

IN THE SUPREME COURT OF CANADA

**IN THE MATTER OF SECTION 53 OF THE SUPREME COURT ACT, R.S.C., 1985, C.
S-26**

**IN THE MATTER OF A REFERENCE BY THE GOVERNOR IN COUNCIL CONCERNING
THE PROPOSAL FOR AN ACT RESPECTING CERTAIN ASPECTS OF LEGAL CAPACITY
FOR MARRIAGE FOR CIVIL PURPOSES, AS SET OUT IN ORDER IN COUNCIL P.C. 2003-
1055, DATED THE 16TH OF JULY 2003**

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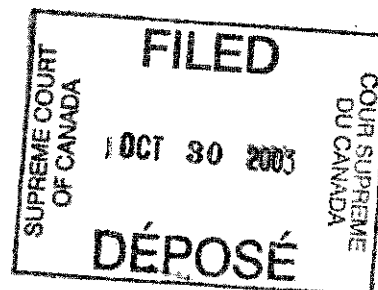
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PART I – STATEMENT OF FACTS

A. OVERVIEW

1. In this Reference, the Attorney General of Canada affirms the validity of proposed federal legislation that enacts a definition of certain aspects of marriage for civil purposes. The proposed law is an initiative on the part of the Government of Canada which, if enacted, would provide a uniform law across the country extending the capacity to marry to same-sex couples. The Attorney General of Canada argues that the proposed legislation is authorized by the power over “marriage” in s. 91(26) of the *Constitution Act, 1867*, and is consistent with the *Canadian Charter of Rights and Freedoms* (“*Charter*”).¹ That part of the definition of marriage, which provides that marriage is the lawful union of one man and one woman, has been held by lower courts to discriminate on the basis of sexual orientation.

2. The proposed legislation deals only with marriage for civil purposes and has no effect on the freedom of religious officials to refuse to perform marriages that are not in accordance with their religious beliefs. This freedom is not only affirmed by the proposed legislation but is guaranteed by s. 2(a) of the *Charter*.

B. SUMMARY OF THE FACTS

i. The Reference

3. On July 16, 2003, the Governor in Council issued an Order in Council asking this Court to hear a reference on the Government’s *Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes*. The Order in Council, filed in this Court on July 17, 2003, sets out questions relating to the constitutional validity of the proposed legislation, the operative clauses of which read as follows:²

1. Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.
2. Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs.

¹ *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11, [“Charter”]* in the Book of Authorities of the Attorney General of Canada [“AGC Authorities”], Vol. III, Tab 40

² Order in Council P.C. 2003-1005 dated July 16, 2003, Annexed *Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes*, in the Record of the Attorney General of Canada [“AGC Record”], Vol. I, Tab 3, p. 9

ii. The *EGALE*, *Halpern* and *Hendricks* cases

4. This Reference was preceded by litigation challenging the constitutional validity of the opposite-sex requirement of marriage in the provinces of British Columbia, Ontario and Québec. In British Columbia and Ontario, each province's Court of Appeal has ruled that the common-law definition of marriage as the "union of one man and one woman" unjustifiably violates equality rights and is therefore unconstitutional. The two Courts of Appeal have changed the common-law definition to the union of "two persons".

5. In British Columbia, two separate petitions for declarations based on equality rights were filed – one by same-sex couples and the other by Equality for Gays and Lesbians Everywhere (EGALE) along with other same-sex couples. Both petitions were heard by Pitfield J. who, by judgment issued October 4, 2001, dismissed the petitions. The same-sex couples and EGALE appealed Pitfield J.'s decision to the British Columbia Court of Appeal. By judgment issued May 1, 2003, the British Columbia Court of Appeal allowed both appeals in its decision styled *EGALE Canada Inc. v. Canada (Attorney General)* ["EGALE"],³ but suspended the remedy for two years.

6. In Ontario, two separate applications for declarations were filed – one by same-sex couples based on discrimination in relation to sexual orientation, and the other by the Metropolitan Community Church of Toronto (MCCT), which solemnized same-sex unions as marriages. In its application, MCCT relied upon discrimination in relation to sexual orientation, violation of freedom of religion and religious discrimination. By judgment issued July 12, 2002, the Divisional Court allowed the application on the grounds of discrimination in relation to sexual orientation, but suspended the remedy for two years. The application of the MCCT based on freedom of religion and religious discrimination was dismissed.

7. The Attorney General of Canada was granted leave to appeal the decisions on the equality rights violation to the Court of Appeal for Ontario. The couples and MCCT were granted leave to cross-appeal the decisions on the suspension of the remedy, and MCCT alone on freedom of religion and religious discrimination. By decision issued June 10, 2003, the Court of Appeal for Ontario in *Halpern v. Canada (Attorney General)* ["*Halpern*"]⁴ dismissed the appeals and allowed both cross-appeals on remedy by giving immediate effect to the change in the common-law definition of marriage. However, the Court of Appeal dismissed MCCT's cross-appeal on freedom of religion and religious discrimination.

³ *EGALE Canada Inc. v. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) 1 (C.A) ["EGALE"], AGC Authorities, Vol. I, Tab 8

8. After the decision of the Court of Appeal for Ontario, the British Columbia Court of Appeal amended its order, with the Attorney General of Canada's consent, and gave immediate effect to the change in the definition of marriage. As a result, in both provinces, same-sex couples have the legal capacity to marry, and are doing so.

9. In Québec, Hendricks and LeBoeuf, a couple, sought a declaratory judgment that the statutory opposite-sex requirement for marriage in that province violated s. 15(1).⁵ By decision issued September 6, 2002, the Québec Superior Court granted the application in *Hendricks v. Québec (Procureur général)* ["Hendricks"],⁶ but suspended the remedy for two years.

10. The Attorney General of Canada appealed the decision to the Québec Court of Appeal, but withdrew his appeal on July 15, 2003. The issue remains before the Québec Court of Appeal because other parties have also appealed the decision.

iii. Marriage in Canada

11. Under the *Constitution Act, 1867*, Parliament is given the power over "marriage and divorce" in s. 91(26) while the provincial legislatures are given the power over "the solemnization of marriage in the province" in s. 92(12).⁷ Couples who wish to marry in Canada must meet both the federal requirements of capacity to marry and the solemnization requirements of the province or territory where they intend to marry.

12. In the late 18th century in British North America, marriages were lawful only when contracted before clergy of specific denominations, subject to limited exceptions.⁸ Over the

⁴ *Halpern v. Canada (Attorney General)*, (2003) 65 O.R. (3rd) 161 (C.A.) ["Halpern"], AGC Authorities, Vol. I, Tab 12

⁵ *Hendricks v. Québec (Procureur général)*, [2002] R.J.Q. 2506 (Sup.Crt) ["Hendricks"], AGC Authorities, Vol. 1, Tab 14

⁶ The Court declared three provisions inoperative: (i) the portion of Article 365 (para. 2) of the *Code civil du Québec/Civil Code of Québec*, L.Q./S.Q., 1991, c. 64 (AGC Authorities, Vol. V, Tab 87) stating that marriage "may be contracted only between a man and a woman"; (ii) the *Federal Law – Civil Law Harmonization Act, No. 1*, S.C. 2001, c. 4, s. 5, a federal statute applicable only in Québec (AGC Authorities, Vol. III, Tab 51); and (iii) the *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12, s. 1.1 (AGC Authorities, Vol. III, Tab 50). It is to be noted that Article 365 (para. 2) had already been repealed by *An Act instituting civil unions and establishing new rules of filiation*, S.Q. 2002, c. 6, s. 22, (AGC Authorities, Vol. V, Tab 91).

⁷ *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), ss. 91(26), 92(12), AGC Authorities, Vol. III, Tab 39

⁸ For example, see *An Act for Regulating Marriage and Divorce, and for preventing and punishing Incest, Adultery and Fornication*, 31 George III, c. 5, s. i (1791)(N.B.) (AGC Authorities, Vol. III, Tab 56); *An Act to confirm and make valid certain Marriages heretofore contracted in the Country now comprised within the Province of Upper Canada, and to provide for the future Solemnization of Marriage within the same*, 33 George III, c. 5, s. i (1793) (AGC Authorities, Vol. IV, Tab 60); and *An Act to render, and make valid, certain Marriages, heretofore solemnized before Magistrates, and other Lay Persons*, 33 George III, c. 5 (1793)(N.S.), ss. i - iii (AGC Authorities, Vol. III, Tab 59). These Acts provided for the recognition of

course of the 19th century, registration of marriages for civil purposes was transferred from religious authorities to the colonial (and then provincial or territorial) vital statistics registrars.⁹ Over this same time period, the ability to perform marriages was slowly extended by colonial legislation to religious officials of additional denominations.¹⁰ Beginning in the late 19th century through to the 20th century, colonial (and then provincial or territorial) legislation began to specify procedures for the conduct of purely secular marriage ceremonies available to all.¹¹

13. Currently, provincial and territorial solemnization requirements generally involve three steps: first, obtaining authorization to marry; second, going through a ceremony of marriage, either religious or civil; and third, registering the marriage with the provincial or territorial government.

14. In all provinces and territories, except for Québec,¹² authorization to marry can be obtained by securing a licence from the couples' local municipal office. This licence allows the couple to have their marriage solemnized in either a religious or civil ceremony. In several provinces and territories, a marriage can also be authorized by the publication of banns in a religious institution, in which case no licence is needed.¹³

marriages by secular officials (such as Magistrates or Justices of the Peace) only where recognized religious officials were unavailable in a given geographical area.

⁹ For example, see *An Ordinance respecting Marriage in British Columbia*, 1865, No. 21, s. iv (B.C.) (AGC Authorities, Vol. III, Tab 53); *An Ordinance Respecting Marriages*, No. 9 (1878), s. xii (N.W.T.) (AGC Authorities, Vol. III, Tab 57); and *An Act relating to the Registration of Marriage Certificates, and to amend the Act hereinafter mentioned*, 55 Victoria, c. 7 (1891), s. 5 (P.E.I.), (AGC Authorities, Vol. IV, Tab 63)

¹⁰ For example, see *An Act to regulate the Celebration of Marriage in Newfoundland*, 57 George III, c. 51 (1817), s. ii (Nfld.) [Quakers, Jews] (AGC Authorities, Vol. III, Tab 55); *An Act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of matrimony in this Province*, 11 George IV, c. 36 (1830), s. iii (Upp. Can.) [Church of Scotland, Lutherans, Presbyterians, Congregationalists, and other Christian denominations] (AGC Authorities, Vol. IV, Tab 61); and *An Ordinance respecting Marriage in British Columbia*, 1865, No. 21, s. xi (B.C.) [Quakers, Jews], (AGC Authorities, Vol. III, Tab 53)

¹¹ For example, see *An Ordinance respecting Marriage in British Columbia*, 1865, No. 21, ss. iii – vi (B.C.) (AGC Authorities, Vol. III, Tab 53); *An Ordinance Respecting Marriages*, No.9 (1878), s. 1 and *An Ordinance Respecting Marriages* 1898, R.O. c. 46, s. 3 (N.W.T.) (AGC Authorities, Vol. III, Tabs 57 & 58); *The Marriage Act*, R.S.A. 1922, c. 213, ss. 16 – 18 (Alta.) (AGC Authorities, Vol. III, Tab 52); *Marriage Act*, R.S.B.C. 1930, c. 41, ss. 16 – 21, (B.C.) (AGC Authorities, Vol. III, Tab 54); and *The Marriage Act*, R.S.O. 1950, c. 222, s. 25 (Ont.), (AGC Authorities, Vol. IV, Tab 62).

¹² In Québec, before the solemnization of a marriage can occur, whether it be pursuant to a civil or religious ceremony, the officiant must post a notice for 20 days before the date fixed for the ceremony, at the place where the marriage is to be solemnized: *Code civil du Québec/ Civil Code of Québec*, L.Q./S.Q., 1991, c. 64, as amended, Article 368 and *Rules Respecting the Solemnization of Civil Marriages and Civil Unions*, C.C.Q., 1991, c. 64, Rule 1, (AGC Authorities, Vol. V, Tabs 88 & 89).

¹³ *Marriage Act*, R.S.O. 1990, c. M.3, s. 17 (AGC Authorities, Vol. V, Tab 83); *The Marriage Act*, R.S.M. 1987, c. M50, s. 8 (AGC Authorities, Vol. IV, Tab 71); *Marriage Act*, R.S.Y. 2002, c. 146, ss. 19-23 (AGC Authorities, Vol. V, Tab 95); *Marriage Act*, R.S.N.B. 1973, c. M-3, s. 11 (AGC Authorities, Vol. V, Tab 78); *Marriage Act*, R.S.N.W.T. 1988, c. M-4, s. 22 (AGC Authorities, Vol. V, Tab 79); and at the time of division, effective April 1, 1999, Nunavut adopted NWT's legislation, (AGC Authorities, Vol. V, Tab 97).

15. Once a marriage has been authorized (by licence or banns), the ceremony of marriage may be either religious or civil. A religious ceremony can be performed by a provincially or territorially registered official. A civil ceremony can be performed by a judge, a justice of the peace, or an official such as a marriage commissioner.

16. After a marriage ceremony, the official who performed the marriage forwards the marriage registration form or declaration¹⁴ to the province's or territory's registration office. If the requirements of both federal and provincial or territorial law have been met, the provincial or territorial office registers the marriage and issues a marriage certificate to the couple.

iv. Demography

17. The Canadian demographics for marital status and religious affiliation provide context for the issues under consideration. Marriage currently remains the predominant family structure in Canada, with 70% of 2001 Census families consisting of married couples.¹⁵ However, since the late 1980s, the proportion of married couples has decreased in relation to other family types.¹⁶ The 2001 Census also, for the first time, provided the incidence of common-law same-sex relationships, which comprised 0.5% of Canadian couples.¹⁷

18. The Canadian population remains predominantly Christian, with the reported figure of 72%. Since 1991, the proportion of persons identified as Christian has decreased (by 2% for Catholics and 6% for Protestants) while the proportion of persons identified with all other religious affiliations has increased by 2.1%.¹⁸ In 76% of marriages conducted in 2000, couples chose religious rather than civil ceremonies.¹⁹ Important provincial and territorial variations underlie these national statistics.²⁰

v. Same-sex relationships in other countries

19. Canada would not be the first country to confer the capacity to marry for civil purposes on same-sex couples. The Netherlands was the first country to "open up" the civil institution of marriage to same-sex couples, effective April 1, 2001. Belgium has since taken this step, effective June 1, 2003. Both countries effected this change to their civil definitions of marriage

¹⁴ *Code civil du Québec/ Civil Code of Québec*, L.Q./ S.Q., 1991, c. 64, as amended, Article 375, AGC Authorities, Vol. V, Tab 88

¹⁵ *Affidavit of Jim Sturrock*, sworn October 6, 2003, at para. 15 ("*Affidavit of Jim Sturrock*"), AGC Record, Vol. I, Tab 6, p.17

¹⁶ *Affidavit of Jim Sturrock*, at para. 15, AGC Record, Vol. I, Tab 6, p. 17

¹⁷ *Affidavit of Jim Sturrock*, at para. 25, AGC Record, Vol. I, Tab 6, pp. 20-21

¹⁸ *Affidavit of Jim Sturrock*, at para. 19, AGC Record, Vol. I, Tab 6, pp. 18-19

¹⁹ *Affidavit of Jim Sturrock*, at para. 22, AGC Record, Vol. I, Tab 6, pp. 19-20

by amendments to their respective Civil Codes. Both Codes now provide, quite simply, that a marriage can be contracted by two people of different sex or of the same sex. As well, seven other European countries have enacted other legal institutions to formally recognize same-sex relationships.²¹

PART II – POINTS IN ISSUE

20. The Reference asks three questions:

(a) Is the annexed *Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes* within the exclusive legislative authority of the Parliament of Canada? If not, in what particular or particulars, and to what extent?

(b) If the answer to question 1 is yes, is section 1 of the proposal, which extends capacity to marry to persons of the same sex, consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars, and to what extent?

(c) Does the freedom of religion guaranteed by paragraph 2(a) of the *Canadian Charter of Rights and Freedoms* protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?

²⁰ *Affidavit of Jim Sturrock*, at para. 22, AGC Record, Vol. I, Tab 6, pp. 19-20

²¹ *Affidavit of Cornelis Waaldijk*, sworn October 4, 2003, at paras. 13-16, 41-43, 58-65, AGC Record, Vol. I, Tab 9, pp. 56-57, 66-67, 72-75

PART III – ARGUMENT

QUESTION 1: THE PROPOSED LEGISLATION IS WITHIN THE EXCLUSIVE LEGISLATIVE AUTHORITY OF PARLIAMENT

21. The first question on this Reference is as follows:

Is the annexed Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes within the exclusive legislative authority of the Parliament of Canada? If not, in what particular or particulars, and to what extent?

22. Clause 1 of the proposed legislation would, if enacted by Parliament, change one aspect of the legal capacity to marry for civil purposes, by stipulating that marriage “is the lawful union of two persons to the exclusion of all others.” The proposed legislation is within Parliament’s exclusive authority to legislate in relation to capacity to marry. It follows that the proposed legislation is constitutional, as it falls within the scope of the word “marriage” found in s. 91(26) of the *Constitution Act, 1867*.

i. Parliament has jurisdiction under section 91(26) over capacity to marry

23. The distribution of legislative power in the *Constitution Act, 1867* is exhaustive. This means that every matter, existing now or in the future, can be found within the legislative competence of either Parliament or the provincial legislatures.²² As a result, either Parliament or the provincial legislatures must have the power to extend marriage to include same-sex couples.

24. Under the *Constitution Act, 1867*, Parliament is given the power over “marriage and divorce” in s. 91(26), while the provincial legislatures are given the power over “the solemnization of marriage in the province” in s. 92(12).²³ It is generally understood that Parliament has jurisdiction over “capacity”,²⁴ such as prohibited degrees of consanguinity²⁵ or

²²*A.G. Ont. v. A.G. Can. (Reference Appeal)*, [1912] A.C. 571 (P.C.) at 581, 583-84 (AGC Authorities, Vol. I, Tab 2); *Bank of Toronto v. Lambe* (1887), 12 A.C. 575 (P.C.) at 587 (AGC Authorities, Vol. I, Tab 6); *Union Colliery Co. v. Bryden*, [1899] A.C. 580 (P.C.) at 584-5 (AGC Authorities, Vol. II, Tab 31); *A.G. Can. v. A.G. Ont. (Labour Conventions)*, [1937] A.C. 326 (P.C.) at 353-4 (AGC Authorities, Vol. I, Tab 1); and *Jones v. A.G.N.B.*, [1975] 2 S.C.R. 182 at 195 (AGC Authorities, Vol. II, Tab 16)

²³*Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), ss. 91(26) and 92(12), AGC Authorities, Vol. III, Tab 39

²⁴H.R. Hahlo, *Nullity of Marriage in Canada* (Toronto: Butterworths, 1979), pp. 5-44, AGC Authorities, Vol. II, Tab 35

²⁵*Teagle v. Teagle*, [1952] 3 D.L.R. 843 (B.C.S.C.) at 845-6, AGC Authorities, Vol. II, Tab 29

the existence of a prior marital relationship.²⁶ The provinces have jurisdiction over pre-ceremonial requirements²⁷ and the qualifications of the person performing the ceremony.²⁸

25. With respect to capacity, English law on marriage initially established which marriages were prohibited. These prohibitions were based on such factors as minimum age of consent, free and informed consent, and a table of prohibited degrees arising either by blood or by marriage prepared in 1563 by Archbishop Parker of the Church of England and reflected in the statutes of Henry VIII. At the time of Confederation, these prohibitions were part of the law of Canada, apart from Québec, although the law in force in that province was essentially the same.²⁹

26. In the late nineteenth century, the Parliament of Canada began to legislate to supplant certain aspects of the pre-existing law in relation to capacity. In 1882, for example, Parliament passed legislation repealing the prohibition against marriage between a man and the sister of his deceased wife.³⁰ In 1990, Parliament replaced the old law on prohibited degrees of consanguinity with the *Marriage (Prohibited Degrees) Act*, which provided that persons may not marry if they are lineally related by consanguinity or adoption or if they are brother and sister by consanguinity or adoption.³¹

27. Parliament, therefore, has historically legislated with respect to certain aspects of the capacity to marry. The legislative proposal before the Court in this Reference would be another exercise of the same federal jurisdiction.

ii. Parliament's jurisdiction should be given a purposive interpretation

28. Section 91(26) should be given a purposive interpretation. A purposive interpretation of a constitutional provision should begin with an examination of "...the meaning of its words, considered in context and with a view to the purpose they were intended to serve".³² This approach requires an examination of the facts leading up to and surrounding the adoption of the

²⁶ *Helens v. Densmore*, [1957] S.C.R. 768 at 778-9 per Cartwright J. (for the majority), at 784 per Rand J., AGC Authorities, Vol. I, Tab 13

²⁷ *Alspector v. Alspector*, [1957] O.R. 454 (C.A.) at 462, 464-5, AGC Authorities, Vol. I, Tab 4

²⁸ *Gilham v. Steele*, [1953] 2 D.L.R. 89 (B.C.C.A.) at 90 per O'Halloran J., at 92-3 per Robertson J., and at 98-99 per Bird J., AGC Authorities, Vol. I, Tab 10

²⁹ Bill S-14, *An Act respecting the laws prohibiting marriage between related persons*, 2nd sess., 34th Parl. (Minutes of Proceedings and Evidence of Legislative Committee, 8 November 1990, House of Commons), AGC Record, Vol. IV, Tab 33, p. 578

³⁰ *An Act concerning Marriage and a Deceased Wife's Sister*, S.C. 1882, c. 42, AGC Authorities, Vol. III, Tab 41

³¹ *Marriage (Prohibited Degrees) Act*, S.C. 1990, c. 46, AGC Authorities, Vol. III, Tab 49

³² *R. v. Blais*, 2003 SCC 44 at para. 16, AGC Authorities, Vol. II, Tab 24

constitutional provision. Relevant evidence would include anything showing the rationale for which the provision was included in the Constitution. This would include records of negotiations, statements by individuals involved in the drafting process, debates, and events preceding the adoption of the provisions that highlight a relevant issue.³³

29. The constitutional debates on marriage in the legislative assembly of the old Province of Canada are not directly helpful on the present issue. Certainly, it was never suggested that marriage might include same-sex unions. However, a driving force behind the allocation of the marriage power to Parliament was the desirability of a uniform law of marriage across the country.³⁴ The idea was to avoid a patchwork situation with its concomitant problems of recognition and enforcement of marriages.

30. This perspective is reflected in the judgment of Rand J. in *Helens v. Densmore*, a case concerning the validity of provincial legislation prescribing the capacity of divorced persons to marry. He stated:³⁵

That being the provincial law before Confederation, it became thereafter the law as if enacted by Parliament. As paramount law, it would determine the capacity for marriage of the person affected throughout Canada; and there could be no question of a Province not giving it recognition. Apart from questions of solemnization, with one source of law for marriage and divorce, personal capacity or incapacity is the same throughout the nation.

iii. Parliament's jurisdiction should be given a progressive interpretation

31. The purposive approach supports a progressive interpretation of the Constitution. The word "marriage" appears in s. 91(26) as a head of legislative power intended to provide a basis for nationwide rules of capacity. Such a general and broad power is inevitably going to be affected by changes in social attitudes towards relationships. The interpretation of the power should reflect this reality.

32. The interpretation of s. 91(26) should not be restricted to what that provision meant in 1867. That would invoke notions of "originalism" and "frozen concepts". This Court has consistently endorsed a progressive approach as a fundamental tenet of constitutional

³³ This Court considered this kind of evidence in *R. v. Blais*, 2003 SCC 44 at paras. 19-31, AGC Authorities, Vol. II, Tab 24.

³⁴ *Parliamentary Debates*, 3rd sess., 8th Prov. Parl. (February 3, 1865), AGC Record, Vol. IV, Tab 32 at 567-570; see also: F. Chevette and H. Marx. *Droit constitutionnel* (Montréal: Les Presses de l'Université de Montréal, 1982), p. 656 (AGC Authorities, Vol. II, Tab 33) and P.W. Hogg, *Constitutional Law of Canada*, Loose-leaf ed., Vol. 1, (Toronto: Thomson Carswell, 1997), pp. 26-1 to 26-2, AGC Authorities, Vol. II, Tab 38.

³⁵ *Helens v. Densmore*, [1957] S.C.R. 768 at 784, AGC Authorities, Vol. I, Tab 13

interpretation, often expressed as the “living tree” principle.³⁶ Constitutional provisions are intended to provide “a continuing framework for the legitimate exercise of governmental power”.³⁷

33. The Constitution must be continuously adapted to new conditions and new ideas.³⁸ This requires an assessment of relevant factors occurring since Confederation that could result in a change to its interpretation. A progressive analysis has been used in the past to accommodate social, economic and technological developments that did not exist, and could not have been contemplated, when the constitutional provision at issue was entrenched.³⁹ As noted recently by this Court in the *Ward* decision:⁴⁰

The Constitution must be interpreted flexibly over time to meet new social, political and historic realities...

34. Laskin, C.J.C., for the majority of this Court in *R. v. Zelensky*, also stressed the importance of re-examining the scope of the heads of power, in this case the federal criminal power, when faced with new or altered social conditions:⁴¹

We cannot, therefore, approach the validity of s. 653 as if the fields of criminal law and criminal procedure and the modes of sentencing have been frozen as of some particular time. New appreciations thrown up by new social conditions or re-assessments of old appreciations which new or altered social conditions induce make it appropriate for this court to re-examine courses of decision on the scope

³⁶ *Reference re: Meaning of the word “Persons” in Section 24 of the British North America Act*, [1930] A.C. 124 (P.C.) at 136-7 (AGC Authorities, Vol. II, Tab 28); *Ontario (Attorney General) v. Canada (Attorney General)*, [1947] A.C. 127 (P.C.) at 154 (AGC Authorities, Vol. II, Tab 22); *Attorney General of British Columbia v. Canada Trust Co.*, [1980] 2 S.C.R. 466 at 478-9 (AGC Authorities, Vol. I, Tab 5); and see also: *Halpern*, at 175 – 176, paras. 42 – 46 (AGC Authorities, Vol. I, Tab 12).

³⁷ *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, per Dickson J. (as he then was), at 155 (AGC Authorities, Vol. II, Tab 15); *R. v. Blais*, 2003 SCC 44 at para. 40 (AGC Authorities, Vol. II, Tab 24)

³⁸ *Martin Service Station Ltd. v. MNR*, [1977] 2 S.C.R. 996 at 1006 (AGC Authorities, Vol. II, Tab 21); L. Walton, “Making Sense of Canadian Constitutional Interpretation” (2000-2001), 12 N.J.C.L. 315, pp. 318, 332 (AGC Authorities, Vol. II, Tab 36); P.W. Hogg, *Constitutional Law of Canada*, Loose-leaf ed., Vol. 1 (Toronto: Thomson Carswell, 1997), pp. 15-44 to 15-45 (AGC Authorities, Vol. II, Tab 38)

³⁹ *Hunter v. Southam*, [1984] 2 S.C.R. 145 at 155 (AGC Authorities, Vol. II, Tab 15); *Reference re: Meaning of the word “Persons” in Section 24 of the British North America Act*, [1930] A.C. 124 (P.C.) at 136-7 (AGC Authorities, Vol. II, Tab 28); *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at 248-9, para. 52 (AGC Authorities, Vol. II, Tab 27); *Reference re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 at 180-1 (AGC Authorities, Vol. II, Tab 26); *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357 at 365 (AGC Authorities, Vol. II, Tab 18); *Attorney General of British Columbia v. Canada Trust Co.*, [1980] 2 S.C.R. 466 at 478-9 (AGC Authorities, Vol. I, Tab 5); P.W. Hogg, *Constitutional Law of Canada*, Loose-leaf ed., Vol. 1, (Toronto: Thomson Carswell, 1997), pp. 15-44 to 15-45 (AGC Authorities, Vol. II, Tab 38); F.L. Morton & R. Knopff, “Permanence and Change in a Written Constitution: The “Living Tree” Doctrine and the *Charter of Rights*”, (1990) *Supreme Court Law Review* 533, p. 544 (AGC Authorities, Vol. II, Tab 34)

⁴⁰ *Ward v. Canada (Attorney General)*, [2002] 1 S.C.R. 569 at 583-4, para. 30, AGC Authorities, Vol. II, Tab 32

⁴¹ *R. v. Zelensky*, [1978] 2 S.C.R. 940 at 951, AGC Authorities, Vol. II, Tab 25

of legislative power when fresh issues are presented to it, always remembering, of course, that it is entrusted with a very delicate role in maintaining the integrity of the constitutional limits imposed by the *British North America Act*.

iv. Parliament has the jurisdiction to confer capacity to marry on same-sex couples

35. A progressive approach to constitutional interpretation is particularly applicable in dealing with gay and lesbian individuals and couples, as there has been such a marked change in public attitudes and public policy since Confederation. Although same-sex relationships obviously existed at the time the Constitution was enacted, there was never the slightest contemplation of the recognition of same-sex marriage. Marriage between persons of the same sex could not realistically have been considered as an issue until the *Criminal Code* was modified to decriminalize homosexual sex between consenting adults, which did not occur until 1969, more than 100 years after Confederation.⁴²

36. Today, governments in Canada not only acknowledge the existence of common-law same-sex couples, but also extend to them virtually all of the benefits and obligations for which common-law opposite-sex couples are eligible.⁴³ In Québec, Ontario and British Columbia, s. 15(1) of the *Charter* has been interpreted as requiring that same-sex couples be permitted to marry. In the Netherlands and Belgium, capacity to marry for civil purposes has been "opened up" to same-sex couples. Other countries may follow. As well, seven other European countries have enacted other institutions to recognize same-sex relationships.⁴⁴

37. As noted by the Court of Appeal for Ontario, marriage is an institution that is monogamous in nature, and is based on intimacy, companionship, social recognition and economic benefits. It also has the goal of being permanent and encouraging the birth and rearing of children.⁴⁵ In the 21st century, marriage can include same-sex couples who want to unite in this institution and whose unions share in the current understanding of the essence of marriage, including in some cases the rearing of children. A progressive approach would accommodate the expansion of the term "marriage" in s. 91(26) to include same-sex couples.

38. Indeed, the Courts of Appeal of British Columbia and Ontario have held that the meaning of "marriage" within s. 91(26) extends to same-sex couples. Those courts have held "that

⁴² *Criminal Law Amendment Act, 1968-1969*, S.C. 1968-1969, c. 38, s. 7, AGC Authorities, Vol. III, Tab 46

⁴³ For example, see the *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12, AGC Authorities, Vol. III, Tab 50

⁴⁴ *Affidavit of Cornelis Waaldijk*, sworn October 4, 2003, paras. 13-16, 41-43 and 58-67, AGC Record, Vol. I, Tab 9, pp. 56-57, 66-67, 72-76

⁴⁵ *Halpern*, at 187, 199, paras. 93, 94, 154, AGC Authorities, Vol. I, Tab 12

'marriage' refers only to a topic or 'class of subjects' of potential legislation, it cannot contain an internal frozen-in-time meaning that reflects the presumed framers' intent as it may have been in 1867." It must be interpreted "as describing a subject for legislation, not a definite object".⁴⁶

Clause 1 of the proposed legislation is, therefore, within the legislative authority of the Parliament of Canada.

v. The proposed legislation is limited to marriage for civil purposes

39. Clause 2 of the proposed legislation states: "Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs".

40. Clause 2 is within the legislative authority of the Parliament of Canada. The clause is merely declaratory of the scope of the proposed legislation, as Clause 1 already limits the legislation to marriage "for civil purposes". As suggested by this Court in *Kitkatla Band v. British Columbia*, legislation may contain declaratory clauses that explain the intended scope of the legislation without needing a particular head of power to sustain them.⁴⁷

41. Clause 2 makes clear that the proposed legislation imposes no new obligations on religious officials. They remain free to refuse to perform marriages that are not in accordance with their religious beliefs.

Conclusion on Question 1

42. The Attorney General of Canada accordingly submits that the proposed legislation is entirely within the legislative authority of the Parliament of Canada. The answer to question 1 of the Reference is yes.

QUESTION 2: CLAUSE 1 OF THE PROPOSED LEGISLATION IS CONSISTENT WITH THE CHARTER

43. The second question on this Reference is as follows:

[...] is section 1 of the proposal, which extends capacity to marry to persons of the same sex, consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars, and to what extent?

⁴⁶ *EGALE*, at 19 - 20, para. 69 [quoting Laforme J., in *Halpern v. Canada* (2002), 60 O.R. (3d) 321 (Div.Crt) at 407, para.106], AGC Authorities, Vol. I, Tab 8; see also *Halpern*, at 175-76, paras. 42-46, AGC Authorities, Vol. I, Tab 12.

⁴⁷ *Kitkatla Band v. British Columbia*, [2002] 2 S.C.R. 146 at 178-9,180, paras. 71, 74, AGC Authorities, Vol. II, Tab 17

44. The proposed legislation must be considered against the backdrop of the *EGALE*, *Halpern* and *Hendricks* decisions, which all held that a definition of marriage which denies same-sex couples the capacity to marry is inconsistent with s. 15(1) of the *Charter*. The proposed legislation removes this unconstitutional discrimination by conferring the capacity to marry on same-sex couples. It accepts that gay and lesbian individuals can “form lasting, caring, mutually supportive relationships with economic interdependence in the same manner as heterosexual couples”.⁴⁸

45. Clause 1 of the proposed legislation, by enacting a more inclusive definition of marriage, is consistent with the *Charter*.

46. The Attorney General of Canada does not yet know what arguments will be advanced against the proposed legislation. The Attorney General of Canada proposes to address possible arguments against the proposed legislation under ss. 2(a) and 15(1) of the *Charter*, in case those provisions are relied upon by opponents of the proposed legislation.

(a) The proposed legislation does not impair freedom of religion

(i) The proposed legislation does not affect freedom of religious belief

47. Section 2(a) of the *Charter* protects “freedom of conscience and religion”.

48. The interest engaged and protected by s. 2(a) of the *Charter* is freedom to hold one’s religious beliefs. This freedom has been characterized by this Court as the absence of coercion or constraint. If a “person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.”⁴⁹

49. In *Big M Drug Mart*, the Supreme Court of Canada elaborated upon the core values underlying the s. 2(a) freedom:⁵⁰

The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, provided *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and

⁴⁸ *Egan v. Nesbit*, [1995] 2 S.C.R. 513 at 604, para. 180 per Cory J. (in dissent), AGC Authorities, Vol. I, Tab 9; see also: *M. v. H.*, [1999] 2 S.C.R. 3 at 57-8, para. 73 per Cory and Iacobucci, JJ., AGC Authorities, Vol. II, Tab 20.

⁴⁹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 336, AGC Authorities, Vol. II, Tab 23; *Delisle v. Canada*, [1999] 2 S.C.R. 989 at 1015, para. 26, AGC Authorities, Vol. I, Tab 7

⁵⁰ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 346-347, AGC Authorities, Vol. II, Tab 23

opinions of their own. [...] It may perhaps be that freedom of conscience and religion extends beyond these principles to prohibit other sorts of governmental involvement in matters having to do with religion. For the present case it is sufficient in my opinion to say that whatever else freedom of conscience and religion may mean, it must at the very least mean this: government may not coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose.

50. Clause 1 explicitly limits the proposed legislation to marriage “for civil purposes”. For greater certainty, clause 2 goes on to provide that: “Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs”. It is clear, therefore, that it is not the intention of the proposed legislation to affect the freedom of religious officials to refuse to conduct marriages that are not in accordance with their religious beliefs or impose a duty on them to conduct them.

51. The civil purpose of the state in recognizing marriage is: to support a key societal institution; to protect individuals; to identify benefits; and to impose legal obligations. In *EGALE*, the British Columbia Court of Appeal, quoting a Law Commission of Canada report, said:⁵¹

The secular purpose of marriage is to provide an orderly framework in which people can express their commitment to each other, receive public recognition and support and voluntarily assume a range of legal rights and obligations.

52. In carrying out this civil purpose, the state must identify a common set of characteristics that it is prepared to recognize as marriage, some of which may be consistent with, and some in conflict with, various religious and secular definitions of marriage.

53. In *Halpern*, the Court of Appeal for Ontario had to address an argument brought by the MCCT that the failure to extend the civil recognition of marriage to same-sex unions violates the religious freedom of individuals and congregations who celebrate those unions. MCCT argued that, when the civil definition of marriage accords with one religious view of marriage, and not another, this diminishes the status of those religious marriages not accorded a civil status. The Court of Appeal disagreed, emphasizing the distinction between marriage for civil purposes and marriage for religious purposes:⁵²

In our view, this case does not engage religious rights and freedoms. Marriage is a legal institution, as well as a religious and a social institution. This case is solely about the legal institution of marriage. It is not about the religious validity

⁵¹ *EGALE*, at 43, para. 154 (AGC Authorities, Vol. I, Tab 8), citing *Beyond Conjugalinity, Recognizing and supporting close personal adult relationships* (Law Commission of Canada, Ottawa, 2002), p. 130, AGC Authorities, Vol. II, Tab 37

⁵² *Halpern*, at 177, para. 53, AGC Authorities, Vol. I, Tab 12

or invalidity of various forms of marriage. We do not view this case as, in any way, dealing or interfering with the religious institution of marriage.

54. Equally here, what is at issue is not the validity or invalidity of various forms of religious marriage, but the state's decision to extend legal recognition for civil purposes to same-sex unions.

55. If religious officials were required to perform a ceremony that did not accord with their religious beliefs, religious freedom would clearly be impaired. The proposed legislation does not, however, impair religious freedom as religious officials have a right, already protected by s. 2(a) of the *Charter* and made explicit by clause 2 of the proposed legislation, to refuse to solemnize a marriage that is not in accordance with their religious beliefs. Those religious officials who do not believe that marriage should include same-sex unions are not compelled to solemnize them. The proposed legislation does not, therefore, constitute coercion within the meaning of the judicial interpretation of s. 2(a) of the *Charter*.

56. The Court of Appeal in *Halpern* held that the opposite-sex definition of marriage, which excluded recognition of the same-sex unions celebrated by the MCCT, did not violate s. 2(a):⁵³

In sharp contrast to the situation in *Big M Drug Mart*, the common-law definition of "marriage" does not oblige MCCT to abstain from doing anything. Nor does it prevent the manifestation of any religious beliefs or practices. There is nothing in the common-law definition of "marriage" that obliges MCCT, directly or indirectly, to stop performing marriage ceremonies that conform with its own religious teachings, including same-sex marriages. Similarly, there is nothing in the common-law definition of "marriage" that obliges MCCT to perform only heterosexual marriages.

57. Equally here, the expansion of the definition of the civil capacity of marriage to include unions of same-sex couples does not violate the rights of anyone opposed to such unions on a religious basis. In fact, unlike the situation complained of by the MCCT (whose same-sex unions were excluded by the common-law definition), opposite-sex unions continue to be included, as before, within the proposed new definition. Those whose religious beliefs prescribe a narrower definition of marriage are free to hold those beliefs and will not be required to act inconsistently with those beliefs.

⁵³ *Halpern*, at 178, para. 57, AGC Authorities, Vol. I, Tab 12

(ii) Religious freedom does not entitle one group to demand state endorsement of its beliefs to the exclusion of others

58. The proposed extension of marriage to same-sex unions does not constitute an endorsement by the state of any particular religious view of marriage, to the exclusion of any other. Furthermore, s. 2(a) cannot be invoked to demand that the state endorse a particular religious view of marriage: s. 2(a) enshrines no right to positive state facilitation of religious belief or practice.⁵⁴

59. Section 2(a) enshrines no right to demand that the state withhold recognition or accommodation of practices that might be contrary to particular religious beliefs.⁵⁵ Enforcement of religious conformity through legislation or government action is no longer a legitimate object of government and is in fact directly contrary to the protection found in s. 2(a). As Dickson, C.J. notes in *Big M Drug Mart*:⁵⁶

In an earlier time, when people believed in the collective responsibility of the community toward some deity, the enforcement of religious conformity may have been a legitimate object of government, but since the *Charter*, it is no longer legitimate. With the *Charter*, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be and it is not for the state to dictate otherwise. The state shall not use the criminal sanctions at its disposal to achieve a religious purpose, namely, the uniform observance of the day chosen by the Christian religion as its day of rest.

60. Recently, the Supreme Court made it clear in *Trinity Western* that the core value protected in s. 2(a) is freedom of belief, and this freedom is broader than the right to act on a religious belief.⁵⁷ This freedom certainly does not extend to a right to compel others to act, or to limit their ability to act, in accordance with a religious belief.

61. Furthermore, as Prowse J. noted in the British Columbia Court of Appeal in *EGALE*, there is no hierarchy of rights: the religious freedom of those opposed to recognizing same-sex unions as marriages does not trump the equality rights of those couples seeking recognition of their unions as marriages.⁵⁸

As noted by Lemelin J. in *Hendricks*, there is no hierarchical list of rights in the *Charter*, and freedom of religion and conscience must live together with s. 15

⁵⁴ *Adler v. Ontario*, [1996] 3 S.C.R. 609 at 702-703, para. 175, per Sopinka, J., AGC Authorities, Vol. I, Tab 3

⁵⁵ *Grant v. Attorney General of Canada* (1995) 125 D.L.R. (4th) 556 (Fed. C.A.) at 557-8; leave to appeal to the Supreme Court of Canada refused, [1995] S.C.C.A. No. 394, AGC Authorities, Vol. I, Tab 11

⁵⁶ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 351, AGC Authorities, Vol. II, Tab 23

⁵⁷ *Trinity Western University v. B.C. College of Teachers*, [2001] 1 S.C.R. 772 at 814-5, para. 36, AGC Authorities, Vol. II, Tab 30

⁵⁸ *EGALE*, at 38, para. 133, AGC Authorities, Vol. I, Tab 8

equality rights. One cannot trump the other. In her view, shared by the court in *Halpern*, the equality rights of same-sex couples do not displace the rights of religious groups to refuse to solemnize same-sex marriages which do not accord with their religious beliefs. Similarly, the rights of religious groups to freely practise their religion cannot oust the rights of same-sex couples seeking equality, by insisting on maintaining the barriers in the way of that equality.

62. Clause 1 of the proposed legislation does not, therefore, impair freedom of religion as guaranteed by s. 2(a) of the *Charter*.

(b) The proposed legislation does not discriminate on the ground of religion

63. Section 15(1) of the *Charter* provides:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

64. The proposed legislation removes from the law of marriage the discrimination on the ground of sexual orientation identified in *EGALE*, *Halpern* and *Hendricks*. The proposed legislation is consistent with s. 15(1) of the *Charter*.

65. Any conceivable attack, based on s. 15(1), upon the extension of marriage to include same-sex couples would fail at the threshold of the equality analysis.⁵⁹ The proposed legislation draws no distinction, imposes no differential treatment, denies no benefit and imposes no burden based on any listed or analogous ground, including different religious understandings of marriage.

66. The proposed legislation concerns itself with the legal definition of marriage for civil purposes and does not touch religious marriage. Religious marriage remains a matter for the conscience of religious officials, and not a matter of law. Religious marriages do not necessarily meet the requirements for legal registration. Equally, marriages that would satisfy the civil requirements do not necessarily meet a particular religion's requirements for marriage.⁶⁰

67. The locus of religious belief is in the individual conscience of religious adherents and not in the civil law. By including same-sex unions, while continuing to include opposite-sex unions within the definition of marriage, the proposed legislation does not differentiate between groups

⁵⁹ *Law v. Canada*, [1999] 1 S.C.R. 497 at 547-552, para. 88, AGC Authorities, Vol. II, Tab 19

⁶⁰ Examples include marriage between Jewish partners where a "get" had not been obtained or between Catholic partners, where either had been divorced or the two are related as first cousins (the latter prohibited by Catholic doctrine, but not by the *Marriage (Prohibited Degrees) Act*).

that might hold a religious understanding of marriage that is more specific or particular than the civil definition. In particular, religious officials who believe marriage should only embrace opposite-sex unions remain free to refuse to solemnize any other unions. The opposite-sex unions that they do solemnize will continue to be recognized as marriages for civil purposes, provided these unions meet all of the legal requirements.

68. In *Halpern*, the Court of Appeal found that the opposite-sex requirement of marriage discriminated against same-sex couples on the grounds of sexual orientation. As part of that decision, however, it specifically rejected an argument made by the MCCT that the common-law definition of marriage discriminated against any group on the grounds of religion:⁶¹

For now, it appears clear to us that any potential discrimination arising out of the differential treatment of same-sex marriages performed by MCCT is based on sexual orientation. This differential treatment is not based on the religious beliefs held by the same-sex couples or by the institution performing the religious ceremony. For this reason, we conclude that MCCT has failed to establish religious discrimination under s. 15(1).

69. The exclusion from the common-law definition of marriage of the same-sex unions solemnized by the MCCT, in accordance with that Church's beliefs, was found not to be in breach of religious freedom in *Halpern*. Under the proposed legislation, the addition of same-sex unions to the definition of marriage for civil purposes is an inclusive change that does not discriminate against those holding different religious understandings of marriage.

70. The recognition of same-sex unions does not marginalize or stigmatize any individual belonging to a religious or cultural group that may hold a different understanding of marriage. Clause 2 specifically respects and affirms the right of religious officials not to solemnize same-sex unions as marriages, while clause 1 continues to include opposite-sex unions within the civil definition of marriage.

Conclusion on Question 2

71. The Attorney General of Canada, accordingly, submits that clause 1 of the proposed legislation is consistent with the *Charter*. The answer to question 2 of the Reference is yes.

⁶¹ *Halpern*, at 178, para. 58, AGC Authorities, Vol. I, Tab 12

QUESTION 3: PARAGRAPH 2(A) OF THE CHARTER PROTECTS RELIGIOUS OFFICIALS FROM BEING COMPELLED TO PERFORM A MARRIAGE BETWEEN TWO PERSONS OF THE SAME SEX

72. The third question on this Reference is as follows:

Does the freedom of religion guaranteed by paragraph 2(a) of the *Canadian Charter of Rights and Freedoms* protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?

73. In *Big M Drug Mart*, this Court made it clear that the core of the interest protected by s. 2(a) is the freedom from being compelled to act contrary to one's beliefs or conscience.⁶²

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. [...] Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

74. A decision by a religious official to perform or not to perform a marriage ceremony, based upon religious beliefs and conscience about marriage, is at the core of religious freedom. Coercing a religious official to perform a marriage ceremony, contrary to his or her religious beliefs, cannot be justified in order to protect public safety, order, health or morals or the fundamental rights and freedoms of others. Such coercion would be contrary to s. 2(a) of the *Charter*.⁶³ That section, therefore, protects religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs.

Conclusion on Question 3

75. The Attorney General of Canada, accordingly, submits that the answer to question 3 of the Reference is yes.

⁶² *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 336-7, AGC Authorities, Vol. II, Tab 23

⁶³ See: *EGALE*, at 38, 49, paras. 133, 181 (AGC Authorities, Vol. 1, Tab 8); see also *Halpern*, at 195, para. 138, AGC Authorities, Vol. 1, Tab 12.

PART IV – SUBMISSIONS CONCERNING COSTS

76. The Attorney General of Canada seeks no order as to costs.

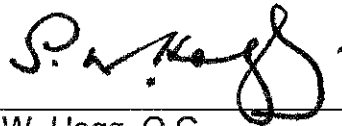
PART V – NATURE OF ORDER SOUGHT

77. The questions on the Reference should be answered as follows:

- (a) Question 1: yes
- (b) Question 2: yes
- (c) Question 3: yes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 24th day of October, 2003.



Peter W. Hogg, Q.C.



Michael H. Morris
Of Counsel for the Attorney General of Canada

PART VI – TABLE OF AUTHORITIES

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<i>An Act to confirm and make valid certain Marriages heretofore contracted in the Country now comprised within the Province of Upper Canada, and to provide for the future Solemnization of Marriage within the same</i> , 33 George III, c. 5 (1793)	12
<i>An Act to render and make valid, certain Marriages, heretofore solemnized before Magistrates, and other Lay Persons</i> , 33 George III, c. 5 (1793)(N.S.)	12
<i>An Act to regulate the Celebration of Marriages in Newfoundland</i> , 57 George III, c. 51 (1817)(Nfld.)	12
<i>An Act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of matrimony in this Province</i> , 11 George IV, c. 36 (1830)(Ont.)	12
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PART VII – STATUTES RELIED ON

Tab

1. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), ss. 91, 92
2. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982* (U.K.), 1982, c. 11

Federal Legislation:

3. *Criminal Law Amendment Act, 1968-1969*, S.C. 1968-1969, c. 38, s. 7
4. *Marriage (Prohibited Degrees) Act*, S.C. 1990, c. 46, ss. 1-4

Provincial Legislation:

5. *Marriage Act*, R.S.N.B. 1973, c. M-3, s. 11
6. *Marriage Act*, R.S.M. 1987, c. M50, s. 8
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8. *Marriage Act*, R.S.O. 1990, c. M-3, s. 17
9. *Marriage Act*, R.S.Y. 2002, c. 146, ss. 19-23
10. *Code civil du Québec/ Civil Code of Québec*, L.Q./ S.Q., 1991, c. 64, Articles 365, 368, 375
11. *Rules Respecting the Solemnization of Civil Marriages and Civil Unions*, C.C.Q., 1991, c. 64, Rule 1
12. *An Act instituting civil unions and establishing new rules of filiation*, S.Q. 2002, c. 6, s. 22

Tab 1

No. 5

CONSTITUTION ACT, 1867

(*THE BRITISH NORTH AMERICA ACT,*
1867)

[Note: The present short title was substituted for the original short title (in italics) by the *Constitution Act, 1982* (No. 44 *infra*).]

30 & 31 Victoria, c. 3 (U.K.)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

[29th March 1867]

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual

N° 5

LOI CONSTITUTIONNELLE DE 1867

(*ACTE DE L'AMÉRIQUE DU NORD*
BRITANNIQUE, 1867)

[Note: Le titre abrégé (en italique) a été remplacé aux termes de la *Loi constitutionnelle de 1982* (n° 44 *infra*).]

30 & 31 Victoria, ch. 3 (R.-U.)

(*Texte français publié dans le volume des Statuts du Canada de 1867.*)

Loi concernant l'Union et le gouvernement du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick, ainsi que les objets qui s'y rattachent.

[29 mars 1867]

Considérant que les provinces du Canada, de la Nouvelle-Ecosse et du Nouveau-Brunswick ont exprimé le désir de contracter une Union Fédérale pour ne former qu'une seule et même Puissance (*Dominion*) sous la couronne du Royaume-Uni de la Grande-Bretagne et d'Irlande, avec une constitution reposant sur les mêmes principes que celle du Royaume-Uni:

Considérant de plus qu'une telle union aurait l'effet de développer la prospérité des provinces et de favoriser les intérêts de l'Empire Britannique:

Considérant de plus qu'il est opportun, concurremment avec l'établissement de l'union par autorité du parlement, non seulement de décréter la constitution du pouvoir législatif de la Puissance, mais aussi de définir la nature de son gouvernement exécutif:

Considérant de plus qu'il est nécessaire de pourvoir à l'admission éventuelle d'autres parties de l'Amérique du Nord britannique dans l'union:

Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

provinces, tout comme si elles étaient ici décrétées et rendues expressément applicables aux provinces respectives et à leurs législatures, en substituant toutefois le lieutenant-gouverneur de la province au gouverneur-général, le gouverneur-général à la Reine et au secrétaire d'Etat, un an à deux ans, et la province au Canada.

VI. DISTRIBUTION OF LEGISLATIVE POWERS

VI. DISTRIBUTION DES POUVOIRS LÉGISLATIFS

Powers of the Parliament

Pouvoirs du parlement

Legislative Authority of Parliament of Canada

Autorité législative du parlement du Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

Amendment as to legislative authority of Parliament of Canada

Modification concernant l'autorité législative du parlement du Canada

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: Provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

1. La modification, de temps à autre, de la constitution du Canada, sauf en ce qui concerne les matières rentrant dans les catégories de sujets que la présente loi attribue exclusivement aux législatures des provinces, ou en ce qui concerne les droits ou privilèges accordés ou garantis, par la présente loi ou par toute autre loi constitutionnelle, à la législature ou au gouvernement d'une province, ou à quelque catégorie de personnes en matière d'écoles, ou en ce qui regarde l'emploi de l'anglais ou du français, ou les prescriptions portant que le parlement du Canada tiendra au moins une session chaque année et que la durée de chaque chambre des communes sera limitée à cinq années, depuis le jour du rapport des brefs ordonnant l'élection de cette chambre; toutefois, le parlement du Canada peut prolonger la durée d'une chambre des communes en temps de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, si cette prolongation n'est pas l'objet d'une opposition exprimée par les votes de plus du tiers des membres de ladite chambre.

[Note: Class 1 was added by the British North America Act (No. 2), 1949 (No. 33 *infra*) and repealed by the Constitution Act, 1982 (No. 44 *infra*).]

[Note: La catégorie 1 a été ajoutée par l'Acte de

- 1A. The Public Debt and Property.
[Note: Re-numbered 1A by the *British North America Act (No. 2), 1949 (No. 33 infra)*.]
2. The Regulation of Trade and Commerce.
- 2A. Unemployment insurance.
[Note: Added by the *Constitution Act, 1940 (No. 28 infra)*.]
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

l'Amérique du Nord britannique (n° 2), 1949 (n° 33 infra) et abrogée par la *Loi constitutionnelle de 1982 (n° 44 infra)*.]

- 1A. La dette et la propriété publiques.
[Note: Renuméroté 1A par l'*Acte de l'Amérique du Nord britannique (n° 2), 1949 (n° 33 infra)*.]
2. La réglementation du trafic et du commerce.
- 2A. L'assurance-chômage.
[Note: Ajouté par la *Loi constitutionnelle de 1940 (n° 28 infra)*.]
3. Le prélèvement de deniers par tous modes ou systèmes de taxation.
4. L'emprunt de deniers sur le crédit public.
5. Le service postal.
6. Le recensement et les statistiques.
7. La milice, le service militaire et le service naval, et la défense du pays.
8. La fixation et le paiement des salaires et honoraires des officiers civils et autres du gouvernement du Canada.
9. Les amarques, les bouées, les phares et l'île de Sable.
10. La navigation et les bâtiments ou navires (*shipping*).
11. La quarantaine et l'établissement et maintien des hôpitaux de marine.
12. Les pêcheries des côtes de la mer et de l'intérieur.
13. Les passages d'eau (*ferries*) entre une province et tout pays britannique ou étranger, ou entre deux provinces.
14. Le cours monétaire et le monnayage.
15. Les banques, l'incorporation des banques et l'émission du papier-monnaie.
16. Les caisses d'épargne.
17. Les poids et mesures.
18. Les lettres de change et les billets promissaires.
19. L'intérêt de l'argent.
20. Les offres légales.
21. La banqueroute et la faillite.
22. Les brevets d'invention et de découverte.
23. Les droits d'auteur.
24. Les Indiens et les terres réservées pour les Indiens.
25. La naturalisation et les aubains.
26. Le mariage et le divorce.
27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

[Note: Legislative authority has also been conferred by the *Rupert's Land Act, 1868* (No. 6 *infra*), *Constitution Act, 1871* (No. 11 *infra*), *Constitution Act, 1886* (No. 15 *infra*), *Statute of Westminster, 1931* (No. 27 *infra*) and section 44 of the *Constitution Act, 1982* (No. 44 *infra*), and see also sections 38 and 41 to 43 of the latter Act.]

28. L'établissement, le maintien, et l'administration des pénitenciers.

29. Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.

Et aucune des matières énoncées dans les catégories de sujets énumérés dans le présent article ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.

[Note: Ont aussi conféré une compétence législative au Parlement l'Acte de la Terre de Rupert, 1868 (n° 6 *infra*), la Loi constitutionnelle de 1871 (n° 11 *infra*), la Loi constitutionnelle de 1886 (n° 15 *infra*), le Statut de Westminster de 1931 (n° 27 *infra*) et l'article 44 de la Loi constitutionnelle de 1982 (n° 44 *infra*). Voir aussi les articles 38 et 41 à 43 de cette dernière loi.]

Exclusive Powers of Provincial Legislatures

Pouvoirs exclusifs des législatures provinciales

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. *The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.*

[Note: Class 1 was repealed by the *Constitution Act, 1982* (No. 44 *infra*). The subject is now provided for in section 45 of that Act, and see also sections 38 and 41 to 43 of the same Act.]

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and

92. Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir:

1. *L'amendement de temps à autre, nonobstant toute disposition contraire énoncée dans le présent acte, de la constitution de la province, sauf les dispositions relatives à la charge de lieutenant-gouverneur;*

[Note: Cette catégorie a été abrogée par la *Loi constitutionnelle de 1982* (n° 44 *infra*). La teneur s'en retrouve maintenant à l'article 45 de la *Loi constitutionnelle de 1982*. Voir aussi les articles 38 et 41 à 43 de cette loi.]

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

3. Les emprunts de deniers sur le seul crédit de la province;

4. La création et la tenure des charges provinciales, et la nomination et le paiement des officiers provinciaux;

5. L'administration et la vente des terres publiques appartenant à la province, et des bois et forêts qui s'y trouvent;

6. L'établissement, l'entretien et l'administration des prisons publiques et des maisons de réforme dans la province;

Sujets soumis au contrôle exclusif de la législation provinciale

- for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
 10. Local Works and Undertakings other than such as are of the following Classes:—
 - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
 - b. Lines of Steam Ships between the Province and any British or Foreign Country;
 - c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
 11. The Incorporation of Companies with Provincial Objects.
 12. The Solemnization of Marriage in the Province.
 13. Property and Civil Rights in the Province.
 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
 16. Generally all Matters of a merely local or private Nature in the Province.
7. L'établissement, l'entretien et l'administration des hôpitaux, asiles, institutions et hospices de charité dans la province, autres que les hôpitaux de marine;
 8. Les institutions municipales dans la province;
 9. Les licences de boutiques, de cabarets, d'auberges, d'encanteurs et autres licences, dans le but de prélever un revenu pour des objets provinciaux, locaux, ou municipaux;
 10. Les travaux et entreprises d'une nature locale, autres que ceux énumérés dans les catégories suivantes:—
 - a. Lignes de bateaux à vapeur ou autre bâtiments, chemins de fer, canaux, télégraphes et autres travaux et entreprises reliant la province à une autre ou à d'autres provinces, ou s'étendant au-delà des limites de la province;
 - b. Lignes de bateaux à vapeur entre la province et tout pays dépendant de l'empire britannique ou tout pays étranger;
 - c. Les travaux qui, bien qu'entièrement situés dans la province, seront avant ou après leur exécution déclarés par le parlement du Canada être pour l'avantage général du Canada, ou pour l'avantage de deux ou d'un plus grand nombre des provinces;
 11. L'incorporation des compagnies pour des objets provinciaux;
 12. La célébration du mariage dans la province;
 13. La propriété et les droits civils dans la province;
 14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;
 15. L'infliction de punitions par voie d'amende, pénalité, ou emprisonnement, dans le but de faire exécuter toute loi de la province décrétée au sujet des matières tombant dans aucune des catégories de sujets énumérés dans le présent article;
 16. Généralement toutes les matières d'une nature purement locale ou privée dans la province.

28

No. 5

Constitution Act, 1867

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Ressources naturelles non renouvelables, ressources forestières et énergie électrique

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province, the legislature may exclusively make laws in relation to

92A. (1) La législature de chaque province a compétence exclusive pour légiférer dans les domaines suivants :

- (a) exploration for non-renewable natural resources in the province;
- (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
- (c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

- a) prospection des ressources naturelles non renouvelables de la province;
- b) exploitation, conservation et gestion des ressources naturelles non renouvelables et des ressources forestières de la province, y compris leur rythme de production primaire;
- c) aménagement, conservation et gestion des emplacements et des installations de la province destinés à la production d'énergie électrique.

Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

(2) La législature de chaque province a compétence pour légiférer en ce qui concerne l'exportation, hors de la province, à destination d'une autre partie du Canada, de la production primaire tirée des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production d'énergie électrique de la province, sous réserve de ne pas adopter de lois autorisant ou prévoyant des disparités de prix ou des disparités dans les exportations destinées à une autre partie du Canada.

Exportation hors des provinces

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

(3) Le paragraphe (2) ne porte pas atteinte au pouvoir du Parlement de légiférer dans les domaines visés à ce paragraphe, les dispositions d'une loi du Parlement adoptée dans ces domaines l'emportant sur les dispositions incompatibles d'une loi provinciale.

Pouvoir du Parlement

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(4) La législature de chaque province a compétence pour prélever des sommes d'argent par tout mode ou système de taxation :

Taxation des ressources

- (a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and
- (b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

- a) des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production primaire qui en est tirée;
- b) des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production même.

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Cette compétence peut s'exercer indépendamment du fait que la production en cause soit ou non, en totalité ou en partie, exportée hors de la province, mais les lois adoptées dans ces domaines ne peuvent autoriser ou prévoir une taxation qui établisse une distinction entre la production exportée à destination d'une autre partie du Canada et la production non exportée hors de la province.

Tab 2

SCHEDULE B

ANNEXE B

CONSTITUTION ACT, 1982

LOI CONSTITUTIONNELLE DE 1982

PART I

PARTIE I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

CHARTE CANADIENNE DES DROITS ET LIBERTÉS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Guarantee of Rights and Freedoms

Garantie des droits et libertés

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Droits et libertés au Canada

Fundamental Freedoms

Libertés fondamentales

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

2. Chacun a les libertés fondamentales suivantes :

Libertés fondamentales

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

Democratic Rights

Droits démocratiques

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

Droits démocratiques des citoyens

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

Mandat maximal des assemblées

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongé respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.

Prolongations spéciales

4	No. 44	Constitution Act, 1982	Schedule B
Annual sitting of legislative bodies	5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.	5. Le Parlement et les législatures tiennent une séance au moins une fois tous les douze mois.	Séance annuelle
<i>Mobility Rights</i>		<i>Liberté de circulation et d'établissement</i>	
Mobility of citizens	6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.	6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.	Liberté de circulation
Rights to move and gain livelihood	(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.	(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit : a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province; b) de gagner leur vie dans toute province.	Liberté d'établissement
Limitation	(3) The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.	(3) Les droits mentionnés au paragraphe (2) sont subordonnés : a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle; b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.	Restriction
Affirmative action programs	(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.	(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.	Programmes de promotion sociale
<i>Legal Rights</i>		<i>Garanties juridiques</i>	
Life, liberty and security of person	7. 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.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.	Vie, liberté et sécurité
Search or seizure	8. Everyone has the right to be secure against unreasonable search or seizure.	8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.	Fouilles, perquisitions ou saisies
Detention or imprisonment	9. Everyone has the right not to be arbitrarily detained or imprisoned.	9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.	Détention ou emprisonnement
Arrest or detention	10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and	10. Chacun a le droit, en cas d'arrestation ou de détention : a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention; b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;	Arrestation ou détention

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

Affaires criminelles et pénales

(a) to be informed without unreasonable delay of the specific offence;

11. Tout inculpé a le droit :
a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;

(b) to be tried within a reasonable time;

b) d'être jugé dans un délai raisonnable;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

(e) not to be denied reasonable bail without just cause;

e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

f) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

Cruauté

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a

13. Chacun a droit à ce qu'aucun témoignage incriminant qu'il donne ne soit utilisé pour l'incriminer dans d'autres procédures, sauf lors de poursuites pour parjure ou pour témoignages contradictoires.

Témoignage incriminant

prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

14. La partie ou le témoin qui ne peuvent suivre les procédures, soit parce qu'ils ne comprennent pas ou ne parlent pas la langue employée, soit parce qu'ils sont atteints de surdit , ont droit   l'assistance d'un interpr te.

Interpr te

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[Note: This section became effective on April 17, 1985. See subsection 32(2) and the note thereto.]

Droits   l' galit 

15. (1) La loi ne fait acception de personne et s'applique  galement   tous, et tous ont droit   la m me protection et au m me b n fice de la loi, ind pendamment de toute discrimination, notamment des discriminations fond es sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l' ge ou les d ficiences mentales ou physiques.

 galit  devant la loi,  galit  de b n fice et protection  gale de la loi

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activit s destin s   am liorer la situation d'individus ou de groupes d favoris s, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur  ge ou de leurs d ficiences mentales ou physiques.

Programmes de promotion sociale

[Note : Cet article n'a pris effet que le 17 avril 1985. Voir le paragraphe 32(2) et la note correspondante.]

Official Languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Langues officielles du Canada

16. (1) Le fran ais et l'anglais sont les langues officielles du Canada; ils ont un statut et des droits et privil ges  gaux quant   leur usage dans les institutions du Parlement et du gouvernement du Canada.

Langues officielles du Canada

(2) Le fran ais et l'anglais sont les langues officielles du Nouveau-Brunswick; ils ont un statut et des droits et privil ges  gaux quant   leur usage dans les institutions de la L gislation et du gouvernement du Nouveau-Brunswick.

Langues officielles du Nouveau-Brunswick

(3) La pr sente charte ne limite pas le pouvoir du Parlement et des l gislatures de favoriser la progression vers l' galit  de statut ou d'usage du fran ais et de l'anglais.

Progression vers l' galit 

17. (1) Chacun a le droit d'employer le fran ais ou l'anglais dans les d bats et travaux du Parlement.

Travaux du Parlement

(2) Chacun a le droit d'employer le fran ais ou l'anglais dans les d bats et travaux de la L gislation du Nouveau-Brunswick.

Travaux de la L gislation du Nouveau-Brunswick

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

18. (1) Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Documents parlementaires

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

(2) Les lois, les archives, les comptes rendus et les procès-verbaux de la Législature du Nouveau-Brunswick sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Documents de la Législature du Nouveau-Brunswick

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

19. (1) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux établis par le Parlement et dans tous les actes de procédure qui en découlent.

Procédures devant les tribunaux établis par le Parlement

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

(2) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux du Nouveau-Brunswick et dans tous les actes de procédure qui en découlent.

Procédures devant les tribunaux du Nouveau-Brunswick

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

20. (1) Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions là où, selon le cas :

Communications entre les administrés et les institutions fédérales

(a) there is a significant demand for communications with and services from that office in such language; or

a) l'emploi du français ou de l'anglais fait l'objet d'une demande importante;

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

b) l'emploi du français et de l'anglais se justifie par la vocation du bureau.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

(2) Le public a, au Nouveau-Brunswick, droit à l'emploi du français ou de l'anglais pour communiquer avec tout bureau des institutions de la législature ou du gouvernement ou pour en recevoir les services.

Communications entre les administrés et les institutions du Nouveau-Brunswick

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

21. Les articles 16 à 20 n'ont pas pour effet, en ce qui a trait à la langue française ou anglaise ou à ces deux langues, de porter atteinte aux droits, privilèges ou obligations qui existent ou sont maintenus aux termes d'une autre disposition de la Constitution du Canada.

Maintien en vigueur de certaines dispositions

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or

22. Les articles 16 à 20 n'ont pas pour effet de porter atteinte aux droits et privilèges, antérieurs ou postérieurs à l'entrée en vigueur de la

Droits préservés

after the coming into force of this Charter with respect to any language that is not English or French. présente charte et découlant de la loi ou de la coutume, des langues autres que le français ou l'anglais.

Minority Language Educational Rights Droits à l'instruction dans la langue de la minorité

Language of instruction

23. (1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

23. (1) Les citoyens canadiens : a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident, b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province,

Langue d'instruction

have the right to have their children receive primary and secondary school instruction in that language in that province. ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

[Note : Voir l'article 59 et la note correspondante.]

[Note: See also section 59 and the note thereto.]

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

Continuité d'emploi de la langue d'instruction

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province :

Justification par le nombre

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

Enforcement

Recours

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

Recours en cas d'atteinte aux droits et libertés

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.

Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

Dispositions générales

25. Le fait que la présente charte garantit certains droits et libertés ne porte pas atteinte aux droits ou libertés — ancestraux, issus de traités ou autres — des peuples autochtones du Canada, notamment :

Maintien des droits et libertés des autochtones

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

a) aux droits ou libertés reconnus par la Proclamation royale du 7 octobre 1763;

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

b) aux droits ou libertés acquis par règlement de revendications territoriales.

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

b) aux droits ou libertés existants issus d'accords sur des revendications territoriales ou ceux susceptibles d'être ainsi acquis.

[Note: Paragraph 25(b) (in italics) was repealed and the new paragraph substituted by the Constitution Amendment Proclamation, 1983 (No. 46 infra).]

[Note: L'alinéa 25b) (en italique) a été abrogé et remplacé aux termes de la Proclamation de 1983 modifiant la Constitution (n° 46 infra).]

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

26. Le fait que la présente charte garantit certains droits et libertés ne constitue pas une négation des autres droits ou libertés qui existent au Canada.

Maintien des autres droits et libertés

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

Maintien du patrimoine culturel

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

28. Indépendamment des autres dispositions de la présente charte, les droits et libertés qui y sont mentionnés sont garantis également aux personnes des deux sexes.

Égalité de garantie des droits pour les deux sexes

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

29. Les dispositions de la présente charte ne portent pas atteinte aux droits ou privilèges garantis en vertu de la Constitution du Canada concernant les écoles séparées et autres écoles confessionnelles.

Maintien des droits relatifs à certaines écoles

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

30. Dans la présente charte, les dispositions qui visent les provinces, leur législature ou leur assemblée législative visent également le territoire du Yukon, les territoires du Nord-Ouest ou leurs autorités législatives compétentes.

Application aux territoires

10	No. 44	Constitution Act, 1982	Schedule B
Legislative powers not extended	31. Nothing in this Charter extends the legislative powers of any body or authority.	31. La présente charte n'élargit pas les compétences législatives de quelque organisme ou autorité que ce soit.	Non-élargissement des compétences législatives
<i>Application of Charter</i>		<i>Application de la charte</i>	
Application of Charter	32. (1) This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.	32. (1) La présente charte s'applique : a) au Parlement et au gouvernement du Canada, pour tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest; b) à la législature et au gouvernement de chaque province, pour tous les domaines relevant de cette législature.	Application de la charte
Exception	(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force. [Note: This section came into force on April 17, 1982. See the proclamation of that date (No. 45 <i>infra</i> .)]	(2) Par dérogation au paragraphe (1), l'article 15 n'a d'effet que trois ans après l'entrée en vigueur du présent article. [Note: Cet article est entré en vigueur le 17 avril 1982. Voir la proclamation à cet effet (n° 45 <i>infra</i> .)]	Restriction
Exception where express declaration	33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.	33. (1) Le Parlement ou la législature d'une province peut adopter une loi où il est expressément déclaré que celle-ci ou une de ses dispositions a effet indépendamment d'une disposition donnée de l'article 2 ou des articles 7 à 15 de la présente charte.	Dérogation par déclaration expresse
Operation of exception	(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.	(2) La loi ou la disposition qui fait l'objet d'une déclaration conforme au présent article et en vigueur a l'effet qu'elle aurait sauf la disposition en cause de la charte.	Effet de la dérogation
Five year limitation	(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.	(3) La déclaration visée au paragraphe (1) cesse d'avoir effet à la date qui y est précisée ou, au plus tard, cinq ans après son entrée en vigueur.	Durée de validité
Re-enactment	(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).	(4) Le Parlement ou une législature peut adopter de nouveau une déclaration visée au paragraphe (1).	Nouvelle adoption
Five year limitation	(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).	(5) Le paragraphe (3) s'applique à toute déclaration adoptée sous le régime du paragraphe (4).	Durée de validité
<i>Citation</i>		<i>Titre</i>	
Citation	34. This Part may be cited as the <i>Canadian Charter of Rights and Freedoms</i> .	34. Titre de la présente partie : <i>Charte canadienne des droits et libertés</i> .	Titre

Tab 3

17-18 ELIZABETH II

17-18 ELIZABETH II

CHAPTER 38

CHAPITRE 38

An Act to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act

Loi modifiant le Code criminel, la Loi sur la libération conditionnelle de détenus, la Loi sur les pénitenciers, la Loi sur les prisons et maisons de correction et apportant certaines modifications résultantes à la Loi relative aux enquêtes sur les coalitions, au Tarif des douanes et à la Loi sur la défense nationale

[Assented to 27th June, 1969]

[Sanctionnée le 27 juin 1969]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

TITRE ABRÉGÉ

Short title 1. This Act may be cited as the *Criminal Law Amendment Act, 1968-69*.

1. La présente loi peut être citée sous Titre abrégé le titre: *Loi de 1968-69 modifiant le droit pénal*.

PART I

PARTIE I

CRIMINAL CODE

CODE CRIMINEL

1953-54, c. 51 2. (1) Paragraph (2) of section 2 of the *Criminal Code* is repealed and the following substituted therefor:

2. (1) L'alinéa (36) de l'article 2 du 1953-54, c. 51 *Code criminel* est abrogé et remplacé par ce qui suit:

"Attorney General" "(2) "Attorney General" means the Attorney General or Solicitor General of a province in which proceedings to which this Act applies are taken and, with respect to

"(36) «procureur général» désigne le «procureur procureur général ou solliciteur général général» d'une province où sont intentées des procédures visées par la présente loi et désigne, relativement

- (a) the Northwest Territories and the Yukon Territory, and
- (b) proceedings instituted at the instance of the Government of Canada and conducted by or on

- a) aux territoires du Nord-Ouest et au territoire du Yukon, et
- b) aux procédures instituées sur l'instance du gouvernement du Canada et dirigées par ce gouverne-

ing to be a permit or registration certificate is evidence of the statements contained therein without proof of the signature or the official character of the person appearing to have signed the same."

ment donné comme étant un permis ou un certificat d'enregistrement fait preuve des déclarations contenues dans le document sans qu'il soit nécessaire de faire la preuve de la signature de la personne par laquelle il paraît avoir été signé ni de la qualité officielle de cette personne.»

(2) Where any firearms registration certificate or any permit in Form 42, 43, 44 or 45 or to the like or any similar effect was issued before the coming into force of this section under the authority of the Criminal Code or any other Act of the Parliament of Canada, the certificate or permit shall, on the coming into force of this section, be deemed for all purposes of the Criminal Code to have been issued under section 97 or 98, as the case may be, of the Criminal Code as enacted by this section at the time when, in fact, it was issued.

(2) Lorsqu'un certificat d'enregistrement d'armes à feu ou un permis selon la formule 42, 43, 44 ou 45 ou qui a le même effet ou un effet similaire a été émis avant l'entrée en vigueur du présent article sous l'autorité du Code criminel ou de toute autre loi du Parlement du Canada, le certificat ou le permis est, à l'entrée en vigueur du présent article, censé, à toutes fins du Code criminel, avoir été, à la date de son émission, émis, selon le cas, en vertu de l'article 97 ou 98 du Code criminel tels que les édicte le présent article.

7. The said Act is further amended by adding thereto, immediately after section 149 thereof, the following section:

7. Ladite loi est en outre modifiée par l'insertion, immédiatement après l'article 149, de l'article suivant:

Exception re acts in private between husband and wife or consenting adults

"149A. (1) Sections 147 and 149 do not apply to any act committed in private between

«149A. (1) Les articles 147 et 149 ne s'appliquent à aucun acte commis, dans l'intimité,

Exceptions concernant les actes de la vie privée entre conjoints ou entre adultes consentants

- (a) a husband and his wife, or
- (b) any two persons, each of whom is twenty-one years or more of age,

- a) entre un mari et sa femme, ou
- b) entre deux personnes, dont chacune est âgée de 21 ans ou plus,

both of whom consent to the commission of the act.

qui consentent, tous les deux, à commettre l'acte.

Idem

(2) For the purposes of subsection (1),

(2) Aux fins du paragraphe (1),

Idem

(a) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and

a) un acte est réputé ne pas avoir été commis dans l'intimité s'il est commis dans un lieu public ou si plus de deux personnes y prennent part ou y assistent; et

(b) a person shall be deemed not to consent to the commission of an act

b) une personne est réputée ne pas consentir à commettre un acte

(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or

(i) si le consentement est extorqué par la force, par la menace ou la peur de lésions corporelles ou s'il est obtenu au moyen de représentations fausses ou trompeuses quant à la nature ou à la qualité de l'acte, ou

(ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is feeble-minded, insane, or an idiot or imbecile."

(ii) si cette personne est simple d'esprit, aliénée, idiote ou imbécile et si l'autre partie qui commet l'acte le sait ou a de bonnes raisons de le croire.»

1959, c. 41, s. 12

8. (1) Paragraph (a) of subsection (8) of section 150A of the said Act is repealed and the following substituted therefor:

8. (1) L'alinéa a) du paragraphe (8) de l'article 150A de ladite loi est abrogé et remplacé par ce qui suit:

"Court"

"(a) "court" means a county or district court or, in the Province of Quebec, the provincial court, the court of the sessions of the peace, the municipal court of Montreal and the municipal court of Quebec,"

«a) «cour» désigne une cour de comté ou de district ou, dans la province de Québec, la cour provinciale, la cour des sessions de la paix, la cour municipale de Montréal et la cour municipale de Québec,»

1959, c. 41, s. 12

(2) Paragraph (c) of subsection (8) of section 150A of the said Act is repealed and the following substituted therefor:

(2) L'alinéa c) du paragraphe (8) de l'article 150A de ladite loi est abrogé et remplacé par ce qui suit:

"Judge"

"(c) "judge" means a judge of a court."

«c) «juge» désigne un juge d'une cour.»

9. Subsection (2) of section 168 of the said Act is repealed and the following substituted therefor:

9. Le paragraphe (2) de l'article 168 de ladite loi est abrogé et remplacé par ce qui suit:

Exception

"(2) A place is not a common gaming house within the meaning of subparagraph (i) or clause (B) or (C) of subparagraph (ii) of paragraph (d) of subsection (1) while it is occupied and used by an incorporated bona fide social club or branch thereof, if

«(2) Un local n'est pas une maison de jeu au sens du sous-alinéa (i) ou de la disposition (B) ou (C) du sous-alinéa (ii) de l'alinéa d) du paragraphe (1) pendant qu'il est occupé et utilisé par un club social authentique constitué en corporation ou par une succursale d'un tel club,

(a) the whole or any portion of the bets on or proceeds from games played therein is not directly or indirectly paid to the keeper thereof, and

a) si la totalité ou quelque partie des paris sur des jeux qui y sont pratiqués ou sur des recettes de ces jeux n'est pas directement ou indirectement payée au tenancier de ce local, et

(b) no fee is charged to persons for the right or privilege of participating in the games played therein other than under the authority of and in accordance with the terms of a licence issued by the Attorney General of the province in which the place is situated or by such other person or authority in the province as may be specified by the Attorney General thereof."

b) si aucune cotisation n'est exigée des personnes pour le droit ou privilège de participer aux jeux qui y sont pratiqués autrement que sous l'autorité et en conformité des modalités d'un permis émis par le procureur général de la province où le local est situé ou par telle autre personne ou autorité, dans

Tab 4

38-39 ELIZABETH II

38-39 ELIZABETH II

CHAPTER 46

CHAPITRE 46

An Act respecting the laws prohibiting marriage between related persons

Loi concernant le droit interdisant le mariage entre personnes apparentées

[Assented to 17th December, 1990]

[Sanctionnée le 17 décembre 1990]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short title	1. This Act may be cited as the <i>Marriage (Prohibited Degrees) Act</i> .	1. Titre abrégé : <i>Loi sur le mariage (degrés prohibés)</i> .	Titre abrégé
No prohibition	2. (1) Subject to subsection (2), persons related by consanguinity, affinity or adoption are not prohibited from marrying each other by reason only of their relationship.	2. (1) Sous réserve du paragraphe (2), les liens de parenté par consanguinité, alliance ou adoption ne constituent pas en eux-mêmes des empêchements au mariage.	Absence d'empêchement
Prohibition	(2) No person shall marry another person if they are related (a) lineally by consanguinity or adoption; (b) as brother and sister by consanguinity, whether by the whole blood or by the half-blood; or (c) as brother and sister by adoption.	(2) Est prohibé le mariage entre personnes ayant des liens de parenté : a) en ligne directe, par consanguinité ou adoption; b) en ligne collatérale, par consanguinité, s'il s'agit de frère et sœur ou de demi-frère et demi-sœur; c) en ligne collatérale, par adoption, s'il s'agit de frère et sœur.	Prohibition
Marriage not invalid	3. (1) Subject to subsection (2), a marriage between persons related by consanguinity, affinity or adoption is not invalid by reason only of their relationship.	3. (1) Sous réserve du paragraphe (2), un mariage entre personnes apparentées par consanguinité, alliance ou adoption n'est pas invalide du seul fait du lien de parenté.	Validité du mariage
Marriage void	(2) A marriage between persons who are related in the manner described in paragraph 2(2)(a), (b) or (c) is void.	(2) Un mariage entre personnes apparentées prohibé par l'alinéa 2(2)a), b) ou c) est nul.	Nullité du mariage
Complete code	4. This Act contains all of the prohibitions in law in Canada against marriage by reason of the parties being related.	4. La présente loi comporte la totalité des règles de droit applicables au Canada en matière d'empêchements au mariage fondés sur des liens de parenté.	Intégralité des règles applicables

2

C. 46

Marriage (Prohibited Degrees) Act

38-39 ELIZ. II

Repeal of
R.S., c. M-2

Commence-
ment

5. The *Marriage Act* is repealed.

6. This Act shall come into force on the day that is one year after the day it is assented to, or on such earlier day in any province as may be fixed by order of the Governor in Council at the request of that province.

5. La *Loi sur le mariage* est abrogée.

6. La présente loi entre en vigueur un an après sa sanction ou, dans une province, à la date antérieure fixée par décret du gouverneur en conseil à la demande de cette province.

Abrogation de
L.R., ch. M-2

Entrée en
vigueur

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OTTAWA, 1991

Tab 5

REVISED STATUTES
OF
NEW BRUNSWICK
1973

LOIS RÉVISÉES
DU
NOUVEAU-BRUNSWICK
DE 1973

Proclaimed and Published
under the authority of
chapter 13 of the Statutes
of New Brunswick, 1972

Proclamées et publiées en
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CHAPTER M-3

CHAPITRE M-3

Marriage Act

Loi sur le mariage

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shall notify the Registrar of the name of any clergymen belonging to that church or denomination who has removed from the Province, as such removal occurs.

8(2) A clergyman licensed under this Act shall notify the Registrar when he removes from the Province. R.S., c.139, s.7.

9(1) Whenever a person is registered as authorized to solemnize marriage or whenever the registration of a person has been cancelled and the authority thereby revoked, the Registrar shall give notice in *The Royal Gazette* of such registration or cancellation of registration and revocation of authority, stating therein the name of the person registered as authorized, or as to whom registration has been cancelled and authority revoked.

9(2) Publication in *The Royal Gazette* of a notice purporting to be by the Registrar that any person named therein has been registered as authorized to solemnize marriage shall in all courts be conclusive evidence of the registration and of the authorization and qualification of such person to solemnize marriage thereafter or until it appears by notice published in *The Royal Gazette* as aforesaid that the registration has been cancelled and the authority thereby revoked.

9(3) Publication in *The Royal Gazette* of a notice purporting to be by the Registrar that any person named therein has been registered as authorized to solemnize marriage during a period fixed in such notice shall in all courts be conclusive evidence of the registration and of the authorization and qualification of such person to solemnize marriage during the period so fixed. R.S., c.139, s.8.

10 No clergyman shall solemnize a marriage unless duly authorized to solemnize that marriage by licence under the hand of the Registrar in the form prescribed by regulation, or the intention of the persons to intermarry has been proclaimed by the publication of banns as in section 11 provided. R.S., c.139, s.9.

11(1) Publication of banns shall be made by proclaiming the intended marriage in an audible

application de la présente loi doivent aviser le registraire du nom des ministres du culte de leur église ou de leur confession religieuse qui ont quittés la province dès que ces derniers partent.

8(2) Un ministre du culte autorisé en application de la présente loi doit aviser le registraire de son départ de la province. S.R., c.139, art.7.

9(1) Lorsqu'une personne est enregistrée comme étant autorisée à célébrer des mariages ou lorsque l'enregistrement d'une personne a été annulé et que son droit lui a été retiré, le registraire doit donner avis dans la *Gazette royale* de l'enregistrement ou de l'annulation d'enregistrement et du retrait du droit, en y indiquant le nom de la personne qui était enregistrée comme étant autorisée à célébrer des mariages ou dont l'enregistrement a été annulé et son droit révoqué.

9(2) La publication dans la *Gazette royale* d'un avis présenté comme émanant du registraire et indiquant qu'une personne y nommément citée est enregistrée comme étant autorisée à célébrer des mariages constitue devant tous les tribunaux une preuve péremptoire de l'enregistrement, de l'autorisation et de l'habilité de la personne à célébrer des mariages après la date de la publication ou jusqu'à ce qu'un avis publié dans la *Gazette royale*, ainsi qu'il est dit plus haut, annonce l'annulation de l'enregistrement et la révocation de l'autorisation.

9(3) La publication d'un avis dans la *Gazette royale* présenté comme émanant du registraire et indiquant qu'une personne y nommément citée est enregistrée comme étant autorisée à célébrer des mariages pendant une période dont la durée est fixée dans l'avis, constitue devant tous les tribunaux une preuve péremptoire de l'enregistrement, de l'autorisation et l'habilité d'une personne à célébrer des mariages pendant la période de temps fixée dans l'avis. S.R., c.139, art.8.

10 Nul ministre du culte ne doit célébrer un mariage à moins qu'une licence établie selon la formule prescrite par règlement et signée de la main du registraire, ne l'y autorise ou que l'intention de se marier des deux personnes n'ait été annoncée par la publication de banns prévue à l'article 11. S.R., c.139, art.9.

11(1) La publication de banns doit se faire par proclamation à haute voix du futur mariage

voice during divine service in a church, chapel or other place of meeting for religious worship in the city, town or parish where each of the parties resides. if both parties are resident within the Province, and if only one party is so resident, then in the city, town or parish in which such party resides.

pendant un service religieux dans une église, une chapelle ou un autre lieu consacré au culte dans la cité, la ville ou la paroisse où chacune des parties réside, si elles résident toutes les deux dans la province et, si une seule y réside, dans la cité, la ville ou la paroisse où celle-ci réside.

11(2) The banns shall be published according to the usage of the denomination of the clergyman proposing to solemnize the ceremony of marriage, and in any event during at least one Sunday service.

11(2) Les bans doivent être publiés selon l'usage de la confession du ministre du culte qui entend célébrer la cérémonie du mariage et, au moins, au cours d'un service du dimanche.

11(3) Where the practice or faith of a religious body substitutes Saturday or any other day as the usual and principal day of the week for the celebration of divine service, the banns may be published on Saturday or on such other day, and the provisions of this Act shall apply accordingly. R.S., c.139, s.10.

11(3) Lorsque, selon la pratique ou la croyance d'un ordre religieux, le samedi ou un autre jour est considéré comme étant le jour habituel et principal pour la célébration du service religieux, les bans peuvent être publiés le samedi ou cet autre jour et les dispositions de la présente loi s'appliquent en conséquence. S.R., c.139, art.10.

12(1) A judge of a county court may solemnize a marriage for which a marriage licence has been issued.

12(1) Un juge d'une cour de comté peut célébrer un mariage pour lequel une licence a été délivrée.

12(2) A marriage that is solemnized by a judge of a county court shall be solemnized in the judge's chambers or office or in a court room.

12(2) Un juge d'une cour de comté doit célébrer un mariage dans son cabinet, dans son bureau ou dans une salle d'audience.

12(3) No particular form of ceremony is required in a marriage that is solemnized by a judge of a county court, except that in some part of the ceremony, in the presence of the judge and two or more credible witnesses, each of the parties shall declare:

12(3) Aucune formule de cérémonie n'est prescrite pour la célébration d'un mariage par un juge d'une cour de comté, sauf qu'au cours de la cérémonie, chacune des parties doit, en présence du juge et d'au moins deux témoins dignes de foi, déclarer:

"I do solemnly declare that I do not know of any lawful impediment why I, A.B. may not be joined in matrimony to C.D.",

«Je déclare solennellement ne pas connaître d'empêchement légal s'opposant à ce que moi, A.B., je m'unisse par les liens du mariage à C.D.»

and each of the parties shall say to the other:

et chaque partie doit déclarer à l'autre:

"I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawfully wedded wife (or husband)",

«Je demande aux personnes ici présentes de témoigner que moi, A.B., je prends C.D. comme légitime épouse (époux)»,

after which the judge shall say:

le juge doit ensuite déclarer:

"I, E.F., judge of the County Court, by virtue of the authority vested in me by the *Marriage Act*, do hereby pronounce you, A.B. and C.D., to be husband and wife".

«Moi, E.F., juge de la cour de comté de en vertu des pouvoirs qui me sont dévolus par la *Loi sur le mariage*, vous déclare, A.B. et C.D., mari et femme».

12(4) A judge of the County Court who solemnizes a marriage is entitled to receive a fee of ten dollars from the parties to the marriage.

12(4) Le juge d'une cour de comté qui célèbre un mariage est autorisé à percevoir un droit de dix dollars des parties contractant mariage.

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THE MARRIAGE ACT

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ANNEXE

MARIAGE

L.R.M. 1987, c. M50

Form of marriage ceremony

7(3) No particular form of ceremony is required in a ceremony of marriage solemnized by a marriage commissioner except that in some part of the ceremony, and in the presence of witnesses and of the marriage commissioner, each of the parties shall declare, "I do solemnly declare that I do not know of any lawful impediment why I, A.B., may not be joined in matrimony to C.D." and each of the parties shall say to the other, "I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)".

S.M. 1989-90, c. 90, s. 25.

Licence or banns required for marriage

8(1) Subject as herein provided, no person authorized to solemnize ceremonies of marriage under this Act shall solemnize or perform a ceremony of marriage between two persons unless

- (a) authorized so to do by a licence issued under the hand of the director in such form as may be prescribed in the regulations; or
- (b) banns declaring the intention of the two persons to intermarry have been published as herein provided.

Requirements respecting publication of banns

8(2) Where a marriage is to be solemnized under the authority of publication of banns, the intention to marry shall be proclaimed openly, at least once, in an audible voice during divine service

- (a) where the parties are in the habit of attending worship at the same church, being in Manitoba, at that church; or
- (b) where the parties are in the habit of attending worship at different churches in Canada, at least one of which is in Manitoba, in each of those churches.

Time and manner of publication

8(3) Every publication of banns shall be made according to the usage of the denomination of the church in which they are published, and shall, subject to subsection (4), be made on a Sunday at least seven clear days before the marriage, immediately before

Forme de la cérémonie du mariage

7(3) Un mariage célébré par un commissaire aux mariages ne requiert aucune forme particulière sauf en présence des témoins et du commissaire aux mariages, faire cette déclaration : « Je déclare solennellement ne connaître aucun empêchement légal s'opposant à ce que moi, A.B., je m'unisse par les liens du mariage à C.D. ». Chacune des parties doit déclarer à l'autre : « Je demande aux personnes ici présentes d'être témoins de ce que moi, A.B., je te prends, C. D., comme légitime épouse (époux) ».

L.M. 1989-90, c. 90, art. 25.

Licence de mariage ou publication des banns

8(1) Sous réserve de ce qui est prévu à la présente loi, nulle personne autorisée à célébrer les mariages en application de cette loi ne peut célébrer un tel mariage entre deux personnes, sauf dans l'un des cas suivants :

- a) elle est autorisée à agir ainsi en vertu d'une licence délivrée sous la signature du directeur, et selon telle formule pouvant être établie dans les règlements;
- b) les banns annonçant l'intention de ces deux personnes de se marier l'une avec l'autre ont été publiés conformément à ce qui est prévu à la présente loi.

Exigences relatives à la publication des banns

8(2) Lorsqu'un mariage doit être célébré sous le régime de la publication des banns, l'intention de mariage doit être publiquement proclamée à haute voix, au moins une fois, durant un service religieux, dans l'un des endroits suivants :

- a) si les parties ont l'habitude d'assister à l'office en la même église au Manitoba, en cette église même;
- b) si les parties ont l'habitude d'assister à l'office en des églises différentes au Canada et dont l'une au moins se trouve au Manitoba, en chacune de ces églises.

Délai et modalités de publication

8(3) Chaque publication des banns doit être conforme à l'usage de la confession religieuse de l'église où elle a lieu et, sous réserve du paragraphe (4), elle doit être faite un dimanche, au moins sept jours francs avant le mariage, au début, à la fin ou au cours du service religieux.

MARRIAGE

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divine service begins, immediately after it ends, or at some intermediate part thereof.

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Publication on day other than Sunday

8(4) Where the usage of any denomination substitutes any day other than Sunday as the usual and principal day of the week for the celebration of divine service, banns published in a church of that denomination shall be published on that other day.

Publication des bans un autre jour que le dimanche

8(4) Lorsque l'usage d'une confession religieuse est de célébrer son service religieux un autre jour de la semaine que le dimanche, la publication des bans dans une église de cette confession religieuse a lieu ce même jour.

Completion of certificate of publication, etc.

8(5) A person who publishes banns or dispenses with the publication thereof under subsection (7) shall complete and sign a certificate of the publication or of the dispensation in such form as may be prescribed in the regulations; and the certificate shall show the official position of the person who signs it.

Exécution du certificat de publication

8(5) Une personne qui publie les bans ou qui en accorde la dispense en application du paragraphe (7) remplit et signe un certificat de publication ou de dispense, selon telle formule pouvant être établie dans les règlements et le certificat indique le titre officiel du signataire.

Delivery of certificate

8(6) No marriage shall be solemnized under the authority of publication of banns, or of a dispensation with such publication, until a certificate mentioned in subsection (5) relating to the intended marriage is delivered to the person solemnizing it.

Délivrance du certificat

8(6) Nul mariage ne peut être célébré sous le régime d'une publication des bans ou d'une dispense de publication, jusqu'à ce que la personne qui doit célébrer le mariage ait reçu un certificat relatif à ce mariage et mentionné au paragraphe (5).

Dispensation of publication, effect of and fee for

8(7) The head of the church or congregation to which one of the parties belongs may grant a dispensation of publication of banns, according to the rites and usages of the church or congregation; and the dispensation shall have the same effect as a marriage licence issued under this Act; and the same fee exacted for a marriage licence shall be payable to the Minister of Finance in connection with the dispensation.

Dispense de publication, effets et droit

8(7) Le chef de l'église ou d'une assemblée de fidèles à laquelle appartient l'une des parties peut accorder une dispense de publication de bans conformément aux rites et coutumes de cette église ou de cette assemblée, auquel cas la dispense produit les mêmes effets qu'une licence de mariage délivrée en application de la présente loi. Cette dispense requiert le paiement au ministre des Finances du même droit que pour une licence de mariage.

Meaning of "church"

8(8) In this section, unless the context otherwise requires, the word "church" includes chapel, meeting house, or place set aside for public religious worship.

Sens du mot « église »

8(8) Dans le présent article et à moins que le contexte ne s'y oppose, le mot « église » s'entend en outre d'une chapelle, d'un temple ou d'un lieu réservé au culte public.

Limitations as to times

9(1) No marriage shall be solemnized under the authority of any proclamation of intention to marry unless the proclamation has been made at least seven clear days previously, nor unless the marriage takes place within three months after the day upon which the proclamation was made; nor shall a marriage be solemnized under the authority of any licence unless within three months after the date thereof.

Délai prescrit

9(1) Un mariage soumis à une publication ne peut être célébré que sept jours francs après la date de la publication, au plus tôt, et dans les trois mois qui suivent cette date, au plus tard. Un mariage célébré en vertu d'une licence ne peut être célébré que dans les trois mois qui suivent la date de la licence.

Tab 7

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CHAPTER M-4
MARRIAGE ACT

CHAPITRE M-4
LOI SUR LE MARIAGE

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(c) the written permission of the Commissioner to the issue of the marriage licence or to the performance of the marriage ceremony, as the case may be.

c) la permission écrite du commissaire autorisant la délivrance de la licence de mariage ou la célébration du mariage, selon le cas.

Minors.

(2) A certificate, other evidence or the written permission of the Commissioner given under subsection (1) does not relieve any person from the requirements of this Act respecting consents to the marriage of minors. R.S.1974,c.M-5,s.22; 1985(1),c.4,s.9.

(2) Le certificat, toute autre preuve ou la permission écrite du commissaire, fourni en application du paragraphe (1), ne soustrait personne aux exigences de la présente loi relatives aux consentements au mariage des mineurs. L.R. 1974, ch. M-5, art. 22; 1985(1), ch. 4, art. 9.

Minors

PUBLICATION OF BANNS

PUBLICATION DES BANS

Licence

22. (1) Persons intending to marry do not require a licence where banns are published in accordance with this section.

22. (1) Aucune licence n'est nécessaire lorsque l'intention de mariage est annoncée sous le régime de la publication des bans prévue au présent article.

Licence

Proclamation of intended marriage

(2) Intention to marry shall be proclaimed openly and in an audible voice during divine service at least once on two successive Sundays in the place of public worship in which both of the persons intending to marry have been attending worship or in some place of public worship of the religious body with which the member of the clergy who is to perform the marriage ceremony is connected in the local municipality, parish, circuit or pastoral charge where both of the persons intending to marry have, for the 15 days immediately preceding, had their usual place of residence.

(2) L'intention de mariage est proclamée publiquement et à haute voix durant le service religieux au moins une fois pendant deux dimanches successifs dans l'édifice consacré au culte dans lequel les deux futurs époux ont l'habitude d'assister à l'office ou dans l'édifice consacré au culte du groupement religieux auquel l'ecclésiastique qui doit célébrer le mariage est associé dans la municipalité, la paroisse, la circonscription ou la charge pastorale locale dans laquelle les deux futurs époux ont eu, au cours des 15 jours précédents, leur résidence habituelle.

Proclamation de l'intention de mariage

Where Sunday not usual day of worship

(3) Where the practice or faith of a religious body substitutes Saturday or some other day as the usual and principal day of the week for the celebration of divine service, proclamation of banns may be made on two consecutive Saturdays or such other days.

(3) Si, selon la coutume ou la croyance d'un groupement religieux, le service religieux habituel et principal a lieu le samedi ou un autre jour, la proclamation des bans se fait pendant deux samedis ou ces deux autres jours consécutifs.

Jour autre que le dimanche

Where parties do not reside in same place

(4) Where both of the persons intending to marry do not reside in the same local municipality, parish, circuit or pastoral charge, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge, if within Canada, where the other of the contracting parties has, for the 15 days immediately preceding, had his or her usual place of residence and the marriage shall not be solemnized until there is delivered to the officiating member of the clergy a certificate in the prescribed form showing that the proclamation has been made.

(4) Si les deux futurs époux ne résident pas dans la même municipalité, paroisse, circonscription ou charge pastorale locale, la même proclamation doit être faite, si elle est située au Canada, dans la municipalité, paroisse, circonscription ou charge pastorale locale où l'autre partie contractante a eu sa résidence habituelle au cours des 15 derniers jours, et le mariage ne peut être célébré que s'il est remis à l'ecclésiastique célébrant un certificat, établi en la forme réglementaire, indiquant que la proclamation a été faite.

Lieu de résidence différent

Where service not regular

(5) Notwithstanding anything in this section, where, by reason of remoteness or otherwise, divine service by the member of the clergy who is to

(5) Par dérogation aux autres dispositions du présent article, si pour des raisons d'éloignement, notamment, l'ecclésiastique célébrant ne tient pas

Service non régulier

perform the marriage ceremony is not regularly held on successive Sundays, Saturdays or other days at a place in the Territories, intention to marry shall, at that place, be proclaimed openly and in an audible voice by that member of the clergy, at not less than two successive divine services, other than in the same day. R.S.1974,c.M-5,s.23.

régulièrement des services religieux tous les dimanches, tous les samedis ou tous les autres jours dans un endroit dans les territoires, il proclame publiquement et à haute voix l'intention de mariage au cours d'au moins deux services religieux consécutifs qui n'ont pas lieu le même jour. L.R. 1974, ch. M-5, art. 23.

Statutory declaration

23. (1) Before publication of banns each of the persons intending to marry shall personally and separately make a statutory declaration in the prescribed form before the member of the clergy who is to proclaim the banns.

23. (1) Avant la publication des bans, quiconque a l'intention de se marier fait personnellement et séparément une déclaration solennelle, en la forme réglementaire, devant l'ecclésiastique qui doit proclamer les bans.

Déclaration solennelle

Degrees of affinity

(2) The degrees of affinity and consanguinity set out in the Schedule must be printed on the reverse side of the statutory declaration.

(2) Les degrés d'affinité et de consanguinité énoncés à l'annexe doivent être inscrits en caractères d'imprimerie au verso de la déclaration solennelle.

Degrés d'affinité

Powers of member of the clergy

(3) A member of the clergy who is to proclaim banns may take declarations and administer oaths for the purposes of this section.

(3) Pour l'application du présent article, l'ecclésiastique qui doit proclamer les bans peut recevoir les déclarations et faire prêter serment.

Pouvoirs de l'ecclésiastique

Other documents

(4) Before publication of banns, where either of the persons intending to marry has been previously married or is a minor, the declarations, proofs, consents or other documents respecting previously married persons or minors required by this Act shall be provided by that person to the member of the clergy who is to proclaim the banns.

(4) Avant la publication des bans, le futur époux qui a déjà été marié ou qui est mineur remet à l'ecclésiastique qui doit proclamer les bans les déclarations, preuves, consentements ou autres documents requis par la présente loi concernant les personnes qui étaient déjà mariées ou les mineurs.

Autres documents

Transfer

(5) A member of the clergy who proclaims banns shall, where he or she is not also the member of the clergy who is to solemnize the marriage, transfer all documents received by him or her pursuant to this section to the member of the clergy who is to solemnize the marriage within 48 hours after the second publication of banns has been made. R.S.1974,c.M-5,s.24; 1985(1),c.4,s.9.

(5) Si l'ecclésiastique qui proclame les bans n'est pas celui qui célèbre le mariage, celui qui fait la proclamation, dans les 48 heures de la seconde publication des bans, communique à l'ecclésiastique célébrant tous les documents qu'il a reçus en application du présent article. L.R. 1974, ch. M-5, art. 24; 1985(1), ch. 4, art. 9.

Remise des documents

Certificate of publication

24. Where either party to the intended marriage wishes a certificate of publication of banns, the member of the clergy who proclaims the banns, on payment to him or her of a fee of \$0.50, shall provide a certificate in the prescribed form. R.S.1974,c.M-5,s.25.

24. À la demande d'un des futurs époux et contre paiement d'un droit de 0,50 \$, l'ecclésiastique qui proclame les bans lui fournit un certificat rédigé en la forme réglementaire. L.R. 1974, ch. M-5, art. 25.

Certificat de publication

Transmittal of documents

25. Within 48 hours after the solemnization of a marriage subsequent to the publication of banns, the officiating member of the clergy shall forward to the Commissioner

25. Dans les 48 heures de la célébration d'un mariage qui fait suite à la publication des bans, l'ecclésiastique célébrant remet au commissaire :

Envoi de documents

- (a) a certificate of the publication of banns in the prescribed form;
- (b) the statutory declarations in the prescribed form required by subsection 23(1); and

- a) un certificat de publication des bans établi en la forme réglementaire;
- b) les déclarations solennelles visées au paragraphe 23(1) faites en la forme réglementaire;
- c) en ce qui concerne les personnes qui

(c) in respect of persons previously married or minors, the declarations, proofs, consents or other documents required by this Act to be provided to the officiating member of the clergy by the contracting parties or transferred to the officiating member of the clergy by the member of the clergy who proclaimed the banns. R.S.1974,c.M-5,s.20. 1985(1),c.4,s.9.

ont déjà été mariées ou les mineurs, les déclarations, preuves, consentements ou autres documents que la présente loi oblige ces personnes à fournir à l'ecclésiastique célébrant ou qu'elle oblige l'ecclésiastique qui a proclamé les bans à remettre à l'ecclésiastique célébrant. L.R. 1974, ch. M-5, art. 26; 1985(1), ch. 4, art. 9.

Effect of irregularities

26. No irregularity or insufficiency in the proclamation of the intention to marry where banns are published or in the certificate of publication invalidates a marriage. R.S.1974,c.M-5,s.27.

26. Nul mariage n'est invalide du fait d'une irrégularité ou d'une insuffisance dans la proclamation de l'intention de mariage ou dans le certificat de publication. L.R. 1974, ch. M-5, art. 27.

Effets des irrégularités

MARRIAGE LICENCES

LICENCES DE MARIAGE

Issuers

27. The Commissioner may appoint persons to issue licences under this Act. R.S.1974,c.M-5,s.28; 1985(1),c.4,s.9.

27. Le commissaire peut nommer des personnes chargées de délivrer des licences en application de la présente loi. L.R. 1974, ch. M-5, art. 28; 1985(1), ch. 4, art. 9.

Délivrateurs de licences

Monthly returns

28. (1) Every issuer shall on the first day of every month make a return to the Commissioner of all licences issued by the issuer during the preceding month with the names of the persons to whom the licences were issued and shall forward to the Commissioner the statutory declaration in the prescribed form taken in each instance together with documents required to be deposited with the issuer respecting previously married persons or minors or any other documents required to be deposited with the issuer under this Act.

28. (1) Le premier du mois, le délivreur de licences présente au commissaire un rapport de toutes les licences qu'il a délivrées au cours du mois précédent, accompagné du nom des personnes auxquelles les licences ont été délivrées et lui transmet la déclaration solennelle faite en la forme réglementaire, accompagnée des documents qui doivent être déposés auprès du délivreur de licences dans le cas des personnes qui ont déjà été mariées ou des mineurs ou tout autre document dont la présente loi exige le dépôt auprès du délivreur de licences.

Rapports mensuels

Powers of Commissioner

(2) The Commissioner may, in the discretion of the Commissioner, alter the periods in which returns must be made by an issuer or may order special returns to be made. R.S.1974,c.M-5,s.29; 1985(1),c.4,s.9.

(2) Le commissaire peut, à sa discrétion, modifier les périodes au cours desquelles un délivreur de licences doit remettre ses rapports, ou ordonner la remise de rapports spéciaux. L.R. 1974, ch. M-5, art. 29; 1985(1), ch. 4, art. 9.

Pouvoirs du commissaire

Fees

29. On application for a licence, the applicant shall pay the issuer the prescribed fee, which shall be distributed in the prescribed manner. R.S.1974,c.M-5,s.30(1); 1982(3),c.11,s.1.

29. L'auteur d'une demande de licence paie au délivreur de licences le droit réglementaire, lequel est réparti de la façon prévue par règlement. L.R. 1974, ch. M-5, par. 30(1); 1982(3), ch. 11, art. 1.

Droits

Deputy issuers

30. (1) An issuer who is prevented from acting by sickness may, with the approval of the Commissioner, appoint in writing, for a period not exceeding three months, a deputy issuer to act for the issuer in the absence of the issuer.

30. (1) En cas d'empêchement pour cause de maladie, le délivreur de licences peut, avec l'approbation du commissaire, nommer par écrit pour une période maximale de trois mois un délivreur suppléant chargé de délivrer les licences en son absence.

Délivrateurs suppléants

Tab 8

CHAPTER M.3

CHAPITRE M.3

Marriage Act

Loi sur le mariage

Definitions

1.—(1) In this Act,

- “band” means a band as defined in the *Indian Act* (Canada); (“bande”)
- “church” includes chapel, meeting-house or place set aside for religious worship; (“église”)
- “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada); (“Indien”)
- “issuer” means a person authorized under this Act to issue marriage licences; (“délivreur de licences”)
- “judge” means a provincial judge or a judge of the Ontario Court (General Division); (“juge”)
- “licence” means a marriage licence issued under this Act; (“licence”)
- “Minister” means the Minister of Consumer and Commercial Relations; (“ministre”)
- “prescribed” means prescribed by the regulations; (“prescrit”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “reserve” means a reserve as defined in the *Indian Act* (Canada). (“réserve”) R.S.O. 1980, c. 256, s. 1 (1), *revised*.

Application of Act to subsequent ceremonies

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized in accordance with this Act or recognized as valid in Ontario. R.S.O. 1980, c. 256, s. 1 (2).

Administration

2. The administration of this Act is under the direction of the Minister. R.S.O. 1980, c. 256, s. 2.

Delegation of powers and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he or she may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial

Définitions

1 (1) Les définitions qui suivent s'appliquent à la présente loi.

- «bande» Bande d'Indiens au sens de la *Loi sur les Indiens* (Canada). («band»)
- «délivreur de licences» Personne que la présente loi autorise à délivrer des licences de mariage. («issuer»)
- «église» S'entend en outre de la chapelle, du lieu de réunion ou de l'endroit réservé au culte. («church»)
- «Indien» Personne qui est inscrite à titre d'Indien ou a le droit de l'être en vertu de la *Loi sur les Indiens* (Canada). («Indien»)
- «juge» Juge provincial ou juge de la Cour de l'Ontario (Division générale). («judge»)
- «licence» Licence de mariage délivrée en vertu de la présente loi. («licence»)
- «ministre» Le ministre de la Consommation et du Commerce. («Minister»)
- «prescrit» Prescrit par les règlements. («prescribed»)
- «règlements» Les règlements pris en application de la présente loi. («regulations»)
- «réserve» Réserve au sens de la *Loi sur les Indiens* (Canada). («reserve») L.R.O. 1980, chap. 256, par. 1 (1), *révisé*.

(2) La présente loi ne s'applique pas à la cérémonie ni à la forme de mariage à laquelle se prêtent deux conjoints déjà unis par les liens d'un mariage célébré conformément à la présente loi ou dont la validité est reconnue en Ontario. L.R.O. 1980, chap. 256, par. 1 (2).

Application de la loi aux cérémonies religieuses

2 L'application de la présente loi est placée sous l'autorité du ministre. L.R.O. 1980, chap. 256, art. 2.

Administration

3 Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le ministre peut déléguer les pouvoirs et fonctions que lui confère la présente loi au sous-ministre de la Consommation et du Commerce ou à un ou plusieurs fonctionnaires de son ministère sous réserve des limitations, restrictions, condi-

Délégation de pouvoirs et de fonctions

(f) any documentary material obtained under section 12. R.S.O. 1980, c. 256, s. 14.

f) les documents obtenus en vertu de l'article 12. L.R.O. 1980, chap. 256, art. 14.

Oaths

15. Issuers may administer oaths for the purposes of this Act. R.S.O. 1980, c. 256, s. 15.

15 Pour l'application de la présente loi, le délivreur de licences peut faire prêter serment. L.R.O. 1980, chap. 256, art. 15.

Serment

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario, no fee shall be charged for the licence. R.S.O. 1980, c. 256, s. 16.

16 Il n'est pas exigé de droits pour la délivrance d'une licence si les parties qui se proposent de contracter mariage sont toutes deux des Indiens résidant ordinairement en Ontario soit sur une réserve, soit sur des terres de la Couronne. L.R.O. 1980, chap. 256, art. 16.

Les Indiens

Publication of banns

17.—(1) Where a marriage is to be solemnized under the authority of the publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

17 (1) En cas de mariage célébré après la publication des bans, celle-ci se fait à haute voix au cours d'un service religieux :

Publication des bans

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

a) dans l'église que fréquentent habituellement les parties, s'il s'agit d'une même église au Canada;

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

b) dans chacune des églises que fréquentent habituellement les parties s'il s'agit d'églises distinctes au Canada.

Method and time of publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(2) La publication des bans se fait à l'église, le dimanche, au cours du service religieux. Elle est conforme aux coutumes de la confession religieuse des parties.

Modalité et moment de la publication

Exception

(3) Where the usage of any denomination, faith or creed substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(3) Si, selon les coutumes d'une confession religieuse, le principal service religieux a lieu un jour autre que le dimanche, la publication des bans se fait ce jour-là.

Exception

Proof

(4) The person or persons who publish banns shall certify proof thereof in the prescribed form. R.S.O. 1980, c. 256, s. 17.

(4) La personne ou les personnes qui publient les bans en atteste la publication au moyen de la formule prescrite. L.R.O. 1980, chap. 256, art. 17.

Preuve

Where banns not to be published

18. Banns shall not be published where either of the parties to the intended marriage has been married and the marriage has been dissolved or annulled. R.S.O. 1980, c. 256, s. 18.

18 La publication des bans ne se fait pas si l'une des parties a déjà été mariée et que son précédent mariage a été dissous ou annulé. L.R.O. 1980, chap. 256, art. 18.

Absence de publication de bans

Prohibited degrees to be endorsed

19. The Form to this Act respecting the prohibited degrees of affinity and consanguinity shall be endorsed on the licence and on the proof of publication of banns. R.S.O. 1980, c. 256, s. 19.

19 La formule relative aux degrés prohibés d'affinité et de consanguinité, qui est annexée à la présente loi, est reproduite au verso de la licence et de la preuve de la publication des bans. L.R.O. 1980, chap. 256, art. 19.

Degrés prohibés au verso de la licence

Who may solemnize marriage

20.—(1) No person shall solemnize a marriage unless he or she is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

20 (1) Nul ne doit célébrer un mariage à moins d'y être autorisé par l'article 24 ou en vertu de celui-ci, ou d'être inscrit en vertu du présent article comme étant autorisé à le faire.

Célébrant

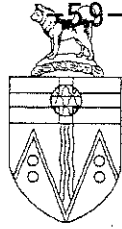
Application for registration

(2) Upon application the Minister may, subject to subsection (3), register any person as a person authorized to solemnize marriage.

(2) Sous réserve du paragraphe (3), le ministre peut, sur demande, inscrire une personne comme étant autorisée à célébrer le mariage.

Demande d'inscription

Tab 9



MARRIAGE ACT

LOI SUR LE MARIAGE

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PUBLICATION OF BANNS

PUBLICATION DES BANS

Publication procedure

Procédure

19(1) Persons intending to marry do not require a licence if banns are published in accordance with this section.

19(1) Aucune licence n'est nécessaire lorsque l'intention de mariage est annoncée au moyen de la publication des bans prévue au présent article.

(2) Intention to marry shall be proclaimed openly and in an audible voice during divine service at least once on two successive Sundays in the place of public worship in which both of the persons intending to marry have been attending worship or in some place of public worship of the religious body with which the cleric who is to perform the marriage ceremony is connected in the local municipality, parish, circuit, or pastoral charge where both of the persons intending to marry have, for the space of 15 days immediately preceding had their usual place of abode.

(2) L'intention de mariage est proclamée publiquement et à haute voix durant le service religieux au moins une fois pendant deux dimanches successifs dans l'édifice consacré au culte dans lequel les deux futurs époux ont l'habitude d'assister à l'office ou dans l'édifice consacré au culte du groupement religieux auquel l'ecclésiastique qui doit célébrer le mariage est associé dans la municipalité, la paroisse, la circonscription ou la charge pastorale locale dans laquelle les deux futurs époux ont eu, au cours des 15 jours précédents, leur résidence habituelle.

(3) If the practice or faith of a religious body substitutes Saturday or some other day as the usual and principal day of the week for the celebration of divine service, proclamation of banns may be made on two consecutive Saturdays or those other days.

(3) Si, selon la coutume ou la croyance d'un groupement religieux, le service religieux habituel et principal a lieu le samedi ou un autre jour, la proclamation des bans se fait pendant deux samedis ou ces deux autres jours consécutifs.

(4) If both of the persons intending to marry do not reside in the same local municipality, parish, circuit, or pastoral charge, a similar proclamation shall be made in the local municipality, parish, circuit, or pastoral charge, if in Canada, where the other of the contracting persons has, for the space of 15 days immediately preceding, had their usual place of abode and the marriage shall not be solemnized until there is delivered to the officiating cleric a certificate in the prescribed form showing that the proclamation has

(4) Si les deux futurs époux ne résident pas dans la même municipalité, paroisse, circonscription ou charge pastorale locale, la même proclamation doit être faite dans la municipalité, paroisse, circonscription ou charge pastorale locale, si elle est située au Canada, dans laquelle l'autre partie contractante a eu sa résidence habituelle au cours des 15 jours précédents, et le mariage ne peut être célébré que s'il est remis à l'ecclésiastique célébrant un certificat, établi en la forme réglementaire, indiquant que la

been made.

(5) Despite anything in this section, if, because of remoteness or otherwise, divine service, by the cleric who is to perform the marriage ceremony, is not regularly held on successive Sundays, Saturdays, or other days at a place in the Yukon, intention to marry shall, at that place, be proclaimed at not less than two successive divine services other than in the same day, openly and in an audible voice by that cleric. R.S., c.110, s.19.

Documents required for publication of banns

20(1) Before publication of banns each of the persons intending to marry shall personally and separately make a statutory declaration in the prescribed form before the cleric who is to proclaim the banns.

(2) A cleric who is to proclaim banns may take declarations and administer oaths for the purposes of this section.

(3) Before publication of banns, if either of the persons intending to marry has been previously married or is a minor, the declarations, proofs, consents or other documents respecting previously married persons or minors required by this Act shall be furnished by that person to the cleric who is to proclaim the banns.

(4) A cleric who proclaims banns shall, if they are not also the cleric who is to solemnize the marriage, transfer all documents received by them pursuant to this section to the cleric who is to solemnize the marriage within 48 hours after the second publication of banns has been made. R.S., c.110, s.20.

proclamation a été faite.

(5) Malgré les autres dispositions du présent article, si pour des raisons notamment d'éloignement, l'ecclésiastique célébrant ne tient pas régulièrement des services religieux tous les dimanches, tous les samedis ou tous les autres jours dans un endroit au Yukon, il proclame publiquement et à haute voix l'intention de mariage au cours d'au moins deux services religieux consécutifs qui n'ont pas lieu le même jour. L.R., ch. 110, art. 19

Déclaration solennelle

20(1) Avant la publication des banns, quiconque a l'intention de se marier fait personnellement et séparément une déclaration solennelle, en la forme réglementaire, devant l'ecclésiastique qui doit proclamer les banns.

(2) Pour l'application du présent article, l'ecclésiastique qui doit proclamer les banns peut recevoir les déclarations et faire prêter serment.

(3) Avant la publication des banns, le futur époux qui a déjà été marié ou qui est mineur remet à l'ecclésiastique qui doit proclamer les banns les déclarations, preuves, consentements ou autres documents requis par la présente loi concernant les personnes qui étaient déjà mariées ou qui sont mineurs.

(4) Si l'ecclésiastique qui proclame les banns n'est pas celui qui célébrera le mariage, celui qui fait la proclamation, dans les 48 heures de la seconde publication des banns, communique tous les documents qu'il a reçus en application du présent article à l'ecclésiastique célébrant. L.R., ch. 110, art. 20

Certificate of publication of banns

21 If either party to the intended marriage desires a certificate of publication of banns the cleric who proclaims the banns, on payment to them of a fee of \$0.50, shall furnish a certificate in the prescribed form. *R.S., c.110, s.21.*

Cleric to forward documents to government

22 Within 48 hours after the solemnization of a marriage after the publication of banns the officiating cleric shall forward to the Minister a certificate of the publication of banns in the prescribed form, the statutory declarations in the prescribed form required under section 20 and, in respect of persons previously married or minors, the declarations, proofs, consents, or other documents required by this Act to be furnished to the officiating cleric by the contracting parties or transferred to the officiating cleric by the cleric who proclaimed the banns. *R.S., c.110, s.22.*

Effect of irregularities

23 No irregularity or insufficiency in the proclamation of the intention to marry when banns are published or in the certificate of publication shall invalidate a marriage. *R.S., c.110, s.23.*

MARRIAGE LICENCES

Appointment of licence issuers

24 The Commissioner in Executive Council may appoint persons to issue marriage licences under this Act. *R.S., c.110, s.24.*

Certificat de publication

21 À la demande d'un des futurs époux et contre paiement d'un droit de 0,50 \$, l'ecclésiastique qui proclame les bans lui fournit un certificat rédigé en la forme réglementaire. *L.R., ch. 110, art. 21*

Envoi de documents

22 Dans les 48 heures de la célébration d'un mariage qui fait suite à la publication des bans, l'ecclésiastique célébrant transmet au ministre un certificat de publication des bans établi en la forme réglementaire, les déclarations solennelles visées à l'article 20 et faites en la forme réglementaire, et, en ce qui concerne les personnes qui ont déjà été mariées ou qui sont mineurs, les déclarations, preuves, consentements ou autres documents que la présente loi oblige ces personnes à fournir à l'ecclésiastique célébrant ou qu'elle oblige l'ecclésiastique qui a proclamé les bans à remettre à l'ecclésiastique célébrant. *L.R., ch. 110, art. 22*

Effet des irrégularités

23 Un mariage n'est pas nul du fait d'une irrégularité ou d'une insuffisance dans la proclamation de l'intention de mariage ou dans le certificat de publication. *L.R., ch. 110, art. 23*

LICENCES DE MARIAGE

Délivreurs de licences

24 Le commissaire en conseil exécutif peut nommer des personnes chargées de délivrer des licences en application de la présente loi. *L.R., ch. 110, art. 24*

Tab 10

(Art. 365-366)

Du mariage

LIVRE DEUXIÈME
DE LA FAMILLE

BOOK TWO
THE FAMILY

TITRE PREMIER
DU MARIAGE

TITLE ONE
MARRIAGE

CHAPITRE PREMIER
DU MARIAGE ET DE SA
CÉLÉBRATION

CHAPTER I
MARRIAGE AND SOLEMNIZATION
OF MARRIAGE

*Art. 365. Le mariage doit être contracté publiquement devant un célébrant compétent et en présence de deux témoins.

*Art. 365. Marriage shall be contracted openly, in the presence of two witnesses, before a competent officiant.

1991, c. 64, a. 365 (1994-01-01); 2002, c. 6, a. 22 (2002-06-24).

C.C.B.C. 116; C.C.Q. (1980) 400, 401, 410 (D.T. 167; C.C.Q. 256, 366, 372, 373 al. 2(1°), 380, 1386, 1398, 1399, 1420, 3088)

* Loi d'harmonisation n° 1 du droit fédéral avec le droit civil

* Federal Law - Civil Law Harmonization Act, No. 1

2001, ch. 4

2001, c. 4

(Extraits)

(Excerpt)

Marriage

Marriage

4. [Application] Les articles 5 à 7, qui s'appliquent uniquement dans la province de Québec, s'interprètent comme s'ils faisaient partie intégrante du *Code civil du Québec*.

4. [Substitution] Sections 5 to 7, which apply solely in the Province of Quebec, are to be interpreted as though they formed part of the *Civil Code of Québec*.

5. [Nécessité du consentement] Le mariage requiert le consentement libre et éclairé d'un homme et d'une femme à se prendre mutuellement pour époux.

5. [Consent required] Marriage requires the free and enlightened consent of a man and a woman to be the spouse of the other.

6. [Âge minimal] Nul ne peut contracter mariage avant d'avoir atteint l'âge de seize ans.

6. [Minimum age] No person who is under the age of sixteen years may contract marriage.

7. [Monogamie] Nul ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été dissous par le décès ou le divorce ou frappé de nullité.

7. [Monogamy] No person may contract a new marriage until every previous marriage has been dissolved by death or by divorce or declared null.

Art. 366. Sont des célébrants compétents pour célébrer les mariages, les greffiers et greffiers-adjoints de la Cour supérieure désignés par le ministre de la Justice, les notaires habilités par la loi à recevoir des actes notariés ainsi que, sur le territoire défini dans son acte de désignation, toute autre personne désignée par le ministre de la Justice, notamment des maires, d'autres membres des conseils municipaux ou des conseils d'arrondissements et des fonctionnaires municipaux.

Art. 366. Every clerk or deputy clerk of the Superior Court designated by the Minister of Justice, every notary authorized by law to execute notarized acts and, within the territory defined in the instrument of designation, any other person designated by the Minister of Justice among such officials as mayors, members of municipal or borough councils and municipal officers is competent to solemnize marriage.

Le sont aussi les ministres du culte habilités à le faire par la société religieuse à laquelle ils appartiennent, pourvu qu'ils résident au Québec et que le ressort dans lequel ils exercent leur ministère soit situé en tout ou en partie au Québec, que l'existence, les rites et les cérémonies de leur confession aient un caractère permanent, qu'ils célèbrent les mariages dans des lieux conformes à ces rites ou aux règles prescrites par le ministre de la Justice et qu'ils soient autorisés par le ministre responsable de l'état civil.

Les ministres du culte qui, sans résider au Québec, y demeurent temporairement peuvent aussi être autorisés à y célébrer des mariages pour un temps qu'il appartient au ministre responsable de l'état civil de fixer.

Sont également compétentes pour célébrer les mariages sur le territoire défini dans une entente conclue entre le gouvernement et une communauté mohawk les personnes désignées par le ministre de la Justice et la communauté.

1991, c. 64, a. 366 (1994-01-01); 1996, c. 21, a. 28 (1996-09-04); 1999, c. 53, a. 20 (1999-11-24); 2002, c. 6, a. 23 (2002-06-24).

C.C.Q. (1980) 411 (D.T. 167; C.C.Q. 103, 377; C.P.C. 4 al. 1d))

Art. 367. Aucun ministre du culte ne peut être contraint à célébrer un mariage contre lequel il existe quelque empêchement selon sa religion et la discipline de la société religieuse à laquelle il appartient.

1991, c. 64, a. 367 (1994-01-01).

C.C.Q. (1980) 412

Art. 368. On doit, avant de procéder à la célébration d'un mariage, faire une publication par voie d'affiche apposée, pendant vingt jours avant la date prévue pour la célébration, au lieu où doit être célébré le mariage.

Au moment de la publication ou de la demande de dispense, les époux doivent être informés de l'opportunité d'un examen médical prénuptial.

1991, c. 64, a. 368 (1994-01-01).

C.C.Q. (1980) 413 (D.T. 167; C.C.Q. 11, 365, 370, 380)

Art. 369. La publication de mariage énonce les nom et domicile de chacun des futurs époux, ainsi que la date et le lieu de leur naissance. L'exactitude de ces énonciations est attestée par un témoin majeur.

1991, c. 64, a. 369 (1994-01-01).

C.C.Q. (1980) 414 (D.T. 167; C.C.Q. 5, 50, 75)

In addition, every minister of religion authorized to solemnize marriage by the religious society to which he belongs is competent to do so, provided that he is resident in Québec, that he carries on the whole or part of his ministry in Québec, that the existence, rites and ceremonies of his confession are of a permanent nature, that he solemnizes marriages in places which conform to those rites or to the rules prescribed by the Minister of Justice and that he is authorized by the minister responsible for civil status.

Any minister of religion not resident but living temporarily in Québec may also be authorized to solemnize marriage in Québec for such time as the minister responsible for civil status determines.

In the territory defined in an agreement concluded between the Government and a Mohawk community, the persons designated by the Minister of Justice and the community are also competent to solemnize marriages.

Art. 367. No minister of religion may be compelled to solemnize a marriage to which there is any impediment according to his religion and to the discipline of the religious society to which he belongs.

Art. 368. Before the solemnization of a marriage, publication shall be effected by means of a notice posted up, for twenty days before the date fixed for the marriage, at the place where the marriage is to be solemnized.

At the time of the publication or of the application for a dispensation, the spouses shall be informed of the advisability of a premarital medical examination.

Art. 369. The publication sets forth the name and domicile of each of the intended spouses, and the date and place of birth of each. The correctness of these particulars is confirmed by a witness of full age.

(Art. 370-375)

Du mariage

Art. 370. Le célébrant peut, pour un motif sérieux, accorder une dispense de publication.
1991, c. 64, a. 370 (1994-01-01).

C.C.Q. (1980) 415 (D.T. 167; C.C.Q. 120, 368)

Art. 371. Si le mariage n'est pas célébré dans les trois mois à compter de la vingtième journée de la publication, celle-ci doit être faite de nouveau.
1991, c. 64, a. 371 (1994-01-01).

C.C.Q. (1980) 416 (D.T. 167)

Art. 372. Toute personne intéressée peut faire opposition à la célébration d'un mariage entre personnes inhabiles à le contracter.

Le mineur peut s'opposer seul à un mariage; il peut aussi agir seul en défense.
1991, c. 64, a. 372 (1994-01-01).

C.C.Q. (1980) 407, 408 (C.C.Q. 7, 159, 373; C.P.C. 55, 70, 813.3, 819-819.4)

***Art. 373.** Avant de procéder au mariage, le célébrant s'assure de l'identité des futurs époux, ainsi que du respect des conditions de formation du mariage et de l'accomplissement des formalités prescrites par la loi. Il s'assure en particulier qu'ils sont libres de tout lien de mariage ou d'union civile antérieur et, s'ils sont mineurs, que le titulaire de l'autorité parentale ou, le cas échéant, le tuteur a consenti au mariage.

1991, c. 64, a. 373 (1994-01-01); 2002, c. 6, a. 24 (2002-06-24).

C.C.B.C. 115, 118-120, 124-126; C.C.Q. (1980) 406, 417 (D.T. 31, 167; C.C.Q. 95, 120, 146, 153, 171, 365 ss., 380, 507, 516, 577, 578, 655 ss.)

* Voir ci-après, la *Loi sur le mariage (degrés prohibés)*, L.C. 1990, ch. 46.

Art. 370. The officiant may, for a serious reason, grant a dispensation from publication.

Art. 371. If a marriage is not solemnized within three months from the twentieth day after publication, the publication shall be renewed.

Art. 372. Any interested person may oppose the solemnization of a marriage between persons incapable of contracting it.

A minor may oppose a marriage alone. He may also act alone as defendant.

***Art. 373.** Before solemnizing a marriage, the officiant ascertains the identity of the intended spouses, compliance with the conditions for the formation of the marriage and observance of the formalities prescribed by law. More particularly, the officiant ascertains that the intended spouses are free from any previous bond of marriage or civil union and, in the case of minors, that the person having parental authority or, if applicable, the tutor has consented to the marriage.

* See hereinafter, the *Marriage (Prohibited Degrees) Act*, S.C. 1990, c. 46.

Art. 374. Le célébrant fait lecture aux futurs époux, en présence des témoins, des dispositions des articles 392 à 396.

Il demande à chacun des futurs époux et reçoit d'eux personnellement la déclaration qu'ils veulent se prendre pour époux. Il les déclare alors unis par le mariage.
1991, c. 64, a. 374 (1994-01-01).

C.C.Q. (1980) 418 (D.T. 167; C.C.Q. 392-396)

Art. 375. Le célébrant établit la déclaration de mariage et la transmet sans délai au directeur de l'état civil.

1991, c. 64, a. 375 (1994-01-01); 1999, c. 47, a. 15 (1999-11-05).

C.C.Q. (1980) 419 (C.C.Q. 118-121)

Art. 374. In the presence of the witnesses, the officiant reads articles 392 to 396 to the intended spouses.

He requests and receives, from each of the intended spouses personally, a declaration of their wish to take each other as husband and wife. He then declares them united in marriage.

Art. 375. The officiant draws up the declaration of marriage and sends it without delay to the registrar of civil status.

Tab 11

Règles sur la célébration du mariage civil

Rules Respecting the Solemnization of Civil Marriages

Code civil du Québec
(1991, c. 64, a. 376)

Civil Code of Québec
(1991, c. 64, a. 376)

1. Aux fins de la publication du mariage civil, le greffier de la Cour supérieure utilise la formule apparaissant à l'annexe I et il l'affiche pendant 20 jours avant la date prévue pour la célébration, au lieu où doit être célébré le mariage ou, dans les cas prévus aux règles 4, 5 et 5.1, au palais de justice le plus près de l'endroit où le mariage sera célébré.

1. For the purposes of the publication of a civil marriage, the clerk of the Superior Court shall use the form in Schedule I and shall post it, for 20 days before the date fixed for the marriage, at the place where the marriage is to be solemnized or, in the cases provided for in rules 4, 5 and 5.1, at the courthouse closest to that place.

A.M., 1994, a. 1; A.M., 1998, a. 1.

2. Le mariage civil doit être célébré entre 9 heures et 16 heures 30. Il ne peut être célébré les jours suivants:

2. Civil marriages shall be solemnized between 9:00 a.m. and 4:30 p.m. They shall not be solemnized on

- a) les dimanches;
- b) les 1^{er} et 2 janvier;
- c) le Vendredi saint;
- d) le lundi de Pâques;
- e) le 24 juin, jour de la fête nationale;
- f) le 1^{er} juillet, anniversaire de la Confédération;
- g) le premier lundi de septembre, fête du Travail;
- h) le deuxième lundi d'octobre;
- i) les 24, 25, 26 et 31 décembre;
- j) le jour fixé par proclamation du gouverneur général pour marquer l'anniversaire du Souverain;
- k) tout autre jour fixé par proclamation du gouvernement comme jour de fête publique ou d'action de grâces.

- (a) Sundays;
- (b) 1 and 2 January;
- (c) Good Friday;
- (d) Easter Monday;
- (e) 24 June, the National Holiday;
- (f) 1 July, the anniversary of Confederation;
- (g) the first Monday of September, Labour Day;
- (h) the second Monday of October;
- (i) 24, 25, 26 and 31 December;
- (j) the day fixed by proclamation of the Governor General for the celebration of the birthday of the Sovereign; or
- (k) any other day fixed by proclamation of the Government as a public holiday or as a day of thanksgiving.

3. Le mariage doit être célébré dans une salle d'un palais de justice ou de tout autre édifice où un tribunal est appelé à siéger. Si, dans un rayon de 80 kilomètres du domicile du futur époux ou de la future épouse, il n'existe aucun palais de justice ni aucun édifice où un tribunal est appelé à siéger, le mariage peut être célébré à l'hôtel de ville le plus rapproché, dans la salle de délibération du conseil ou dans tout autre endroit convenable de cet hôtel de ville.

3. The marriage shall be solemnized in a room of a courthouse or of any other building in which a court of law sits. If there is no courthouse and no building in which a court sits within an 80-kilometre radius of the domicile of the intended husband or the intended wife, the marriage may be solemnized in the council chamber of the nearest city hall or in any other suitable place in that city hall.

4. Si l'un des futurs époux est dans l'impossibilité physique de se déplacer, attestée par certificat médical, le mariage peut être célébré à l'endroit où le futur époux se trouve, sur permission du greffier de la Cour supérieure, pourvu que demande lui en soit faite avant que soit affiché l'acte de publication ou au moment de la demande de dispense de publication.

5. Si l'un des futurs époux est incarcéré dans un pénitencier, le mariage peut être célébré dans ce pénitencier, pourvu que demande en soit faite au greffier de la Cour supérieure avant que soit affiché l'acte de publication ou au moment de la demande de dispense de publication.

5.1 Dans le cadre d'un projet pilote, sur permission du greffier de la Cour supérieure, le mariage peut être célébré dans un lieu accessible au public et aménagé à cette fin dans un des endroits suivants:

- dans le district judiciaire de Charlevoix:
au Manoir Richelieu, 181, avenue Richelieu, La Malbaie – Pointe-au-Pic;
- dans le district judiciaire de Longueuil:
à l'hôtel de ville de Boucherville, 500, rue de la Rivière-aux-Pins, Boucherville;
- dans le district judiciaire de Montréal:
au Jardin botanique de Montréal, 4101, rue Sherbrooke Est, Montréal;
- dans le district judiciaire de Québec:
au Domaine Cataract, 2141, chemin Saint-Louis, Sillery;
- dans le district judiciaire de Rimouski:
dans les Jardins de Métis, à Grand-Métis.

Pour obtenir cette autorisation, la demande doit être faite au greffier avant que l'acte de publication ne soit affiché ou au moment de la demande de dispense de publication.

A.M., 1998, a. 2; A.M., 1999, a. 1.

6. Le drapeau du Québec doit être arboré dans la salle où le mariage est célébré, à moins qu'il ne s'agisse d'un endroit visé aux règles 4, 5 et 5.1.

A.M., 1994, a. 6; A.M., 1998, a. 3.

4. If one of the intended spouses is physically unable to move about, and that inability is attested to in a medical certificate, the marriage may be solemnized, with the permission of the clerk of the Superior Court, at the place where that intended spouse is, provided that a request to that effect is submitted to the clerk before the posting of the notice of marriage or at the time of an application for a dispensation from publication of that notice.

5. Where one of the intended spouses is imprisoned in a penitentiary, the marriage may be solemnized there, provided that a request to that effect is submitted to the clerk of the Superior Court before the posting of the notice of marriage or at the time of an application for a dispensation from publication of that notice.

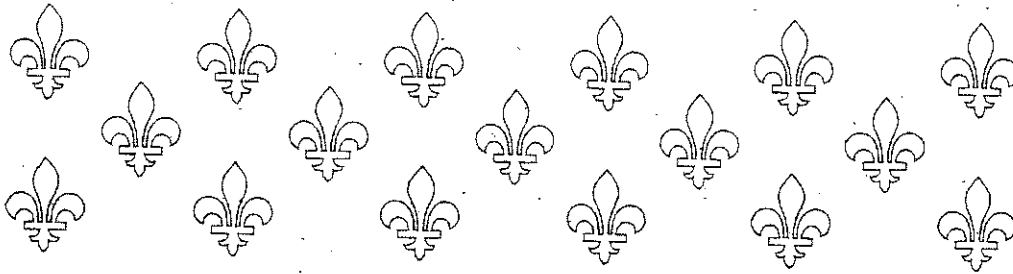
5.1 Under a pilot project, with the permission of the clerk of the Superior Court, a marriage may be solemnized in a place accessible to the public and laid out for that purpose at one of the following locations:

- in the judicial district of Charlevoix:
at the Manoir Richelieu, 181, avenue Richelieu, La Malbaie – Pointe-au-Pic;
- in the judicial district of Longueuil:
at the Hôtel de ville de Boucherville, 500, rue de la Rivière-aux-Pins, Boucherville;
- in the judicial district of Montréal:
at the Montreal Botanical Garden, 4101, rue Sherbrooke Est, Montréal;
- in the judicial district of Québec:
at the Domaine Cataract, 2141, chemin Saint-Louis, Sillery;
- in the judicial district of Rimouski:
at the Jardins de Métis, at Grand-Métis.

A request to that effect shall be submitted to the clerk before the posting of the notice of marriage or at the time of the application for a dispensation from publication of the notice.

6. The Québec flag shall be displayed in the room in which the marriage is solemnized, unless the marriage is solemnized in a place provided for in rules 4, 5 and 5.1.

Tab 12



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 84

(2002, chapter 6)

**An Act instituting civil unions and
establishing new rules of filiation**

Introduced 25 April 2002

Passage in principle 7 May 2002

Passage 7 June 2002

Assented to 8 June 2002

Québec Official Publisher
2002

Bill 84

AN ACT INSTITUTING CIVIL UNIONS AND ESTABLISHING NEW RULES OF FILIATION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

AMENDMENTS TO THE CIVIL CODE

1. Article 15 of the Civil Code of Québec (1991, chapter 64) is amended

- (1) by replacing "his consent" in the English text by "consent";
- (2) by replacing "spouse or, if he" by "married, civil union or *de facto* spouse or, if the person";
- (3) by replacing "his" wherever it appears in the English text by "his or her".

2. Article 56 of the said Code is amended

- (1) by replacing "his" in the English text of the first paragraph by "his or her";
- (2) by replacing "his spouse" in the second paragraph by "his or her married or civil union spouse".

3. Article 61 of the said Code is amended

- (1) by replacing "his reasons and gives the name of his father and mother" in the English text of the first paragraph by "the reasons for the application and gives the names of his or her father and mother";
- (2) by replacing "the name of his spouse and of his children" in the first paragraph by "the name of his or her married or civil union spouse and children";
- (3) by replacing "his children's" in the English text of the first paragraph by "the children's";
- (4) by replacing "his" in the English text of the second paragraph by "the".

4. Article 82 of the said Code is amended by replacing "Spouses" by "Married or civil union spouses".

"Upon notification of a notarized joint declaration or a judgment dissolving a civil union, the registrar shall make a notation of the declaration or judgment in the computerized version of the acts of birth and civil union of each of the persons concerned.";

(2) by inserting "or civil union" after "nullity of marriage" in the last paragraph;

(3) by inserting "or civil union" after "act of marriage" in the last paragraph.

20. Article 146 of the said Code is amended

(1) by replacing the first paragraph by the following paragraph:

146. A certificate of civil status sets forth the person's name, sex, place and date of birth and, if the person is deceased, the place and date of death. It also sets forth, if applicable, the place and date of marriage or civil union and the name of the spouse.";

(2) by inserting ", civil union" after "marriage" in the second paragraph.

21. Article 258 of the said Code is amended

(1) by replacing "himself or of administering his property by reason, in particular, of illness, deficiency or debility due to age which impairs his mental faculties or his physical ability to express his will" in the English text of the first paragraph by "himself or herself or of administering property by reason, in particular, of illness, deficiency or debility due to age which impairs the person's mental faculties or physical ability to express his or her will";

(2) by replacing "his spouse" in the second paragraph by "his or her married or civil union spouse".

22. Article 365 of the said Code is amended by striking out the second paragraph.

23. Article 366 of the said Code, amended by section 28 of chapter 21 of the statutes of 1996 and section 20 of chapter 53 of the statutes of 1999, is again amended

(1) by inserting ", every notary authorized by law to execute notarized acts and, within the territory defined in the instrument of designation, any other person designated by the Minister of Justice among such officials as mayors, members of municipal or borough councils and municipal officers" after "Minister of Justice" in the first paragraph;

(2) by inserting ", that he solemnizes marriages in places which conform to those rites or to the rules prescribed by the Minister of Justice" after "permanent nature" in the second paragraph.



Chapitre 6

LOI INSTITUANT L'UNION CIVILE ET ÉTABLISSANT DE NOUVELLES RÈGLES DE FILIATION

[Sanctionnée le 8 juin 2002]

LE PARLEMENT DU QUÉBEC DÉCRÈTE CE QUI SUIT :

MODIFICATIONS AU CODE CIVIL

- 1991, c. 64, a. 15,
mod.
- 1.** L'article 15 du Code civil du Québec (1991, chapitre 64) est modifié :
- 1° par le remplacement, dans le texte anglais, des mots « his consent » par le mot « consent » ;
- 2° par l'insertion, après les mots « par le conjoint », de ce qui suit : « , qu'il soit marié, en union civile ou en union de fait, » ;
- 3° par le remplacement, dans le texte anglais, du mot « his », partout où il se trouve, par les mots « his or her ».
- 1991, c. 64, a. 56,
mod.
- 2.** L'article 56 de ce code est modifié :
- 1° par le remplacement, dans le texte anglais, au premier alinéa, du mot « his » par les mots « his or her » ;
- 2° par le remplacement, au deuxième alinéa, des mots « son conjoint » par les mots « la personne à laquelle il est marié ou uni civilement ».
- 1991, c. 64, a. 61,
mod.
- 3.** L'article 61 de ce code est modifié :
- 1° par le remplacement, dans le texte anglais, au premier alinéa, des mots « his reasons and gives the name of his father and mother » par les mots « the reasons for the application and gives the names of his or her father and mother » ;
- 2° par le remplacement, au premier alinéa, des mots « celui de son conjoint, de ses enfants » par les mots « le nom de la personne à laquelle il est marié ou uni civilement, celui de ses enfants » ;
- 3° par le remplacement, dans le texte anglais, au premier alinéa, des mots « his children's » par les mots « the children's » ;
- 4° par le remplacement, dans le texte anglais, au deuxième alinéa, du mot « his » par le mot « the ».

1991, c. 64, a. 135,
mod.

19. L'article 135 de ce code, modifié par l'article 10 du chapitre 47 des lois de 1999, est de nouveau modifié :

1° par l'insertion, après le premier alinéa, du suivant :

« Il doit, sur notification d'une déclaration commune notariée ou d'un jugement de dissolution d'une union civile, en faire mention sur l'exemplaire informatif des actes de naissance et d'union civile de chacune des personnes concernées. » ;

2° par l'insertion, au dernier alinéa et après les mots « la nullité de mariage », des mots « ou d'union civile » ;

3° par l'insertion, au dernier alinéa et après les mots « acte de mariage », de ce qui suit : « , d'union civile ».

1991, c. 64, a. 146,
mod.

20. L'article 146 de ce code est modifié :

1° par le remplacement du premier alinéa par le suivant :

« **146.** Le certificat d'état civil énonce les nom, sexe, lieu et date de naissance de la personne et, si elle est décédée, les lieu et date du décès. Il énonce également, le cas échéant, les lieu et date de mariage ou d'union civile et le nom du conjoint. » ;

2° par l'insertion, au deuxième alinéa et après les mots « de mariage », de ce qui suit : « , d'union civile ».

1991, c. 64, a. 258,
mod.

21. L'article 258 de ce code est modifié :

1° par le remplacement, dans le texte anglais, au premier alinéa, des mots « himself or of administering his property by reason, in particular, of illness, deficiency or debility due to age which impairs his mental faculties or his physical ability to express his will » par les mots « himself or herself or of administering property by reason, in particular, of illness, deficiency or debility due to age which impairs the person's mental faculties or physical ability to express his or her will » ;

2° par le remplacement, au deuxième alinéa, des mots « son conjoint » par les mots « son époux ou conjoint uni civilement ».

1991, c. 64, a. 365,
mod.

22. L'article 365 de ce code est modifié par la suppression du deuxième alinéa.

1991, c. 64, a. 366,
mod.

23. L'article 366 de ce code, modifié par l'article 28 du chapitre 21 des lois de 1996 et par l'article 20 du chapitre 53 des lois de 1999, est de nouveau modifié :

IN THE SUPREME COURT OF CANADA

**IN THE MATTER OF SECTION 53 OF THE SUPREME COURT ACT,
R.S.C. 1985, c. S-26**

**IN THE MATTER OF A REFERENCE BY THE GOVERNOR IN COUNCIL
CONCERNING THE PROPOSAL FOR AN ACT RESPECTING
CERTAIN ASPECTS OF LEGAL CAPACITY FOR MARRIAGE FOR
CIVIL PURPOSES, AS SET OUT IN ORDER IN COUNCIL P.C. 2003-
1055, DATED THE 16TH OF JULY 2003**

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