

THE CASE AGAINST ‘SAME-SEX MARRIAGE’

Margaret A. Somerville

AM, FRSC, A.u.A (pharm.), LL.B. (hons),
D.C.L., LL.D. (hons. caus.)

**Notes for Oral Presentation to
The Standing Committee on Justice and Human Rights**

**Montréal, Québec
April 29, 2003**

McGill Centre for Medicine, Ethics and Law
3690 Peel Street
Montreal, Quebec H3A 1W9

Copyright© 2003 Margaret A. Somerville
Not to be copied or cited without permission of the author

1. • May I assume that the brief I submitted — the final amended version of which I gave to the clerk this morning — will be *read into the Committee's record*?

❖ Throughout this presentation, for the sake of brevity, I use the term “same-sex marriage”. I note, however, that the term is internally contradictory if one believes, as I do, that marriage describes a relationship with an inherently procreative potential — that is, the institution of marriage has a biological base.

One of the previous witnesses, Me. Valois, argued that marriage, like a funeral ceremony, should be open to all citizens. Indeed, that is an apt analogy, because there is a biological condition-precedent in both cases, although considering that leads me to an opposite conclusion from Me. Valois: One has to be dead to have a funeral, and to be an opposite sex couple for marriage.

❖ I also note the widespread confusion of same-sex marriage with the legal recognition of same-sex partnerships, for instance, as apparent in statements of politicians on this topic reported in this morning's press. Same-sex marriage and same-sex partnerships differ in fundamental ways and must be distinguished. I support legal recognition of the latter, but not former for the reasons I give below.

2. • Marriage is the societal structure that *symbolizes and institutionalizes the inherently procreative relationship* — that between a man and a woman. It cannot do that, if it is changed to include same-sex couples.

❖ I believe that as the millennia of the history of marriage across all human societies shows, society has always needed such an institution. But there is a special need now when rerogenetic technologies are opening up previously unimaginable possibilities for the transmission of human life, for instance, through cloning or, in the future, making an embryo from two ova or two sperm.

❖ If, as argued by “same-sex marriage” advocates, it is wrongful discrimination to exclude same-sex couples from marriage, it would likewise be wrongful discrimination to prohibit them from making a child from two sperm or two ova.

The Nova Scotia Court of Appeal has held that failure to pay for an infertile couple's treatment for their infertility was discrimination within section 15 of the *Charter*, but was justified because of the costs of the treatment and the exercise of governmental discretion in the allocation of health care resources. (See *Cameron vs AG Nova Scotia*) But if a couple were willing to pay themselves, such a prohibition could not be justified — it would simply be discrimination.

Claims or rights to make a child from two sperm or two ova could also flow from another alleged right, that to “absolute reproductive freedom”: How one reproduces and what kind of child, is no one else's business and certainly not the state's to interfere with through law.

Bill C13, the *Assisted Human Reproduction Act*, rightly, in my view, **prohibits cloning** (sec 5(1)(a)). But it does **not prohibit such procedures**. Moreover, in its latest draft, it **does prohibit denying access** to reproductive technologies on the basis of sexual orientation or marital status (section 2(e)). Consequently, same-sex married couples could argue they have a right to jointly create a child through technological means. As an aside, I believe such procedures should be added to the Prohibited Activities list in section 5.

3. Marriage should be considered from a **child-centred perspective** — it is primarily meant to protect children and, if at all possible, ensure that children are raised by their own biological mother and father.

The argument for same-sex marriage is **adult-centred** — it focuses on the claims of two same-sex individuals to marry.

The strongest argument for “same-sex marriage”, in my view is for protection of children brought into a same-sex relationship. But it does not justify “same-sex marriage”.

First, if, as I argue, marriage institutionalizes and symbolizes for society the inherently procreative relationship, then, to recognize same-sex marriage is to destroy that symbolism.

Second, I believe that a child has a right not to be created from the genetic patrimony of two men

or two women, or by cloning, or from multiple genetic parents. Therefore, same-sex relationships should not be included within an institution that symbolizes an inherently procreative relationship.

Third, bringing children into a same-sex relationship should not be seen as within the norm, but rather, as an exception to it. Although it is considered a radical view by some people, and often seen as politically incorrect, I believe that the societal norm should continue to recognize that a child needs a mother and a father and, if possible and unless there are good reasons to the contrary, preferably its own biological mother and father as its raising parents. Adopted children's search for their birth parents and current moves to give children born through reproductive technologies, using donated gametes, access to the gamete donors' identity, show a deep human need to know our biological family origins. The same is true of birth parents of adopted children.

Advocates of same-sex marriage reject the "complementarity of the sexes in parenting" argument, that is, that a male parent and a female parent are complementary to each other in providing parenting to a child, who needs and benefits from that complementarity. Their stance is that two same-sex parents can fulfil the same roles and functions. Yet, in comparison, the whole basis of the feminist critique of legal system is that it is only "male" based and that at least equal female input is required, because such input is fundamentally different. This critique recognizes that women are different from, but equal to, men. Complementarity recognizes that same reality in relation to parenting.

To argue that we should work from a basic principle that a child needs a mother and a father and preferably his or her own biological parents, is not to denigrate families formed through adoption or families headed by a same-sex couple. Nor is it to deny that children can do well in same-sex households. It is rather to ask whether bringing children into a same-sex relationship should be part of the norm, rather than an exception to it. Recognizing same-sex marriage would make it part of the norm. I do not believe that would be in the best interests of children, in general.

That statement is an example of an important distinction that should be, but is not being, currently made in the same-sex marriage debate. There are different concerns, considerations, principles

and arguments relevant to analysis of the impact of same-sex marriage at the individual level, as compared with the societal level. For example, at the societal level, we should work from a principle that children, in general, need and should have a mother and father. But at the individual level the best option for a given child might be to be adopted by a same-sex couple. Those advocating same-sex marriage are basing their arguments almost entirely at the individual level. In effect, they are taking “hard” individual cases and arguing they should be expanded to become the general principle. In doing so, they would abolish the general principle as it presently stands.

4. That brings me to another point, one I have not addressed in my brief: The committee has publicly stated it is going to consider the Netherlands and Belgium’s legalization of same-sex marriage as a possible precedent for Canada.

May I respectfully suggest that you take great care in making comparisons. I have studied euthanasia and physician-assisted suicide in the Netherlands for over 25 years. (See “*Death Talk*” [McGill Queens University Press, Montreal:2001] for some of my research.) An oft-sounded warning in ethics comes to mind: Good facts are essential for good ethics.

The Dutch have a “silo approach” to societal values — in short, their tolerance for a wide variety of viewpoints does not imply a basic integration across their society of the values these viewpoints represent. There are a range of explanations as to the cause of this situation, in particular historical, sociological and societal-level psychological reasons. For instance, an eminent professor of sociology at the University of Amsterdam, Derek Phillips, says the multiple divisions come from great difficulty in Dutch people accepting the ambiguity and tension that result when people of different viewpoints are interacting in the same group. He gives as a simple but powerful example, that Dutch journals do not reflect a diversity of opinions; characteristically different opinions find expression in separate journals.

Moreover, whether as a related or separate phenomenon, individual autonomy prevails as the touchstone of the Dutch secular society to an unprecedented degree in comparison with all other Western democracies (except, perhaps now, Belgium). For example, unlike Canada (and the rest

of the world) the Dutch refused to allow anonymous reporting of permanently unlinked HIV test results in order to establish HIV seroprevalence statistics for the Netherlands.

Phillips also warns that in the Netherlands “indifference often masquerades as tolerance”. That sounds a valuable warning in relation to Canadians’ attitudes to marriage. Anecdotally, when I have canvassed peoples’ opinions about same-sex marriage, a common response has been, “Who cares what happens, marriage is not worth anything, anyway.” I believe that if it returned to being more child-centred than adult-centred, its worth would be more apparent to Canadians in general, especially were they to become more familiar with the very long term harm to children from broken homes. Child-centred marriage requires that marriage continue to symbolize the inherently procreative relationship between a man and a woman.

5. That brings me to my final point: In dealing with the question of whether to change the definition of marriage to include same-sex couples, you are really discussing whether to abolish marriage as the societal institution that symbolizes, protects and promotes the inherently procreative relationship. You must keep in mind that there is no other institution to replace it. Consequently, you must consider not just the claims of same-sex couples to be admitted to marriage, but also whether society needs such an institution and whether you would be justified in implementing the major and radical change in the structure of society that eliminating marriage’s function in relation to procreation would entail.

To change the definition of marriage would be to change the nature of marriage. You may decide to recommend that, but, if so, you must understand the full impact of what you are recommending. And that impact must be considered not just at the individual level, but most importantly at the societal level, and not just for the present, but also the future.

Definition (and language in general) create human reality. We don’t just change words, we change the nature of an entity when we redefine it. Definitions are frames that we place on events, concepts or circumstances, in order to give them meaning — we frame reality with language in order to find meaning in that reality. Far from everyone in the gay community wants same-sex

marriage, *precisely because* they believe that marriage does *not reflect* or accommodate their *values, aspirations, commitments, lifestyle or rituals*. In other words, marriage would not provide them with access to the meaning they seek in their intimate relationships. Those in the gay community who want same-sex marriage are right to seek meaning in their relationships and to want to have that meaning publicly recognized. They are wrong, however, to try to do it by co-opting the institution of marriage. The institution of marriage cannot function in that way without being deformed and destroyed.