

MARRIAGE: HAS CANADA FORGOTTEN THAT CHILDREN HAVE HUMAN RIGHTS?

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Why is the Charter of Rights and Freedoms silent about children, except with regards to linguistic education?

Why did the Supreme Court, in answering three of the four questions about marriage submitted to it by the Liberal government, not mention children at all?

Is there a more natural, self-evident birthright for a child than to have a mother and a father?

How is it possible that, in the name of equality for adults, our marriage institution can now create a new government-sanctioned minority of fatherless or motherless children?

Children's Rights

Canada is a signatory to the U.N. Convention on the Rights of the Child. This convention affirms that the child shall have "*as far as possible, the right to know and be cared for by his or her parents*" (Article 7), meaning of course the father and mother who gave him life. Article 3 states that "*In all actions concerning children, whether undertaken by ... courts of law ... or legislative bodies, the best interests of the child shall be a primary consideration.*"

Did our courts and legislators ever test same-sex marriage legislation in the context of the rights of children? We all know that consideration for children and their rights were summarily dismissed, as this was framed strictly as a Charter-based equality issue for adults.

Maybe we can use another country as an example. France, confronted with the same pressures to redefine marriage, decided to review any changes in light of the U.N. Convention on the Rights of the Child.

After a year of study, a 30 member parliamentary commission concluded not to open marriage to same-sex couples, as well as to deny all same-sex couples in civil unions or common-law relationships access to either adoption or medically assisted reproduction. It added that "*to systematically give preference to adult aspirations over respect for these (children's) rights is not possible any more.*" (Report on the Family and the Rights of Children, National Assembly, France, January 25, 2006)

What is the harm?

Rights are based on the notion that their absence causes harm. For example, our Charter states that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

One way to measure the harm is to examine what is lost when heterosexual marriage is replaced by same-sex marriage. For the child, heterosexual marriage has many benefits.

- Heterosexual marriage provides that a child will know and be raised by his own parents.
- Research demonstrates conclusively that heterosexual marriage serves children's best interests.
- Heterosexual marriage provides the child with a natural network of care and support from his immediate and extended biological family.
- Heterosexual marriage sets the foundation for the child to have the same biological, legal and care-giving parents.

- Heterosexual marriage greatly reduces the risk that children or their constituent parts will become commodities deprived of human dignity.
- Heterosexual marriage provides children with a multi-generational sense of identity.
- Children born from heterosexual parents have access to their own genetic heritage for medical purposes.
- Defining marriage as between one man and one woman strengthens the judicial protection accorded to children.
- Allowing court-ordered same-sex marriage to prevail creates precedent for further erosion of children's rights.
- Heterosexual marriage protects the filiative rights of all children (the rights that connect a child to his parents).
- Defining heterosexual marriage is an absolutely essential first step in protecting children's rights and best interests.
- Defining heterosexual marriage is insufficient to ensure adequate protection for children's rights and best interests.
- Heterosexual marriage provides a simple and understandable set of norms.
- Heterosexual marriage naturally protects children from potential discrimination because of the sex of their parents.

Can the harm be undone?

When slavery was abolished, all slaves – who up to that time had been treated as mere property – became free men and women. When women obtained the right to vote, the discrimination ended with the very next election.

For children of same-sex parents, the situation is different. Even if the government redefines marriage as between one man and one woman, not a single child born fatherless or motherless within a same-sex marriage will get his missing parent back.

For children, only prevention will protect their rights.

Conclusion

Is it appropriate for our government to be complicit in causing discrimination and creating a new minority of fatherless or motherless children in Canada? To quote a former Prime Minister: "I rise in support of a Canada in which liberties are safeguarded, rights are protected and the people of this land are treated as equals under the law."

Parliament needs to reopen the definition of marriage, to review its impacts on children's needs and to reinstate their natural right to have a mother and a father.

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This commentary appeared under the title "Rights of children have been overlooked" in the September 2006 issue of The Interim. Sub-headings have been added to improve readability.

The 14 points listed are discussed in more detail in the testimony given at the Judiciary Commission of the State of Massachusetts earlier this year. Massachusetts is the only state in the U.S. that authorizes same-sex marriages. The testimony can be found at www.preservemarriage.ca/eng/links.htm under the title "How Heterosexual Marriage Protects Children's Rights and Best Interests".

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www.preservemarriage.ca