

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)**

**BETWEEN:**

INTERFAITH COALITION ON MARRIAGE AND FAMILY  
Applicant (Intervener)

-and-

HEDY HALPERN and COLLEEN ROGERS  
MICHAEL LESHNER and MICHAEL STARK  
ALOYSIUS PITTMAN and THOMAS ALLWORTH  
DAWN ONISHENKO and JULIE ERBLAND  
CAROLYN ROWE and CAROLYN MOFFATT  
BARBARA McDOWALL and GAIL DONNELLY and  
ALISON KEMPER and JOYCE BARNETT (the “Respondent Couples”), and

METROPOLITAN COMMUNITY CHURCH OF TORONTO  
Respondent/Moving Parties  
(Respondent)

and

THE ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellant)

-and-

EGALE CANADA INC.  
Respondent (Intervener)

-and-

THE ASSOCIATION FO MARRIAGE AND THE FAMILY IN ONTARIO  
Respondent (Party Intervener)

---

**AFFIDAVIT OF MARLENE JENNINGS**

---

I, MARLENE JENNINGS of the City of Montreal of the Province of Quebec Vancouver  
MAKE OATH AND SAY THAT:

1. I am a Member of Parliament and a member of the House of Commons Justice and Human Rights Committee (“the Standing Committee” or “the Committee”) and as such have direct personal knowledge of the matters contained in this affidavit.
2. From November 27, 2002 to April 30, 2003, the Standing Committee held a total of 27 hearings on the issue of same-sex marriage, involving 15 hearings in Ottawa and 12 in other communities across Canada, namely Vancouver, Edmonton, Moose Jaw, Steinbach, Halifax, Sussex, Sudbury, two in Toronto, two in Montreal and Iqaluit.
3. In total, the Committee heard from 467 witnesses. The majority of witnesses (274 or 59%) favoured extending equal marriage rights to same-sex couples. 166 witnesses or 35.5% opposed.
4. These witnesses represented a board range of groups and interests of Canadian society concerned with the issue of same-sex marriage.
5. Those speaking in favour of same-sex marriage included same-sex couples, a number of whom were raising children, as well as parents and family-members of gays and lesbians, children being raised by same-sex parents, educators, union groups, women’s and ethnocultural organizations, academics, legal organizations and Bar Associations, family organizations, youth groups, Human Rights Commissions and a variety of religious denominations including representatives of Jewish, Muslim, Sikh, and Catholic communities, the Unitarian Church, the United Church of Canada, Metropolitan Community Churches, and the Religious Society of Friends (Quakers).

6. Those speaking against same-sex marriage included academics, lawyers, family organizations, ethnocultural organizations and a variety of religious denominations including representatives of Catholic, Pentecostal, Islamic, Evangelical, Jewish and Mennonite faiths. The opposition to same-sex marriage on the basis of religious views was most common.
7. Among those who spoke against same-sex marriage was Mr. Bruce Clemenger of Evangelical Fellowship of Canada (the Appellant). In his presentation to the Committee, Mr. Clemenger stated that “If you redefine marriage, we would want legal protection to ensure that clergy are not required to marry people who would represent a violation of conscience.”
8. There was a very little support for the notion of civil unions as an alternative. Many thought they were morally and legally not equal to marriage. Moreover, the legal experts were clear that the federal government lacked jurisdiction, and thus could not create a national civil union, as it only has jurisdiction over marriage.
9. I believe the process was fair and that during the Committee’s extensive hearing all concerned groups in every part of Canada had plenty of opportunity to express their views.
10. More importantly, throughout this process, my colleagues and I had an opportunity to form or challenge our own views on the basis of arguments presented before us.
11. It is important to note that although we were aware of the judgments of the courts, I did not feel compelled to vote in any particular way because of what those judgments have said. Yet, I felt informed by them. Many of the groups who appeared before the Committee were litigants in the court actions in Ontario,

British Columbia and Québec. The Committee therefore had a unique opportunity to weigh all the *pros* and *cons* of this issue and take a democratic vote.

12. I cast my vote in support of the motion proposed by Mr. Svend Robinson recommending the Government not to appeal the decision of the Ontario Court of Appeal.
13. The vote was carried in favour of this motion with a 9-8 margin. Mr. Lee was not present when the vote took place. This vote shows that the Committee, as well as Canadian society, was divided on the issue of same-sex marriage, with a slight majority of the Committee favouring the legalization of same-sex marriages.
14. The Committee's recommendation not to appeal the decision of the Ontario Court of Appeal was not binding upon the Government. It was the Executive branch of government that had to make the final decision on the issue, not the Legislative branch. I was glad that the Government agreed with the Committee's recommendation and decided not to appeal. I believe that drafting the Bill and making a reference to the Supreme Court is the most appropriate and democratic way of dealing with the issue of same-sex marriage.
15. It is also important to note that there was the consensus within the Committee that no church or other religious authority would be forced to conduct marriage ceremonies that are not in conformity with its beliefs and rituals. All clergy have the right to determine the additional criteria necessary before they will agree to marry two individuals.
16. Therefore, the Minister's draft Bill seems to reflect almost exactly the main concerns raised during the consultations. It affirms equal marriage as most witnesses urged, and it protects religious freedom. It has been coupled with a Supreme Court reference to address the concerns of those who were skeptical about whether the Courts would ultimately uphold a religious freedom provision.

17. It is my opinion that further hearings, by the Committee or the court, would be unnecessary and time-consuming. It is unlikely that there is any important evidence that was left outside the scope of the Committee's or court's inquiry. Liberal MPs as well as groups forming part of the so-called Interfaith Coalition (the appellants in this motion) had an ample opportunity to make their views known before the Committee. They proved to be part of a minority, however.

18. In addition, it is my understanding that the process of passage of the Bill will give Canadians of all political and religious denominations further opportunity to express their views with regard to the Bill. In fact, a vigorous debate continues in the Liberal caucus where opponents have had ample opportunity to express their views.

19. I therefore oppose the leave to appeal to the Supreme Court by religious groups supported by several MPs, as it is an unnecessary step duplicating the efforts of the Government to resolve the issues by the way of the Bill and the Reference.

SWORN before me at )  
the City of Toronto, in the )  
Province of Ontario, )  
on the       <sup>th</sup> day )  
of August, 2003. )

\_\_\_\_\_  
MARLENE JENNINGS

A Commissioner for Taking Affidavits