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Speaker: The Honourable Peter Milliken

Mr. John Cummins (Delta—Richmond East, CPC): Mr. Speaker, I support the traditional definition of marriage as the union of one man and one woman to the exclusion of all others.

In 2003 the Liberal government's position in support of the traditional definition of marriage was clear and unambiguous. Department of Justice lawyers argued in the Ontario Court of Appeal that the definition of marriage predated our legal framework and had a meaning and life independent of any act of Parliament or court decision.

The government lawyers led expert evidence to show the existence of the universal definition of marriage across cultures and across religions, that marriage has always been and continues to be understood and defined as a particular kind of human relationship, a publicly committed, monogamous, heterosexual union. The Department of Justice stated:

The fundamental meaning or essence of marriage can only be derived in reference to its history, including its religious origins. It is not merely a legal status, or a creature of the common law, but a social practice and institution that has an independent and ordinary meaning, which is universally, understood—that is, the union of a man and woman.

Now the government would have us believe that Parliament ought to fundamentally alter the definition of marriage and that the Supreme Court of Canada compels it to do so. That is not the case. In fact on December 10, 2004, the Supreme Court refused to give an opinion on the constitutionality of the traditional definition of marriage and implied that it was Parliament's job to legislate with regard to marriage, not the court's.

Neither the absence of an opinion nor the observation that Parliament is the custodian of the definition of marriage can be construed as a Supreme Court mandated obligation to alter the definition of marriage.

Interestingly, when it has addressed the definition of marriage, the Supreme Court has rejected claims that the traditional definition of marriage defined as the union of one man and one woman was contrary to the Charter of Rights and Freedoms.

In 2003 the Supreme Court of Canada in the *Egan* decision stated:

Marriage has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long-standing philosophical and religious traditions. But its ultimate *raison d'être* transcends all of these and 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.

Further, the court noted that the importance of marriage to the stability and well-being of family and society. Heterosexual marriage, it said is, “a social unit that is fundamental to society” and “is unique”. It differs from all other couples including homosexual couples.

This was also the position of the Liberal Government of Canada in the Ontario courts. It said:

Marriage has never been defined merely as one context for producing or rearing children, both of which can occur—and often do—without marriage. Marriage has always been defined as an “ideal” context for producing and rearing children.

There is concern that if same sex marriage is legalized by Parliament, there will be significant intrusions by the state into the lives of ordinary Canadians of faith. The *National Post* in an editorial, entitled “Freedom of religion under threat”, speculated about where such a change would take us as a society. The editorial referenced cases which gave some credence to its concern.

First, a same sex couple in B.C. is trying to force a Catholic men's organization, the Knights of Columbus, to provide space in its hall for their marriage ceremony. Second, in Saskatchewan, a evangelical Christian was charged for placing an ad in a Saskatoon newspaper that cited four scriptural passages denouncing same sex relations.

The *National Post* editorial concluded that “gay rights are now taken to trump every other freedom”.

In its same sex legislation, the government has failed to ensure that substantive protections are available for people of faith and religious institutions. The bill before Parliament has a one sentence clause the government claims protects religious freedom. This clause which states that religious officials will not be forced to solemnize same sex marriages has already been ruled invalid by the Supreme Court of Canada. Parliament, the Supreme Court stated, lacks the constitutional authority to enact such a

provision because the Constitution gives provinces exclusive responsibility for the solemnization of marriage.

The government claims that same sex marriage is a fundamental right. The highest courts in other countries and the *United Nations Commission on Human Rights* have rejected such claims.

For example, the New Zealand supreme court found that the opposite sex requirement of marriage was not discriminatory, noting that the definition of marriage as a union of a man and a woman was not based on an act of Parliament or a court decision, but was a recognition of the fundamental nature of marriage itself. The New Zealand court saw it as no more discriminatory than prohibitions against marrying someone who was underage, marrying a sister or a brother, or marrying someone who was already married, prohibitions contained in the New Zealand *Marriage Act*.

Following the New Zealand ruling, the *UN Commission on Human Rights* heard a complaint that the decision violated the international covenant for the protection of human rights, to which New Zealand, like Canada, is a signator. The commission rejected this complaint in 2002, in effect upholding that same sex marriage was not a basic universal human right.

The Liberal government's same sex legislation is seriously flawed and a threat to religious liberty. Neither the Supreme Court of Canada nor the *UN Commission on Human Rights* would compel the government to rewrite the traditional definition of marriage.

The government now raises questions about the validity or appropriateness of religious based contributions to the debate about same sex marriage. At least one minister of the government misrepresented the notion of separation of church and state to mean that there was no room for a religious based view in a discussion of what constitutes marriage. That was not the position of the government in 2001.

Expert evidence presented for the Government of Canada in the Ontario courts identified religious communities as stakeholders within the institution

of marriage. In her testimony, the government's expert witness, Suzanne Scorsone, made clear the following:

1. Every political issue is necessarily addressed from the perspective of ideology, that is a general belief set. Among these, we find religious...belief sets. Every individual has an ideology, whether that ideology is consistently integrated or not, and whether it is "religious" or not.

2. Societies that function harmoniously reconcile, insofar as possible, the values and norms of their stakeholders and constituencies.

3. Religion is an important model of and for society in that it articulates and frames the conceptualization of its members as to what relationships and behaviour are and/or should be.

4. Religion and religious communities constitute an essential "voice" in Canadian society which is secular, diverse and eclectic. Organized religion has always played a particularly important role in the Canadian community. The state has always interacted with organized religion, in the context of special guarantees for religious freedom.

5. Given the historical roots of marriage, the strong "religious" attachment that Canadians have to marriage and the long history of responsibility undertaken by religious bodies with respect to the celebration of marriage, religious communities have an important historic and current stake in the institution of marriage.

Every one of us has a core set of beliefs, an ideology which guides our decision making. The beliefs of some may be religion based. For others it may not be. However, just because one's core set of beliefs is religious based does not disqualify him or her from participating in a discussion, especially a discussion as fundamental to our society as marriage.

The Government of Canada, through the expert testimony of Professor Shorter of the University of Toronto Faculty of Medicine, cautioned against a fundamental alteration in the definition of marriage. He said:

Marriage represents an institution of incalculable importance to society...That single enduring meaning that has been as a union of a man and a woman for the bearing and nurturing of children. If we begin inserting players into legal marriage whose own values may be at odds with this core mission, we may be undermining that sense of mission for all. We shall be undermining this task privately... And we shall be undermining this task publicly as well, diminishing a core institution that has offered the most stable environment for childbearing...Tampering with it in the name of well-meaning but untried experiments could have a negative outcome for our society.

While the government's expert witnesses were consistent in their observation that marriage between a man and a woman was a universal norm, they rightly urged respect for those who, for whatever reason, entered relationships inconsistent with that universal norm.

Professor Young, on behalf of the Attorney General of Canada, advised the court in *Halpern*, “All societies must deal with the inevitable anomalies and exceptions. The mark of a healthy society is to have not only strong norms but also humane ways of evoking tolerance for those who either do not or cannot adopt them”.

We in this party have proposed a legitimate and sensible alternative to changing the definition of marriage.

We should not forget that all individuals, because of their inherent human dignity, are entitled to our respect and, furthermore, all are entitled to express their point of view.