

Court File No.

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

B E T W E E N:

**THE INTERFAITH COALITION ON MARRIAGE AND FAMILY
Applicant (Party Intervener)**

- and -

**HEDY HALPERN and COLLEEN ROGERS,
MICHAEL LESHNER and MICHAEL STARK,
MICHELLE BRADSHAW and REBEKAH ROONEY,
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
Respondents (Respondents)**

- and -

**THE ATTORNEY GENERAL OF CANADA,
THE ATTORNEY GENERAL OF ONTARIO and
NOVINA WONG, THE CLERK OF THE CITY OF TORONTO
Respondents (Appellants)**

- and -

**EGALE CANADA INC.
Party Intervener (Party Intervener)**

- and -

**THE ASSOCIATION FOR MARRIAGE AND THE FAMILY IN ONTARIO
Party Intervener (Party Intervener)**

**AFFIDAVIT OF VIC TOEWS
ON BEHALF OF THE APPLICANT
THE INTERFAITH COALITION ON MARRIAGE AND FAMILY**

AFFIDAVIT OF VIC TOEWS

I, VIC TOEWS, of the City of Steinbach, Province of Manitoba, AFFIRM AND DECLARE:

1. I am a Member of Parliament and am currently a Member of the Standing Committee on Justice and Human Rights ("the Justice Committee"). As a member of the Justice Committee, I have participated in cross-country public hearings and Committee deliberations, towards drafting recommendations for Parliament as to whether it should recognize same-sex unions, and if so, in what manner. As such, I have knowledge of the facts and matters hereafter deposed to, except where such matters are stated to be based upon information and belief, and where so stated I believe them to be true.
2. I was elected as a Member of Parliament for the constituency of Provencher, Manitoba, in 2000. I have served as Justice Critic for the Official Opposition since January 2001.
3. I was the Attorney General and Minister of Justice of Manitoba from 1997 until the end of my term as a member of the Legislative Assembly of Manitoba in 1999. Prior to that, I held the position of Minister of Labour in the Manitoba Government from 1995 to 1997.

4. Before being elected to the Legislative Assembly of Manitoba in 1995, I practised law with the Manitoba Department of Justice from 1976 to 1991. In 1987 I was appointed Director of Constitutional Law for the Province of Manitoba. My duties as Director included advising the Government of Manitoba on constitutional questions, defending the laws of the Province of Manitoba before all levels of court, and acting as legal counsel to the Premier of Manitoba at the Meech Lake Accord discussions in 1990.
5. As a Member of Parliament, I have served as a member of the Standing Committee on Justice and Human Rights, and the Subcommittee on National Security.
6. On November 12, 2002, while I was a member of the Justice Committee, Justice Minister Martin Cauchon referred the following question to the Justice Committee:

"Given our constitutional framework and the traditional meaning of marriage, should Parliament take measures to recognize same sex unions and, if so, what should they be?"
7. At that time, Justice Minister Cauchon issued a discussion paper entitled "Marriage and Legal Recognition of Same-Sex Unions" (the "Discussion Paper"). A copy of the Discussion Paper is attached as **Exhibit 1** to this affidavit.
8. In his preface to the Discussion Paper, Justice Minister Cauchon explained that the work of the Justice Committee is part of the effort by "people living in Canada" to "reconcile the traditional meaning of marriage and the recognition of committed gay

and lesbian relationships within our constitutional framework and equality guarantees”.

9. In the Discussion Paper, the Minister of Justice set out three policy options that he wished the Justice Committee to consider:
 - i) Marriage could remain an opposite-sex institution, with or without a new federal statute creating a registry for civil unions or domestic partnerships;
 - ii) Marriage could be changed to include same-sex couples;
 - iii) Parliament could withdraw from the regulation of marriage.

10. According to its terms of reference, the Justice Committee was not limited to considering only these three options. It had the mandate to consider whatever policy options were suggested to it over the course of its consultations with Canadians. It was intended to be a broad inquiry into these issues.

11. As part of its mandate, the Justice Committee was instructed to conduct public hearings throughout Canada, to allow individual Canadians to have input into the development of a policy initiative that could have a profound impact on them.

12. The Justice Committee received the diverse views of thousands of Canadians, given in oral presentations, written briefs, letters and phone calls. The Justice Committee held public hearings in eleven locations across Canada during April 2003: in

Vancouver, British Columbia; Edmonton, Alberta; Moosejaw, Saskatchewan; Steinbach, Manitoba; Halifax, Nova Scotia; Sussex, New Brunswick; Sudbury, Ontario; Toronto, Ontario; Montreal, Quebec; and Iqaluit, Nunavut.

13. While the opinions and beliefs expressed at the hearings were always firmly held and often forcefully expressed, the overwhelming majority of persons presented their submissions respectfully, regardless of whatever policy alternative they favoured. While there were occasional lapses in civility, those lapses were very much the exception and were not confined to the proponents of any particular policy option.
14. There were many submissions made by persons who were concerned about the changes to the institution of marriage - replacing the traditional conception with an institution that includes same-sex partners - that some litigants were asking the courts to make. Many of these witnesses expressed concern about the negative impact that such changes could have on them and on their communities. Some expressed the concern that just as the liberalization of the law of divorce in the 1960s contributed to an unexpected and far reaching social transformation, the change sought by the claimants could, over time, provoke a similarly unpredictable social transformation.
15. As a member of the Justice Committee, I believed that many Canadians who made submissions were concerned about the prospect of changes to the social environment in which we live, work, and receive our education.

16. In early June 2003, when the hearings had concluded and members of the Justice Committee were in the process of writing proposals for policy options, the Ontario Court of Appeal delivered its reasons in *Halpern v. Canada*. In this decision, the Court of Appeal struck down the common law definition of marriage and replaced it with a new creation said to be between "two persons" in place of "one man and one woman".
17. The particular remedy granted by the Ontario Court of Appeal made the Justice Committee's work irrelevant. There are legislative alternatives that I consider constitutionally viable, that Parliament could have chosen that could have provided institutional support for committed gay and lesbian relationships, and at the same time respected the needs of other Canadians to maintain marriage as a continuing heterosexual institution. By mandating one policy alternative to be the law, the Court of Appeal put a stop to the deliberative, cooperative process to find a legislative solution that satisfies the needs of all Canadians. The decision of the Ontario Court of Appeal has not left Parliament with a discretion do anything other than accept the Court of Appeal's redefinition of marriage.
18. As a Parliamentarian, I am under an obligation to defend the jurisdiction of Parliament to choose the best policy solution to social problems of this nature. The respective roles of Parliament and the judiciary are such that once a court has identified a law as constitutionally invalid, that Parliament have the opportunity to

create a legislative solution. For a court to mandate one particular policy option in the manner done by the Ontario Court of Appeal, is inconsistent with the separation of powers in our Constitution.

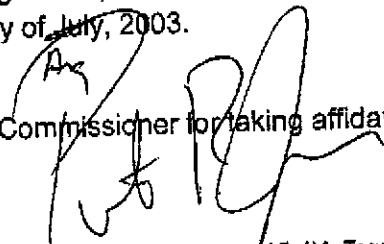
19. I am aware of draft legislation entitled 'an Act Respecting Certain Aspects of Legal Capacity for Marriage', that the Minister of Justice has referred to the Supreme Court of Canada under a constitutional reference. I am concerned that the reference does not address the ultimate issue addressed in *Halpern v. Canada*, specifically, the question of whether maintaining the traditional institution of marriage as an institution conferring the status of husband and wife, necessarily violates the *Charter of Rights and Freedoms*.
20. I believe that it is possible to develop a legislative regime that is fully constitutional and maintains the traditional conception of marriage as between one man and one woman, and provides institutional recognition for same-sex committed partnerships. Several other countries in Scandinavia and Europe have created registered partnerships or civil unions that are open to gay and lesbian couples.

AFFIRMED before me at the City
of
in the Province of
this 13th
day of July, 2003.

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VIC TOEWS

A Commissioner for taking affidavits, etc.



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P. R. Jarvis