right.

With the possibility of the opening up of the traditional meaning of the word “marriage” to include same sex couples many consider that there is now a conflict between globally-shared values and “values” that have been effectively been legislated by Canadian politicians or judicially determined by persons with no accountability for the social consequences of such determinations. One issue of moral relativism that has now arisen, in the context of the debate over same-sex marriage, is that of the potential for Canadian consti-



tutional protection for polygamy. In another time and place, such an issue being raised would be regarded comical—surely the parties cannot be serious. Well, right now in Canada, the parties are so serious that the federal department of the Status of Women has issued an “urgent call” for persons interested in receiving funds to research and make recommendations on the issue of polygamy. One does not have to be a nationally or internationally-respected scholar to receive such funding, though in these relativistic times, it appears that one person’s opinion is just as good as another’s—particularly if an agency has funded one opinion and not the other. Muslims in Canada, many of whom are opposed to same-sex marriage on religious grounds, are less opposed to legislative recognition of polygamy, since polygamy is permitted under Islamic law. Old-order Mormons were similarly supportive, as some may recall from news reports relating to the Mormon-dominated town of Bountiful, British Columbia.

It is in the court of international opinion that Canada may find itself subject to a rather rude awakening. Already, Prime Minister

Paul Martin was surprised to find that, when trying to discuss trade relationships in India, he was compelled to first attempt to explain to the Indian population why Canada supported same-sex marriage—a concept that again is contrary to the teachings of major Indian religions, such as Sikhism. The Netherlands has encountered similar difficulties, being one of only two countries currently recognizing same-sex marriages. Netherlands has recognized same-sex marriages since 2001. The other

country that has recognized same-sex marriage is Belgium. The Swedish government is preparing legislation to legalize same-sex marriage, as is Spain, where same-sex marriage is expected to be legalized as of 2005.

Like Canada, the Netherlands has many historic ties to other parts of the world, such as Aruba, in the Caribbean and which, since 1986, has been a separate entity within the Kingdom of Netherlands. After a Dutch lesbian married an Arubian lesbian in the Netherlands, they moved to Aruba and expected that their marriage would be recognized there. Instead, their application to register their marriage was



**Peter Goldring’s Alberta marriage certificate from 1974. Alberta has stepped forward to challenge the Liberal redefinition of traditional marriage.**

denied, amidst significant degrees of social pressure that ultimately compelled the couple to return to the Netherlands. Often forgotten in these relativistic debates is that there are globally-held moral views that are broadly shared and that it is the height of arrogance to presume that changes to these long-held views will be accepted based on some sort of subservience to the "enlightened" thought of industrialized nations. Imposing a relativistic view of marriage on such countries is certainly little more than the folly and fancy of those whose sense of moral self-absorption leaves them blind to the morality of the rest of the world.

I believe that Bishop Henry continues to have much of importance to say on the issues of marriage and family traditions. Perhaps the real issue prompting so many to comment concerns an interpretation of Canada's Charter of Rights and Freedoms that is far too Liberal for the majority of society to comfortably accept.

With Bill C-38 now before Parliament, the Liberals have decided not to have a free vote for some of the Members and the NDP has decided not to have a free vote at all. The way all Canadians will have the opportunity to have a say in the issue is in a national referendum.

**Update:** Bill C-38, to change the definition of marriage to include same sex couples, is a result of a Supreme Court reference, which said that Parliament has the jurisdiction to change the definition of marriage, if it was felt that Canadians wanted to do so. The Supreme Court did not state that Parliament must do so.

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*This brochure series is intended to highlight special issues that Member of Parliament, Peter Goldring, has been involved in. If you wish to comment, please take a moment to fill out the survey below, write or call to the address above.*

**Your Opinion Matters...**

**Question #1** Do you believe that the word "marriage" should remain defined as the union of one man and one woman?

Yes       No

**Question #2** Do you believe that we should hold a national referendum on the issue of the definition of marriage?

Yes       No

Comments: \_\_\_\_\_  
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Name: \_\_\_\_\_  
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