

STATE OF CONNECTICUT SUPREME COURT

S.C. 17716

ELIZABETH KERRIGAN, ET AL.

VS.

COMMISSIONER OF PUBLIC HEALTH, ET AL.

**BRIEF OF AMICI CURIAE
WITH APPENDIX**

PROFESSORS PAUL S. BERMAN, WILLIAM DUNLAP,
WILLIAM N. ESKRIDGE, JR., HAROLD HONGJU KOH, ANGEL
OQUENDO, WILLIAM ACEVES, MARCO BALBONI, BARBARA COX,
SUJIT CHOUDHRY, BRENDA COSSMAN, DR. IAN CURRY-SUMNER,
OLIVIER DE SCHUTTER, PIERRE DE VOS, KATHLEEN LAHEY, DR.
LEONARDO RAZNOVICH, BRUCE RYDER, BETH VAN SHAACK,
ABBE SMITH, DR. KEES WAALDIJK, KRISTEN L. WALKER, STEPHEN
WHITTLE, ROBERT WINTEMUTE, AND ALEARDO ZANGHELLINI;
REBECCA BAILEY-HARRIS, MATTEO BONINI BARALDI, NIGEL
CHRISTIE, AND HANS YTTERBERG;

AND

THE UNIVERSITY OF TORONTO FACULTY OF LAW
INTERNATIONAL HUMAN RIGHTS CLINIC

FILED: DECEMBER 12, 2006

OF COUNSEL:
PROF. NOAH B. NOVOGRODSKY
VISITING PROFESSOR OF LAW,
GEORGETOWN UNIVERSITY LAW
CENTER, DIRECTOR, INTERNATIONAL
HUMAN RIGHTS CLINIC,

UNIVERSITY OF TORONTO FACULTY
OF LAW.

BEN A. SOLNIT
PAUL GUGGINA
TYLER COOPER & ALCORN, LLP
205 CHURCH STREET
NEW HAVEN, CT 06510
TEL. (203) 784-8205
FAX (203) 777-1181
JURIS NO. 064830

Table of Contents

Table of Authorities	ii
Statement of Interests of the Amici Curiae.....	v
Argument	1
I. Comparative Precedents Finding a Right to Marry Under Constitutional Equality Provisions are Instructive to This Court	1
A. Relying on Principles of Equality and Human Dignity, the Canadian Courts Have Ended the Exclusion of Gay and Lesbian Couples From Marriage.....	3
B. Relying on Principles of Equality and Human Dignity, the South African Courts Have Ended the Exclusion of Gay and Lesbian Couples From Marriage.....	6
II. Civil Unions Are Not an Adequate Alternative	8
III. Including Same-Sex Couples Within Marriage Has Had No Detrimental Effect on The Integrity of the Institution	9
Conclusion	10
Appendix.....	

Table of Authorities

Cases

United States Supreme Court

<u>Lawrence v. Texas</u> , 539 U.S. 558 (2003)	2
<u>Atkins v. Virginia</u> , 536 U.S. 304 (2002)	2

Connecticut

<u>Castagno v. Wholean</u> , 239 Conn. 336, 342-43 (1996)	1
<u>State v. Geisler</u> , 222 Conn. 672 (1992)	2
<u>Moore v. Ganim</u> , 233 Conn. 557 (Conn. 1995)	2

Massachusetts

<u>Goodridge v. Dept. of Public Health</u> , 798 N.E.2d 941 (Mass. 2003)	3, 7
--	------

Supreme Court of Canada:

<u>Egan v. Canada</u> , [1995] 2 S.C.R. 513	4
<u>Law v. Canada (Minister of Employment & Immigration)</u> , [1999] 1 S.C.R. 497	4
<u>M. v. H.</u> , [1999] 2 S.C.R. 3	4
<u>Reference re Same-Sex Marriage</u> , [2004] 3 S.C.R. 698	6, 10

British Columbia:

<u>EGALE Canada Inc. v. Canada (Attorney General)</u> , [2003], 225 D.L.R. (4th) 472 (B.C.C.A)	3, 5, 8, 9
--	------------

Ontario:

<u>Halpern v. Canada (Attorney General)</u> , [2003] 65 O.R. (3d) 161 (Ont. C.A)	3, 5, 9, 10
--	-------------

Quebec:

<u>Hendricks c. Québec</u> , [2004] 238 D.L.R. (4th) 577	3, 5
<u>Hendricks c. Québec</u> , [2002] R.J.Q. 2506 (Sup. Ct.)	9

Israel:

HCJ 3045/05 <u>Ben-Ari v. The Director of the Population Administration in the Ministry of the Interior</u> , [2006]	10
--	----

United Kingdom:

Hyde v. Hyde and Woodmansee, L.R. 1 P&D. 130, 133 (1866) 5

Ghaidan v. Godin-Mendoza [2004] 3 All E.R. 411 (House of Lords) 3

South Africa:

Fourie and Another v Minister of Home Affairs and Others 2005 (3) BCLR 241 (SCA) (S.Afr.) 3, 6, 7, 8

Minister of Home Affairs and Another v Fourie and Another 2006 (3) BCLR 355 (CC) (S. Afr.) 6, 7, 9, 10

National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs 2000 (1) BCLR 39 (CC) 7

European Court of Human Rights:

Karner v. Austria [2003] 14 B.H.R.C. 674 (Eur. Ct. H.R.) 3

Goodwin v. United Kingdom [2002] 35 E.H.R.R. 18 (Eur. Ct. H.R.) 6

Statutes

Belgium:

13 FEVRIER 2003. Loi ouvrant le mariage à des personnes même sexe et modifiant certaines dispositions du Code civil. Moniteur Belge, 28.02.2003, p. 9880 10

Canada:

Canadian Constitution Act, Part I, § 15 4

Marriage for Civil Purposes Act, 2005 S.C. ch. 33 (Can) 6

Netherlands:

Staatsblad van het Koninkrijk der Nederlanden 2001, nr. 9 (11 January) (Official Journal of the Kingdom of the Netherlands) [Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)] 10

Spain:

Ley 13/2005, de 1 de Julio, por la que se modifica el Código Civil en material de derecho a contraer matrimonio. [Marriage Act 30, June 2005, (royal assent 1 July 2005)]	10
---	----

South Africa:

Civil Union Act	8
-----------------------	---

Statement of Interests of the Amici Curiae

This brief is submitted in support of the plaintiffs/appellants on behalf of 27 law professors, scholars and legal practitioners, and the University of Toronto Faculty of Law International Human Rights Clinic. The signatories are experts in the fields of comparative constitutional law and international human rights law and are familiar with legal developments outside the United States. Each of the signatories to this Brief has research, academic, and/or advocacy interests in equality and the elimination of all forms of discrimination. Amici respectfully submit this Brief to ensure that the Court is aware of developments in foreign jurisprudence with respect to the growing trend of court rulings expanding civil marriages to couples of the same sex and equal treatment of gay, lesbian and bisexual individuals. Amici and their institutional affiliations¹ are as follows:

Paul S. Berman is the Jesse Root Professor of Law at the University of Connecticut School of Law where he teaches courses in Cyberspace Law, Conflict of Laws, Civil Procedure, and Copyright Law. Professor Berman's scholarly writing focuses on the intersection of cyberspace law, international law, civil procedure, and the cultural analysis of law.

William Dunlap is a Professor of Law at Quinnipiac University where he teaches courses in a variety of areas including International Law, International Human Rights, and Constitutional Law. He has authored two books and several articles, book chapters, reports, and essays pertaining to international law and international human rights law.

William N. Eskridge, Jr., is the John A. Garver Professor of Jurisprudence at Yale Law School. He has published several scholarly books and dozens of law review articles on

¹ Institutional affiliations are listed for identification purposes only.

the evolution of family law in the United States and marriage rights for same-sex couples in particular.

Harold Hongju Koh is Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law at Yale Law School, where he teaches courses in International Human Rights Law, Transnational Law and Procedure. From 1998-2001, he served as U.S. Assistant Secretary of State for Democracy, Human Rights and Labor.

Angel Oquendo is the Olimpiad S. Ioffe Professor of Law at the University of Connecticut School of Law. Professor Oquendo teaches courses on Civil Procedure, Business Organizations, Philosophy of Law, International Law, Comparative Law, and Latin American Law. He has published and researched widely in the areas of self-determination, comparative corporate law, Latin American law, jurisprudence, moral and political philosophy, international dispute resolution, and critical race theory.

William Aceves is a Professor of Law and the Director of the International Legal Studies Program at California Western School of Law where he teaches courses on Human Rights Laws, Foreign Affairs and the Constitution, and Comparative Law. Professor Aceves studies human rights and international law and writes extensively in these fields, frequently working with Amnesty International, the Center for Justice & Accountability, the Center for Constitutional Rights and the American Civil Liberties Union on projects involving the domestic application of international law.

Rebecca Bailey-Harris is a barrister with one of the leading family law chambers in England. She has previously served as a Professor of Law at Flinders University, South Australia and the University of Bristol. She has served as the Dean of Law in both universities and has authored a number of leading texts on family law.

Marco Balboni is a Professor of Human Rights Law at the University of Bologna, Forli.

Matteo Bonini Baraldi holds a Ph.D. from the University of Bologna. He works both on the problem of contractual unbalance and on constitutional and discrimination law. From 2002 to 2004 he was a researcher at Universiteit Leiden (the Netherlands) where he also performed as assistant-coordinator to the European Group of Experts on Combating Sexual Orientation Discrimination), dealing with the new European legal framework against sexual orientation discrimination at the workplace. Author of several publications in the field of legal recognition of same-sex couples, in 2005 he published the first Italian book which proposed both a comparative analysis of most legal schemes around the world and an assessment of their recognition in Italy according to national rules of private international law and Community law. In 2006, he coauthored a book assessing the legal framework against sexual orientation discrimination in European law.

Barbara Cox is a Professor of Law at California Western School of Law where she teaches Civil Procedure, Women and the Law, and Comparative Issues in Family, Gender, and Sexuality. She has authored several publications on marriage and conflicts of law and has given numerous presentations on the legal rights of same-sex partners, conflicts of law, and interstate recognition of marriage and domestic partnership.

Sujit Choudhry is an Associate Professor of Law at the University of Toronto. Professor Choudhry's principal research and teaching interests are Constitutional Law and Theory and he has written numerous publications pertaining to antidiscrimination laws and comparative constitutional law.

Nigel Christie is a Ph.D. candidate at the University of Waikato School of Law in New Zealand. He has both published and presented at international conferences in London

(1999), Turin (2002), and Montreal (2005) on the topic of legal recognition of same-sex relationships through civil marriage.

Brenda Cossman is a Professor of Law at the University of Toronto where she teaches courses on Family Law, Feminist Legal Theory, Law and Sexuality, and Law and Film. She written several articles and coauthored several books regarding feminism, sexuality, and the law.

Dr. Ian Curry-Sumner is a lecturer in private international law (conflicts of law) and comparative law at the Molengraaff Institute for Private of the Faculty of Law, Utrecht University. His Ph.D. thesis was on the subject of the substantive and private international law aspects of non-marital registered relationships in Europe. He has lectured and presented on a wide variety of topics in the field of English law, family law and private international law both in and outside The Netherlands.

Olivier De Schutter is a Professor at the Catholic University of Louvain and at the College of Europe (Natolin). He is also a Member of the Global Law School Faculty at New York University and is a Visiting Professor at the University of Paris I-Panthéon-Sorbonne, at the Abo Akademi University and Institute for Human Rights at Turku (Finland), and at the University of Coimbra (Portugal). He is the chair of the EU Network of Independent Experts on Fundamental Rights and a member of the European Group of Legal Experts on discrimination.

Pierre De Vos is a Professor of Law at the University of Western Cape, South Africa where he teaches courses in Constitutional Law and International Human Rights Law. He has authored numerous publications on Social and economic rights with reference to International Human Rights Law and the SA Constitution.

Kathleen Lahey is a Professor of Law at Queen's University in Kingston, Ontario where she teaches courses in Law and Sexuality, Charter Law, Property, and Taxation. She has authored several articles on sexuality and the law including The Impact of Relationship Recognition on Lesbian Women in Canada (Ottawa: Status of Women Canada, 2001); Legal Recognition of Same-Sex Relationships in Canada (2001); Becoming "Persons" in Canadian Law: Genuine Equality or 'Separate but Equal' (2001); and Sexuality and Segregation: "Separate but Equivalent" in the New Millennium (2000).

Dr. Leonardo Raznovich is Senior Lecturer in Law & Programme Director of Legal Studies at the Canterbury Christ Church University, U.K. He has written numerous works on procedural law and also antidiscrimination law in Argentina and has given several presentations on diversity, marriage laws, and legal thinking.

Bruce Ryder is an Associate Professor of Law and the Director of the Centre for Public Law and Public Policy at the Osgoode Hall Law School in Toronto, Canada. He teaches courses on Constitutional Law, Anti-Discrimination Law, and Sexuality and the Law. Professor Ryder has worked closely with the Ontario Law Reform Commission and the Law Commission of Canada on their reports regarding the legal changes needed to better recognize the diversity of adult personal relationships in Canadian society.

Beth Van Schaack is an Assistant Professor of Law with Santa Clara University School of Law where she teaches and writes in the areas of human rights, transitional justice, international criminal law, public international law, and civil procedure. She joined the law faculty from private practice where she practiced in the area of commercial law, international law and human rights.

Abbe Smith is a Professor of Law at the Georgetown University Law Center where she teaches courses on criminal law and civil procedure. She is the author of articles on feminism and criminal law, clinical legal education, legal ethics, and juvenile justice.

Dr. Kees Waaldijk is a senior lecturer in the E.M. Meijers Institute of Legal Studies of the Faculty of Law at the Universiteit Leiden, The Netherlands. Since 2000, he has been that Institute's head of Ph.D. studies, as well as a research fellow specializing in sexual orientation law. Dr. Waaldijk has published several comparative studies on same-sex partnership/marriage.

Kristen L. Walker is an Associate Professor of Law at the Melbourne Law School where she teaches courses in Constitutional Law, International Law, Law and Sexuality, Principles of International Law and Refugee Law. She has published several journal articles, book chapters and book reviews on a wide range of subjects, including sexuality, human rights, and international law.

Stephen Whittle is a Professor of Equalities Law at the Manchester Metropolitan School of Law in the United Kingdom where he teaches courses on Gender and the Law, Legal Theory, and Principles and Policy in Law. Professor Whittle has authored several publications relating to gender, sexuality, and the law.

Robert Wintemute is a Professor of Human Rights Law at the King's College School of Law at the University of London. His research areas include EU Law, Human Rights Law, Anti-Discrimination Law, and Sexual Orientation and the Law.

Hans Ytterberg is the Associate Judge of Appeal and Ombudsman against Discrimination on grounds of Sexual Orientation, Stockholm, Sweden.

Aleardo Zanghellini is a Professor of Law at the Macquarie University in Sydney, Australia where he teaches classes in Family Law, Jurisprudence, Constitutional Law, and

Law and Sexuality. His research areas include constitutional and human rights, comparative law, family law, and law and sexuality.

The University of Toronto Faculty of Law International Human Rights Clinic is a specialized law practice of the University of Toronto Faculty of Law that operates under the direction of Director Noah B. Novogrodsky. The Clinic has appeared as an amicus party before the California Court of Appeal and as an intervener at the Supreme Court of Canada. The Clinic and associated Faculty have also appeared represented parties before the European Court of Human Rights, the Special Court for Sierra Leone, the Inter-American Commission on Human Rights, the Constitutional Court of Uganda, the Supreme Court of Belize and in judicial proceedings in South Africa, Cambodia and Singapore.

Argument

This Court should consider the constitutionality of the denial of marriage to same-sex couples from a variety of perspectives, including that provided by the recent experience of Canada and South Africa. Applying the same or similar constitutional provisions to nearly identical facts, liberal democracies in other countries have concluded that marriage is an essential social institution and that the continued denial of access to this institution on the basis of sex or sexual orientation violates fundamental principles of dignity and equality. In Connecticut, as elsewhere, the Legislature has chosen to privilege and encourage the monogamous adult relationship as the basic social unit and foundation of society. Amici contend that the principles of human dignity and autonomy that are the essence of the modern rights-protecting democracy demand that civil marriage be available to all couples and that the equality of all citizens triumph over historical attitudes.

I. COMPARATIVE PRECEDENTS FINDING A RIGHT TO MARRY UNDER CONSTITUTIONAL EQUALITY PROVISIONS ARE INSTRUCTIVE TO THIS COURT

Connecticut shares a common law tradition with many Anglo-American jurisdictions that trace their heritage to English law and that empower courts to strike down laws found to be unconstitutional.² By using comparative jurisprudence to interpret internationally shared legal principles such as “equality,” “liberty,” and “discrimination,” this Court can benefit from the experience of other nations to test workable solutions to common constitutional problems. Indeed, the U.S. Supreme Court has affirmed the value of comparative and international jurisprudence in providing interpretive guidance on the rights and liberties protected by the U.S.

² See, e.g., Castagno v. Wholean, 239 Conn. 336, 342-43 (1996) (tracing the common law roots of family autonomy).

Constitution.³ In Lawrence v. Texas, 539 U.S. 558 (2003), the Court relied on comparative and international precedents to find that the criminalization of same-sex sexual conduct was out of step with the “values we share with a wider civilization” and that protecting such conduct is now regarded “as an integral part of human freedom in many other countries.” Id. at 576-77 (citing to decisions of the European Court of Human Rights and the laws of other nations). Such reliance accords with former Justice O’Connor’s common-sense observation that, “[w]hile ultimately we must bear responsibility for interpreting our own laws, there is much to learn from other distinguished jurists who have given thought to the same difficult issues that we face here.”⁴

In State v. Geisler, 222 Conn. 672, 685 (1992), this Court directed litigants to look to both federal and sister state precedent in supporting claims that the Connecticut Constitution protects individual rights not currently protected under law. Three years later, in Moore v. Ganim, 233 Conn. 557, 637-641 (1995) (Peters, J., concurring), Justice Peters discussed the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights in concluding that, while the Connecticut Constitution should be construed to include a right to minimal subsistence, the challenged statute was consistent with historic limitations on public support.⁵

³ In the context of the death penalty applied to mentally disabled persons, the US Supreme Court recently invoked international norms, noting that: “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.” Atkins v. Virginia, 536 U.S. 304, 316 (2002).

⁴ Sandra Day O’Connor, Keynote Address Before the Ninety-Sixth Annual Meeting of the American Society of International Law, 96 Am. Soc’y Int’l L. Proc. 348, 350 (2002). See also William H. Rehnquist, Constitutional Courts—Comparative Remarks, in Germany and Its Basic Law: Past, Present, and Future—A German-American Symposium 411, 412 (Paul Kirchhof & Donald P. Kommers eds., 1993) (“[N]ow that constitutional law is solidly grounded in so many foreign countries, it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process.”) Similarly, foreign courts also look for guidance to the constitutional decisions of courts in this country.

⁵ See also Vicki C. Jackson, “Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse,” 65 Mont. L. Rev. 15, fn. 92 (providing illustrations

In adjudicating issues involving the right of same-sex couples to marry and the place of sexual orientation within the canons of antidiscrimination law, high courts in several jurisdictions around the world have cited the contributions of foreign courts.⁶ As the Massachusetts Supreme Court recognized in Goodridge, “[w]e face a problem similar to one that recently confronted the Court of Appeal for Ontario, the highest court of that Canadian province, when it considered the constitutionality of the same-sex marriage ban under the Canadian Charter of Rights and Freedoms...” Goodridge v. Dept. of Public Health, 798 N.E.2d 941, 969 (Mass. 2003).

A. Relying on Principles of Equality and Human Dignity, the Canadian Courts Have Ended the Exclusion of Gay and Lesbian Couples From Marriage.

In Canada’s three most populous provinces, a trio of landmark decisions known as Halpern, EGALE, and Hendricks found in favor of same sex marriage.⁷ Between 2002 and 2005, these three Courts of Appeal and six other provincial and territorial courts held that the traditional definition of marriage that excluded same-sex couples violated Canada’s Constitution.

The Canadian cases are all predicated on Section 15(1) of the Canadian Charter of Rights and Freedoms, which provides:

from Connecticut, Oregon, California, Maine and Florida in which state courts have referred to international or foreign sources of law on questions of human rights).

⁶ See Halpern v. Canada (Attorney General), [2003] 65 O.R. (3d) 161 (Ont. C.A) [citing Loving v. Virginia (Commonwealth) 388 U.S. 1 (1967)]; Fourie and Another v Minister of Home Affairs and Others 2005 (3) BCLR 241 (Supreme Court of Appeal of South Africa) [citing Goodridge v. Department of Public Health, 798 N.E.2d 941 (Mass. 2003)]; Ghaidan v. Godin-Mendoza [2004] 3 All E.R. 411 [House of Lords, citing Karner v. Austria, [2003] Eur. Ct. H. R. 395]. (A table of international case citations, with internet, LEXIS or Westlaw source references, is included in the Appendix at A-23.)

⁷ See Hendricks c. Québec, [2004] 238 D.L.R. (4th) 577, EGALE Canada Inc. v. Canada (Attorney General), [2003] 225 D.L.R. (4th) 472 (B.C.C.A) and Halpern v. Canada (Attorney General), [2003] 65 O.R. (3d) 161 (Ont. C.A.).

Every individual is equal before the law 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.

The equality guarantee in sec. 15(1) of the Charter is similar to those found in provisions of the United States Constitution and Article First, secs. 1, 20 of the Connecticut Constitution. Like its U.S. counterparts, sec. 15 of the Canadian Charter does not specifically designate sexual orientation as a protected category. However, eight years before the Canadian marriage cases the Supreme Court of Canada unanimously held that, for the purpose of anti-discrimination law, sexual orientation was analogous to race, religion and sex for the dual reasons that: (1) sexual orientation is “a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs,” Egan v. Canada, [1995] 2 S.C.R. 513 at ¶ 5; and (2) gays and lesbians have endured a long history of disadvantage, discrimination, stigmatization, and public harassment due to their sexual orientation. Id. at ¶ 22.

In Law v. Canada (Minister of Employment & Immigration), [1999] 1 S.C.R. 497, the Canadian Supreme Court subsequently held that the purpose of sec. 15 is:

“[T]o prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.”

Id. at 529.

In M. v. H., [1999] 2 S.C.R. 3, the Supreme Court of Canada emphasized that same-sex couples should be entitled to the same benefits and obligations as different-sex couples because, from the perspective of the state, the distinction between their respective relationships was arbitrary. Like different-sex couples, the Court recognized that same-sex couples form long, lasting, loving and intimate relationships in need of the same protection under the law as their heterosexual counterparts.

Halpern echoed this fundamental principle by observing that through the operation of the common law definition of marriage in force in Canada since 1866:⁸

...same-sex couples are excluded from a fundamental societal institution -- marriage. The societal significance of marriage, and the corresponding benefits that are available only to married persons, cannot be overlooked. Indeed, all parties are in agreement that marriage is an important and fundamental institution in Canadian society. It is for that reason that the claimants wish to have access to the institution. Exclusion perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships [and is therefore discriminatory].

Halpern, *supra*, 65 O.R. (3d) 161 at ¶ 107. The Court also found that privileging heterosexual relationships over their homosexual counterparts could not serve as a justification for this discrimination because it perpetuates the view that same-sex relationships are not equally capable of providing companionship. Halpern at ¶ 124. In the same vein, Justice Prowse, writing for a majority of the British Columbia Court of Appeal in EGALE, amplified the connection between the importance of marriage as an institution and the resulting impact on an individual's dignity, finding that "[t]he evidence supports a conclusion that 'marriage' represents society's highest acceptance of the self-worth and the wholeness of a couple's relationship, and, thus, touches their sense of human dignity at its core." EGALE, 225 D.L.R. (4th) at ¶ 90.⁹

⁸ The definition of marriage in force in Canada's nine common law provinces derived from Hyde v. Hyde and Woodmansee, L.R. 1 P&D. 130, 175 (1866) in which Lord Penzance declared that marriage was "the voluntary union for life of one man and one woman, to the exclusion of all others." In Quebec, which has a civil law system, the former definition of marriage as between a man and woman in the civil code was incorporated into a federal statute to reflect Canada's federal jurisdiction over the capacity to marry. The Quebec Superior Court held the federal law definition, which applied only to Quebec, contravened the equality rights of gays and lesbians entrenched in Section 15 of the Charter. See Hendricks, *supra* at n. 6.

⁹ The marriage cases also addressed and rejected the justifications offered for the sec. 15 Charter violation. For example, in Halpern, the Court dismissed the contention that the purpose of marriage is to unite the different sexes and encourage companionship. Halpern, 65 O.R. (3d) 161 at ¶ 119. While that Court acknowledged that the encouragement of child rearing is an important purpose, it emphasized that this could obviously not serve as a reason to exclude same-sex couples from marriage. *Id.* at ¶ 94, and *id.* at ¶ 117 ("stating

These cases were the catalyst for national change.¹⁰ Significantly, the federal government chose not to appeal any of the Court of Appeal decisions. Rather, Parliament proposed a bill in which marriage was defined as the lawful union of two people. Parliament then referred the proposed bill to the Canadian Supreme Court for guidance as to the bill's constitutionality. In 2004, the Supreme Court of Canada upheld the bill, holding that "the mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the s. 15(1) rights of another." Reference re Same-Sex Marriage, [2004], 3 S.C.R. 698. The Marriage for Civil Purposes Act received Royal Assent and became law on July 20, 2005, making marriage "for civil purposes...the lawful union of two persons to the exclusion of all others." (Appendix ("App.") at p. A-4).

B. Relying on Principles of Equality and Human Dignity, the South African Courts Have Ended the Exclusion of Gay and Lesbian Couples From Marriage.

On December 1, 2005, South Africa's Constitutional Court joined the Canadian courts in ruling that the exclusion of same-sex couples from the institution of civil marriage was unconstitutional. In Fourie, South African judges sitting both in the Supreme Court of Appeal (SCA), the highest South African court for non-constitutional matters, and then in the Constitutional Court (CC), held that a definition of marriage that excludes same-sex couples

that marriage is heterosexual because it always has been ... is merely an explanation for the opposite-sex requirement of marriage; it is not an objective that is capable of justifying the infringement of a Charter guarantee"). See also Christine Goodwin v. United Kingdom, Eur.Ct.H.R., 11 July 2002, para. 98: "the inability of any couple to conceive or parent a child cannot be regarded as per se removing their right to [marry]."

¹⁰ According to Canada's federal distribution of powers, the Parliament of Canada has authority over "marriage and divorce" (section 91[26]), and the legislatures of the provinces have authority over "the solemnization of marriage in the province" (section 92[12]). See Constitution Act, 30 & 31 Victoria, c. 3 (1867) (U.K.).

violates the constitutional rights to human dignity and equality¹¹ and that these rights require access to the institution of marriage for all couples, regardless of sexual orientation.¹²

As in Canada, the Fourie (CC) decision was preceded by a rich jurisprudence that extended equal protection of the law to same-sex couples. In a 1999 case, National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs 2000 (1) BCLR 39 (CC), the Constitutional Court of South Africa held that same-sex couples must be given the same immigration rights as married different-sex couples. Denying equal rights to same-sex couples, the Court found, sends a “clear message” that “whether viewed as individuals or in their same-sex relationships, [they] do not have the inherent dignity and are not worthy of the human respect possessed by and accorded to heterosexuals and their relationships.” Id. at ¶ 42.

In Fourie, the Supreme Court of Appeal (SCA) found that the exclusion of same-sex couples from an institution of fundamental social significance “undermines the values which underlie an open and democratic society based on freedom and equality.” Fourie (SCA), *supra*, (3) BCLR 241 at ¶ 16. The SCA then cited the Massachusetts Supreme Court’s decision in Goodridge:

The appellants moreover do not seek to limit procreative heterosexual marriage in any way. They wish to be admitted to its advantages... Denying them this, to quote Marshall CJ in the Massachusetts Supreme Court of Judicature, ‘works a deep and scarring hardship on a very real segment of the community for no rational reason.’

¹¹ South Africa’s equal protection clause, Section 9(1) of the Constitution, states that “Everyone is equal before the law and has the right to equal protection and benefit of the law.” Section 9(3) provides that “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” (Cited in Civil Union Act, App. at p. A-17).

¹² Minister of Home Affairs and Another v Fourie and Another, 2006 (3) BCLR 355 (CC) (S. Afr.) [hereinafter “Fourie (CC)”], and 2005 (3) BCLR 241 (SCA), [hereinafter “Fourie (SCA)”].

Id. at ¶ 18. On appeal, the South African Constitutional Court held that the exclusion of same-sex couples from civil marriage:

represent[s] a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples. It reinforces the wounding notion that they are to be treated as biological oddities, as failed or lapsed human beings who do not fit into normal society, and, as such, do not qualify for the full moral concern and respect that our Constitution seeks to secure for everyone. It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples.

Id. at ¶ 71 On November 14, 2006, the South African Parliament voted to legalize same-sex marriages, thereby implementing the Constitutional Court's ruling and making the Republic of South Africa the latest country to remove legal barriers to gay and lesbian marriages.¹³

II. CIVIL UNIONS ARE NOT AN ADEQUATE ALTERNATIVE

Both Canada's and South Africa's courts recognized that anything less than full equality demeans the dignity of same-sex couples and the self-esteem of persons in such relationships. Civil unions and domestic partnerships perpetuate an altogether different and inferior scheme of state recognition. As Justice Prowse of the British Columbia Court of Appeal reasoned:

[T]he obvious remedy is...the redefinition of marriage to include same-sex couples. ... Any other form of recognition of same-sex relationships, including the parallel institution of RDP's [registered domestic partnerships], falls short of true equality. This Court should not be asked to grant a remedy which makes same-sex couples 'almost equal,' or to leave it to governments to choose amongst less-than-equal solutions.

EGALE, 225 D.L.R. (4th) 472 at ¶ 156. Likewise, the Quebec Court observed that "offering benefits to gay and lesbian partners under a different scheme from heterosexual partners is a version of the separate but equal doctrine" and cautioned against reviving that doctrine "after its

¹³ Civil Union Act of South Africa, No. 17 of 2006, §§ 1, 11 (App. at p. A-16). In South Africa, the term "civil union" now refers to a couple's choice of a "marriage" or a "civil partnership").

much heralded death in the United States.” Hendricks c. Québec, [2002] R.J.Q. 2506 (Sup. Ct.) at ¶ 134.

The South African Constitutional Court agreed that marriage is more than its material manifestations, noting among other things the profound intangible harms from being denied both equal access to marriage and the right to choose to marry. Fourie (CC) at ¶ 72. It cautioned against a remedy that “on the face of it would provide equal protection, but would do so in a manner that in its context and application would be calculated to reproduce new forms of marginalization.” Id. at ¶ 150. Calling “separate but equal” regimes a “threadbare cloak for covering distaste for...the group subjected to segregation,” id., it focused on the “real lives as lived by real people today” and stressed “the importance of the impact that an apparently neutral distinction could have on the dignity and self-worth of the persons affected.” Id. at ¶ 151.

III. INCLUDING SAME-SEX COUPLES WITHIN MARRIAGE HAS HAD NO DETRIMENTAL EFFECT ON THE INTEGRITY OF THE INSTITUTION.

In both Halpern and EGALE, the courts fashioned a temporary remedy that reformulated the common law rule, substituting the words “two persons” for “one man and one woman” until the legislature had an opportunity to repair the impugned law. Through a similar definition, the South African Constitutional Court also foreclosed the possibility of polygamous marriages.

Significantly, no empirical evidence exists to suggest that there has been a discernible impact upon the rights or interest of opposite-sex couples or religious officials by the introduction of same-sex marriage or legal unions in any U.S. state or foreign jurisdictions.¹⁴ As the Halpern Court observed, “Allowing same-sex couples to marry does not result in a

¹⁴ See William N. Eskridge, Jr. & Darren R. Spedale, GAY MARRIAGE: For Better or for Worse (2006) (studying Scandinavian Registered Partnership systems; finding that different-sex marriage has not suffered from the legalization of same-sex unions; and specifically rebutting the claim of journalist Stanley Kurtz that such harm has occurred).

corresponding deprivation to opposite-sex couples.” Id. at ¶ 137. Both the Supreme Court of Canada and South Africa’s Constitutional Court ensured that religious officials may continue to enjoy the full exercise of their beliefs by permitting clergy to refuse to solemnize marriages between people of the same sex. Reference re Same-Sex Marriage [2004] 3 S.C.R. 698 at ¶¶ 55-60; Fourie (CC), ¶ 98.

Conclusion

The foreign and comparative lessons on the question of marriage equality for same-sex couples are instructive. Common law courts with the power to enforce equality principles and promote the human dignity of same-sex couples by striking down restrictive definitions of marriage are doing so. In several civil law systems, including the Netherlands, Belgium, and Spain, legislatures have determined that civil unions do not constitute an adequate alternative to full marriage rights and have led the way towards full equality.¹⁵ Joining this growing trend, Israel’s highest court recently determined that same-sex couples presenting a valid marriage certificate acquired abroad must now be permitted to register as married couples in Israel. HCJ 3045/05 Ben-Ari v. Dir. of the Population Admin. in the Ministry of the Interior [2006].

In each of these cases, changes in the definition of civil marriage have been informed by what the Spanish Prime Minister has called “two unstoppable forces: freedom and equality,”¹⁶ that is, the startlingly simple proposition that same-sex couples are worthy of the same rights afforded to their heterosexual counterparts. Amici urge this Court to find that loving, committed, same-sex relationships in Connecticut warrant the same public recognition as those in Toronto, Cape Town, Amsterdam, Brussels or Madrid.

¹⁵ See unofficial translations of respective statutes, App. at pp. A-1 (Belgium), A-6 (Netherlands), A-15 (Spain)

¹⁶ Cortes Generales, Diario de Sesiones del Congreso de los Diputados (30 June 2005) No 103 p 5228 (excerpts translated into English at <http://www.guardian.co.uk/gayrights/story/0,12592,1518144,00.html>).

Respectfully submitted,

Professors Paul S. Berman, William Dunlap, William N. Eskridge, Jr., Harold Hongju Koh, Angel Oquendo, William Aceves, Marco Balboni, Barbara Cox, Sujit Choudhry, Brenda Cossman, Dr. Ian Curry-Sumner, Olivier De Schutter, Pierre De Vos, Kathleen Lahey, Dr. Leonardo Raznovich, Bruce Ryder, Beth Van Shaack, Abbe Smith, Dr. Kees Waaldijk, Kristen L. Walker, Stephen Whittle, Robert Wintemute, and Aleardo Zanghellini; Rebecca Bailey-Harris, Matteo Bonini Baraldi, Nigel Christie, and Hans Ytterberg; and the University of Toronto Faculty of Law International Human Rights Clinic,

by _____
Ben A. Solnit
Paul Guggina
Tyler Cooper & Alcorn, LLP
205 Church Street
New Haven, CT 06510
Tel. (203) 784-8205
Fax (203) 777-1181
Juris No. 064830

Of Counsel:
Prof. Noah B. Novogrodsky
Visiting Professor of Law,
Georgetown University Law Center
Director, International Human Rights Clinic,
University of Toronto Faculty of Law.

On the brief:
Mathew Goldstein, J.D. candidate,
International Human Rights Clinic,
University of Toronto Faculty of Law

APPENDIX

Table of Contents

Belgium:

13 FEVRIER 2003. Loi ouvrant le mariage à des personnes même sexe et modifiant certaines dispositions du Code civil. Moniteur Belge, 28.02.2003, p. 9880 [including unofficial translation].	A-1
--	-----

Canada:

Canadian Constitution Act, 1982, Part I, § 15.....	A-2
Marriage for Civil Purposes Act, 2005 S.C. ch. 33 (Can).....	A-3

Netherlands:

Staatsblad van het Koninkrijk der Nederlanden 2001, nr. 9 (11 January) (Official Journal of the Kingdom of the Netherlands) [Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)] [unofficial translation].	A-6
--	-----

Spain:

Ley 13/2005, de 1 de Julio, por la que se modifica el Código Civil en material de derecho a contraer matrimonio. [Marriage Act 30, June 2005, (royal assent 1 July 2005)] [unofficial translation]	A-15
--	------

South Africa:

Civil Union Act	A-16
-----------------------	------

Table of Foreign Cases With Internet, LEXIS or Westlaw Citations	A-23
---	-------------

APPENDIX

Table of Contents

Belgium:

13 FEVRIER 2003. Loi ouvrant le mariage à des personnes même sexe et modifiant certaines dispositions du Code civil. Moniteur Belge, 28.02.2003, p. 9880 [including unofficial translation].	A-1
--	-----

Canada:

Canadian Constitution Act, 1982, Part I, § 15	A-2
Marriage for Civil Purposes Act, 2005 S.C. ch. 33 (Can).	A-3

Netherlands:

Staatsblad van het Koninkrijk der Nederlanden 2001, nr. 9 (11 January) (Official Journal of the Kingdom of the Netherlands) [Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)] [unofficial translation].	A-6
--	-----

Spain:

Ley 13/2005, de 1 de Julio, por la que se modifica el Código Civil en material de derecho a contraer matrimonio. [Marriage Act 30, June 2005, (royal assent 1 July 2005)] [unofficial translation]	A-15
--	------

South Africa:

Civil Union Act	A-16
-----------------	------

Table of Foreign Cases With Internet, LEXIS or Westlaw Citations	A-23
--	------

Feb. 2003 – Belgium - *Loi du 13 février 2003 ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil* (Law of 13 Feb. 2003 opening up marriage to persons of the same sex and modifying certain provisions of the Civil Code), *Moniteur belge*, 28 Feb. 2003, Edition 3, p. 9880 (http://www.moniteur.be/index_fr.htm, *Moniteur belge*, electronic item 2003009163), in force 1 June 2003:

Art. 143. – “*Deux personnes de sexe différent ou de même sexe peuvent contracter mariage.*” (“Two persons of different sex or of the same sex may contract marriage.”)

Canadian Constitution Act, 1982

Enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, which came into force on April 17, 1982

PART I

Canadian charter of rights and freedoms

Equality Rights

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.

(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.



Canadian Legal Information Institute



FRANÇAIS

Canada >> Statutes and Regulations >> Consolidated Statutes of Canada >> Marriage for Civil Purposes Act, [2005, c. 33]

Marriage for Civil Purposes Act

2005, c. 33

[Assented to July 20, 2005]

An Act respecting certain aspects of legal capacity for marriage for civil purposes

Preamble

WHEREAS the Parliament of Canada is committed to upholding the Constitution of Canada, and section 15 of the *Canadian Charter of Rights and Freedoms* guarantees that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination;

WHEREAS the courts in a majority of the provinces and in one territory have recognized that the right to equality without discrimination requires that couples of the same sex and couples of the opposite sex have equal access to marriage for civil purposes;

WHEREAS the Supreme Court of Canada has recognized that many Canadian couples of the same sex have married in reliance on those court decisions;

WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the *Canadian Charter of Rights and Freedoms*;

WHEREAS the Supreme Court of Canada has determined that the Parliament of Canada has legislative jurisdiction over marriage but does not have the jurisdiction to establish an institution other than marriage for couples of the same sex;

WHEREAS everyone has the freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*;

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the

freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage;

WHEREAS, in light of those considerations, the Parliament of Canada's commitment to uphold the right to equality without discrimination precludes the use of section 33 of the *Canadian Charter of Rights and Freedoms* to deny the right of couples of the same sex to equal access to marriage for civil purposes;

WHEREAS marriage is a fundamental institution in Canadian society and the Parliament of Canada has a responsibility to support that institution because it strengthens commitment in relationships and represents the foundation of family life for many Canadians;

AND WHEREAS, in order to reflect values of tolerance, respect and equality consistent with the *Canadian Charter of Rights and Freedoms*, access to marriage for civil purposes should be extended by legislation to couples of the same sex;

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

Short title

1. This Act may be cited as the *Civil Marriage Act*.

Marriage — certain aspects of capacity

2. Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.

Religious officials

3. It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

Freedom of conscience and religion and expression of beliefs

3.1 For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

Marriage not void or voidable

4. For greater certainty, a marriage is not void or voidable by reason only that the spouses are of the same sex.

CONSEQUENTIAL AMENDMENTS

CANADA BUSINESS CORPORATIONS ACT

5. [Amendments]

CANADA COOPERATIVES ACT

6. [Amendments]

CIVILIAN WAR-RELATED BENEFITS ACT

7. [Amendment]

DIVORCE ACT

8. [Amendments]

FEDERAL LAW AND CIVIL LAW OF THE PROVINCE OF QUEBEC ACT

9. [Amendment]

INCOME TAX ACT

10. [Amendments]

11. [Amendment]

11.1 [Amendment]

12. [Amendments]

MARRIAGE (PROHIBITED DEGREES) ACT

13. [Amendment]

14. [Amendment]

MODERNIZATION OF BENEFITS AND OBLIGATIONS ACT

15. [Amendment]

[\[About CanLII\]](#) [\[Conditions of Use\]](#) [\[Advanced search\]](#) [\[Help\]](#) [\[Français\]](#)
[\[Privacy Policy\]](#) [\[Mailing Lists\]](#) [\[Technical Library\]](#)
[\[Contact CanLII\]](#)

by **LexUM** _____ for the Federation of Law Societies of Canada 

Text of Dutch law on the opening up of marriage for same-sex partners (plus explanatory memorandum)

summary-translation by Kees Waaldijk ([home page](#))

Universiteit Leiden, The Netherlands, c.waaldijk@law.leidenuniv.nl

version of 2 May 2001

This is an unofficial translation and I am not a professional translator. Please consult me before publishing this text elsewhere. All explanations and comments between square brackets have been added by me. Square brackets are also used to indicate omitted or summarised passages. All copyrights are mine (W).

For some background information on the lengthy process leading up to this bill, see: [Latest news about same-sex marriage in the Netherlands](#).

See also: [Text of Dutch law on adoption by persons of the same sex. Summary-translation by Kees Waaldijk \(October 2000\)](#).

The new Dutch text of Book 1 of the Civil Code can be found at: [Boek 1 Burgerlijk Wetboek, zoals dat luidt na openstelling van huwelijk en adoptie per 1 april 2001](#)

Staatsblad van het Koninkrijk der Nederlanden

2001, nr. 9 (11 January) (Official Journal of the Kingdom of the Netherlands)

For the original version in Dutch, see:
(<http://www.eerstekamer.nl/9202266/d/w26672st.pdf>).

Act of 21 December 2000 amending Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

[This Act results from proposal nr. 26 672, introduced by the Government on 8 July 1999, amended by the Government on 3 May 2000 and 4 August 2000, adopted by the Lower House of the States-General on 12 September 2000 and by the Upper House of the States-General on 19 December 2000, and signed into law on 21 December 2000. As a result of the Royal Decree of 20 March 2001 (*Staatsblad* 2001, nr. 145) it has entered into force on 1 April 2001.]

We Beatrix [?];

[*preamble:*]

considering that it is desirable to open up marriage for persons of the same sex and to amend Book I of the Civil Code accordingly;

Article I

A, B and C

[amendments to articles 16a, 20 and 20a, concerning administrative duties of the registrar]

D

[amendment of article 28, concerning the change of sex in the birth certificates of transsexuals: Being not-married shall no longer be a condition for such change.]

E

Article 30 shall read as follows:

Article 30

1. A marriage can be contracted by two persons of different sex or of the same sex.
2. The law only considers marriage in its civil relations.

[Until now, article 30 only consists of the text of the second paragraph.]

F

Article 33 shall read as follows:

Article 33

A person can at the same time only be linked through marriage with one person.

[Until now, the text of article 33 only outlaws heterosexual polygamy.]

G

[Insertion of the words "brothers" and "sisters" in article 41, which will now read as follows:

Article 41

1. A marriage cannot be contracted between those who are, by nature or by law, descendant and ascendant, brothers, sisters or brother and sister.
2. Our Minister of Justice can, for weighty reasons, grant exemption from this prohibition to those who are brothers, sisters or brother and sister through adoption.]

H

A new article 77a shall be inserted:

Article 77a

1. When two persons indicate to the registrar that they would like their marriage to be converted into a registered partnership, the registrar of the domicile of one of them can make a record of conversion to that effect. If the spouses are domiciled outside the Netherlands and want to convert their marriage into a registered partnership in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.
2. Articles 65 and 66 apply correspondingly.
3. A conversion terminates the marriage and starts the registered partnership on the moment the record of conversion is registered in the register of registered partnerships. The conversion does not affect the paternity over children born before the conversion.

I

[consequential amendment to article 78, concerning proof of marriage]

J

[amendments to article 80a, concerning registered partnership. The minimum age for marriage and registered partnership is 18, but for marriage it is reduced to 16, if the woman is pregnant or has given birth; this exception shall now also apply to registered partnership. Furthermore, annulment of an underage marriage is not possible after the female spouse has become pregnant; the same shall now apply to an underage registered partnership.]

K

[consequential amendment to article 80c]

L

A new article 80f shall be inserted:

Article 80f

1. When two persons indicate to the registrar that they would like their registered partnership to be converted into a marriage, the registrar of the domicile of one of them can make a record of conversion to that effect. If the registered partners are domiciled outside the Netherlands and want to convert their registered partnership into a marriage in the Netherlands, and at least one of them has Dutch nationality, conversion will take place with the registrar in The Hague.
2. The articles 65 and 66 apply correspondingly.
3. A conversion terminates the registered partnership and starts the marriage on the moment the record of conversion is registered in the register of marriages. The conversion does not affect the paternity over children born before the conversion.

M

[consequential amendment to article 149]

N

Article 395 shall read as follows:

Article 395

Without prejudice to article 395a, a stepparent is obliged to provide the costs of living for the minor children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his nuclear family.

[Until now this article only applies to marriage, not to registered partnership.]

O

Article 395a, second paragraph, shall read as follows:

2. A stepparent is obliged to provide [the costs of living and of studying] for the adult children of his spouse or registered partner, but only during his marriage or registered partnership and only if they belong to his nuclear family and are under the age of 21.

[Until now this article only applies to marriage, not to registered partnership.]

Article II

[technical amendments concerning registered partnership]

Article III

Within five years after the entering into force of this Act, Our Minister of Justice shall send Parliament a report on the effects of this Act in practice, with special reference to the relation to registered partnership.

Article IV

This Act shall enter into force on a date to be determined by royal decree.

[This Act entered into force on 1 April 2001, as a result of the Royal Decree of 20 March 2001, *Staatsblad* 2001, nr. 145.]

Article V

This Act shall be cited as: Act on the Opening up of Marriage.

[?] Given in The Hague, 21 December 2000: *Beatrix*

The State-Secretary for Justice: *M.J. Cohen*

Published on 11 January 2001 (The Minister for Justice: *A.H. Korthals*)

Lower House of the States-General, session 1998/1999

Parliamentary paper 26672, nr. 3 (8 July 1999)

Amendment of Book 1 of the Civil Code, concerning the opening up of marriage for persons of the same sex (Act on the Opening up of Marriage)

EXPLANATORY MEMORANDUM

[The explanatory memorandum which accompanied the original Bill of 8 July 1999, is a lengthy text. Therefore only some brief passages have been translated.]

[?]

Amendments ? where necessary ? in other books of the Civil Code and in other legislation will be proposed in a separate bill. [introduced on 22 August 2000, Parliamentary Papers II 1999/2000, 27256, nr.2] [?]

1. *History*

[?]

From the government's manifesto of 1998 (Parliamentary Papers II, 1997/1998, 26024, nr. 9, p. 68) it appears that the principle of equal treatment of homosexual and heterosexual couples has been decisive in the debate about the opening up of marriage for persons of the same sex.

2. *Equalities and differences between marriage for persons of different sex and marriage for persons of the same sex.*

[?]

As to the conditions for the contracting of a marriage no difference is made between heterosexuals and homosexuals [?].

[For example, only one of the persons wishing to marry needs to have either his or her domicile in the Netherlands or Dutch nationality.]

The differences between marriage for persons of different sex and marriage for persons of the same sex only lie in the consequences of marriage. They concern two aspects: firstly the relation to children and secondly the international aspect. [?]

[According to article 199 the husband of the woman who gives birth during marriage is presumed to be the father of the child.] It would be pushing things too far to assume that a child born in a marriage of two women would legally descend

from both women. That would be stretching reality. The distance between reality and law would become too great. Therefore this bill does not adjust chapter 11 of Book 1 of the Civil Code, which bases the law of descent on a man-woman relationship. Nevertheless, the relationship of a child with the two women or the two men who are caring for it and who are bringing it up, deserves to be protected, also in law. This protection has partly been realised through the possibility of joint authority for a parent and his or her partner (articles 253t ff.) and will be completed with a proposal for the introduction of adoption by same-sex partners [introduced 8 July 1999, Parliamentary Papers II 1998/1999, 26673; this proposal became law on 21 December 2000, see my Summary-translation], with a proposal for automatic joint authority over children born in a marriage or registered partnership of two women [introduced 15 March 2000, Parliamentary Papers II 1999/2000, 27047], and with a proposal to attach more consequences [such as inheritance] to joint authority [not yet introduced]. [?]

As far as the law of the European Union is concerned, the Kortmann-committee [advising the government about the opening up of marriage in 1997] concluded that it is certainly not unthinkable that the rules of free movement of persons relating to spouses will not be considered applicable to registered partners or married spouses of the same sex (report, p. 20). A recent judgement of the Court of Justice in Luxembourg strengthens this conclusion (see Court of Justice of the EC 17 February 1998, *Grant v South-West Trains*, case C-249/96). [?]

Treaties relating to marriage are almost all dealing with private international law. [?] An interpretation of these treaties based on a gender-neutral marriage seems improbable. Just because of this it will be necessary, when opening up marriage for persons of the same sex in the Netherlands, to design our own rules of private international law. The Royal Commission on private international law will be asked to advise on this, as soon as this bill will have been approved by the Lower House of Parliament.

3. *Relation to registered partnership; evaluation.*

Registered partnership was introduced in the Netherlands on 1 January 1998. In 1998 4556 couples (including 1550 different-sex couples) have used the possibility of contracting a registered partnership [?]. Compared to other countries with registered partnership legislation the interest in registered partnership in the Netherlands is relatively high [?].

The relatively high number of different-sex couples that contracted a registered partnership in 1998 and the results of a quick scan evaluation research [Yvonne Scherf, *Registreea Partnership in the Netherlands. A quick scan* (Amsterdam: Van Dijk, Van Someren en Partners, 1999); that is the English translation of the

original report] make it plausible that there is a need for a marriage-like institution devoid of the symbolism attached to marriage.

Therefore the government wants to keep the institution of registered partnership in place, for the time being. After five years the development of same-sex marriage and of registered partnership will be evaluated. Then [?] it will be possible to assess whether registered partnership should be abolished. [?]

4. *International aspects*

[?]

As the Kortmann-committee has stated (p. 18) the question relating to the completely new legal phenomenon of marriage between persons of the same sex concerns the interpretation of the notion of public order to be expected in other countries. Such interpretation relates to social opinion about homosexuality. The outcome of a survey by the said committee among member-states of the Council of Europe was that recognition can only be expected in very few countries. This is not surprising. [?]

Apart from the recognition of marriage as such, it is relevant whether or not in other countries legal consequences will be attached to the marriage of persons of the same-sex. [?]

As a result of this spouses of the same sex may encounter various practical and legal problems abroad. This is something the future spouses of the same sex will have to take into account. [?] However, this problem of "limping legal relations" also exists for registered partners, as well as for cohabiting same-sex partners who have not contracted a registered partnership or marriage.

5. *Conversion of marriage into registered partnership and of registered partnership into marriage*

[?]

6. *Adaptation of computerised systems*

[?]

7. *Explanation per article*

[?]

Article I ? D

[?] The principle of gender-neutrality of marriage is expressed by [the new article 30, paragraph 1].

[?]

summary, translation and comments by Kees Waaldijk

July 2005 – Spain – *Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio* (Law 13/2005, of 1 July, providing for the amendment of the Civil Code with regard to the right to contract marriage), *Boletín Oficial del Estado* no. 157, 2 July 2005, pp. 23632-23634, <http://www.boe.es/boe/dias/2005-07-02/pdfs/A23632-23634.pdf> (in force 3 July 2005):

Article 44 (new second para.): “*El matrimonio tendrá los mismos requisitos y efectos cuando ambos contrayentes sean del mismo o de diferente sexo.*”
 (“Marriage shall have the same requirements and effects whether both parties are of the same or different sex.”)

REPUBLIC OF SOUTH AFRICA

CIVIL UNION ACT

IRIPHABHULIKI YASENINGIZIMU AFRIKA

**UMTHETHO
WOKUHLANGANISWA
KWABANTU NGOKOBUHLOBO**

No , 2006

ACT

To provide for the solemnisation of civil unions, by way of either a marriage or civil partnership; the legal consequences of civil unions; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that everyone is equal before the law and has the right to equal protection and benefit of the law;

AND WHEREAS section 9(3) of the Constitution provides that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;

AND WHEREAS section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected;

AND WHEREAS section 15(1) of the Constitution provides that everyone has the right to freedom of conscience, religion, thought, belief and opinion;

AND WHEREAS the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom;

AND NOTING that the family law dispensation as it existed after the commencement of the Constitution did not provide for same-sex couples to enjoy the status and the benefits coupled with the responsibilities that marriage accords to opposite-sex couples,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—

“civil union” means the voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others; 5

“civil union partner” means a spouse in a marriage or a partner in a civil partnership, as the case may be, concluded in terms of this Act;

“Customary Marriages Act” means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

“Identification Act” means the Identification Act, 1997 (Act No. 68 of 1997); 5

“Marriage Act” means the Marriage Act, 1961 (Act No. 25 of 1961);

“marriage officer” means—

(a) a marriage officer ex officio or so designated by virtue of section 2 of the Marriage Act; or

(b) any minister of religion, or any person holding a responsible position in any religious denomination or organisation, designated as marriage officers under section 5 of this Act; 10

“Minister” means the Cabinet member responsible for the administration of Home Affairs;

“prescribed” means prescribed by this Act or by regulation made under this Act; 15 and

“this Act” includes the regulations.

Objectives of Act

2. The objectives of this Act are—

(a) to regulate the solemnisation and registration of civil unions, by way of either a marriage or a civil partnership; and 20

(b) to provide for the legal consequences of the solemnisation and registration of civil unions.

Relationships to which Act applies

3. This Act applies to civil union partners joined in a civil union. 25

Solemnisation of civil union

4. (1) A marriage officer may solemnise a civil union in accordance with the provisions of this Act.

(2) Subject to this Act, a marriage officer has all the powers, responsibilities and duties, as conferred upon him or her under the Marriage Act, to solemnise a civil union. 30

Designation of ministers of religion and other persons attached to religious denomination or organisation as marriage officers

5. (1) Any religious denomination or organisation may apply in writing to the Minister to be designated as a religious organisation that may solemnise marriages in terms of this Act. 35

(2) The Minister may designate such a religious denomination or organisation as a religious institution that may solemnise marriages under this Act, and must, from time to time, publish particulars of all religious institutions so designated in the *Gazette*.

(3) The Minister may, on request of any designated religious institution referred to in subsection (2), revoke the designation under that subsection and must publish such revocation in the *Gazette*. 40

(4) The Minister and any officer in the public service authorised thereto by him or her may designate, upon receiving a written request from any minister of religion or any person holding a responsible position in any designated religious institution to be, as long as he or she is such a minister or occupies such position, a marriage officer for the purpose of solemnising marriages, in accordance with this Act, and according to the rites of that religion. 45

(5) Every designation of a person as a marriage officer under subsection (4) shall be by written instrument and the date as from which it shall have effect and any limitation to which it is subject shall be specified in such instrument.

(6) The Minister and any officer in the public service authorised thereto by him or her may, upon receiving a written request from a person designated as a marriage officer under subsection (4), revoke, in writing, the designation of such person as a marriage officer for purposes of solemnising marriages under this Act. 5

Marriage officer not compelled to solemnise civil union

6. A marriage officer, other than a marriage officer referred to in section 5, may in writing inform the Minister that he or she objects on the ground of conscience, religion 10 and belief to solemnising a civil union between persons of the same sex, whereupon that marriage officer shall not be compelled to solemnise such civil union.

Prohibition of solemnisation of civil union without production of identity document or prescribed affidavit

7. No marriage officer may solemnise a civil union unless— 15
- (a) each of the parties in question produces to the marriage officer his or her identity document issued under the provisions of the Identification Act;
 - (b) each of such parties furnishes to the marriage officer the prescribed affidavit; or
 - (c) one of such parties produces his or her identity document referred to in 20 paragraph (a) to the marriage officer and the other furnishes to the marriage officer the affidavit referred to in paragraph (b).

Requirements for solemnisation and registration of civil union

8. (1) A person may only be a spouse or partner in one marriage or civil partnership, as the case may be, at any given time. 25

(2) A person in a civil union may not conclude a marriage under the Marriage Act or the Customary Marriages Act.

(3) A person who is married under the Marriage Act or the Customary Marriages Act may not register a civil union.

(4) A prospective civil union partner who has previously been married under the Marriage Act or Customary Marriages Act or registered as a spouse in a marriage or a partner in a civil partnership under this Act, must present a certified copy of the divorce order, or death certificate of the former spouse or partner, as the case may be, to the marriage officer as proof that the previous marriage or civil union has been terminated. 30

(5) The marriage officer may not proceed with the solemnisation and registration of the civil union unless in possession of the relevant documentation referred to in subsection (4). 35

(6) A civil union may only be registered by prospective civil union partners who would, apart from the fact that they are of the same sex, not be prohibited by law from concluding a marriage under the Marriage Act or Customary Marriages Act. 40

Objections to civil union

9. (1) Any person desiring to raise any objection to any proposed civil union must lodge such objection in writing with the marriage officer who is to solemnise such civil union.

(2) Upon receipt of any such objection the marriage officer concerned must inquire 45 into the grounds of the objection and if he or she is satisfied that there is no lawful impediment to the proposed civil union, he or she may solemnise the civil union.

(3) If he or she is not so satisfied, he or she must refuse to solemnise the civil union and record the reasons for such refusal in writing.

Time and place for and presence of parties and witnesses at solemnisation and registration of civil union

10. (1) A marriage officer may solemnise and register a civil union at any time on any day of the week, but is not obliged to solemnise a civil union at any other time than between the hours of eight in the morning and four in the afternoon. 5

(2) A marriage officer must solemnise and register a civil union in a public office or private dwelling-house or on the premises used for such purposes by the marriage officer, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection do not prohibit a marriage officer to solemnise a civil union in any place other than a place mentioned herein, if the civil union must be solemnised in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties. 10

(3) No person is competent to enter into a civil union through any other person acting as his or her representative.

Formula for solemnisation of marriage or civil partnership

15

11. (1) A marriage officer must inquire from the parties appearing before him or her whether their civil union should be known as a marriage or a civil partnership and must thereupon proceed by solemnising the civil union in accordance with the provisions of this section.

(2) In solemnising any civil union, the marriage officer must put the following questions to each of the parties separately, and each of the parties must reply thereto in the affirmative: 20

“Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed marriage/civil partnership with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful spouse/civil partner?”, 25 and thereupon the parties must give each other the right hand and the marriage officer concerned must declare the marriage or civil partnership, as the case may be, solemnised in the following words:

“I declare that A.B. and C.D. here present have been lawfully joined in a marriage/civil partnership.”. 30

(3) If the provisions of this section relating to the questions to be put to each of the parties separately or to the declaration whereby the marriage or civil partnership shall be declared to be solemnised, or to the requirement that the parties must give each other the right hand, have not been strictly complied with owing to—

(a) an error, omission or oversight committed in good faith by the marriage officer; 35

(b) an error, omission or oversight committed in good faith by the parties; or

(c) the physical disability of one or both of the parties, and such civil union has in every other respect been solemnised in accordance with the provisions of this Act, that civil union shall, provided there was no other lawful impediment thereto, be valid and binding. 40

Registration of civil union

12. (1) The prospective civil union partners must individually and in writing declare their willingness to enter into the civil union with one another by signing the prescribed document in the presence of two witnesses. 45

(2) The marriage officer and the two witnesses must sign the prescribed document to certify that the declaration made in terms of section 11(2) was made in their presence.

(3) The marriage officer must issue the partners to the civil union with a registration certificate stating that they have, under this Act, entered into a marriage or a civil partnership, depending on the decision made by the parties in terms of section 11(1). 50

(4) The certificate contemplated in subsection (3) is *prima facie* proof that a valid civil union exists between the partners referred to in the certificate.

(5) Each marriage officer must keep a record of all civil unions conducted by him or her.

(6) The marriage officer must transmit the civil union register and records concerned to the official in the public service with the delegated responsibility for the population register in the area in question.

(7) Upon receipt of the said register the official referred to in subsection (6) must cause the particulars of the civil union concerned to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act.

Legal consequences of civil union

13. (1) The legal consequences of a marriage contemplated in the Marriage Act apply, with such changes as may be required by the context, to a civil union. 10

(2) With the exception of the Marriage Act and the Customary Marriages Act, any reference to—

- (a) marriage in any other law, including the common law, includes, with such changes as may be required by the context, a civil union; and 15
- (b) husband, wife or spouse in any other law, including the common law, includes a civil union partner.

Offences and penalties

14. (1) Any marriage officer who purports to solemnise a civil union which he or she is not authorised under this Act to solemnise or which to his or her knowledge is legally prohibited, and any person not being a marriage officer who purports to solemnise a civil union, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding 12 months. 20

(2) Any marriage officer who demands or receives any fee, gift or reward for or by reason of anything done by him or her as marriage officer in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months. 25

(3) Any marriage officer who knowingly solemnises a civil union in contravention of the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months. 30

(4) Any person who, for the purposes of this Act, makes any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Regulations

15. (1) The Minister may make regulations relating to— 35

- (a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act;
- (b) the fees payable for any certificate issued or any other act performed in terms of this Act; and
- (c) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered. 40

(2) Such regulations may prescribe penalties for a contravention thereof, of—

- (a) a fine not exceeding the amount that, in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), may be imposed as an alternative to imprisonment for a period of six months; or 45
- (b) in lieu of payment of a fine referred to in paragraph (a), imprisonment for a period not exceeding six months.

(3) Any regulation made under the Marriage Act shall, in the absence of a regulation made under subsection (1), apply to the extent that it is practicable and necessary, in order to promote or facilitate the application of this Act: Provided that this subsection shall lapse after a period of one year from the date of the commencement of this Act.

Short title and commencement

5

16. This Act is called the Civil Union Act, 2006, and comes into operation on 30 November 2006 or an earlier date fixed by the President by proclamation in the *Gazette*.

INTERNATIONAL CASES CONTAINED IN THIS BRIEF

Supreme Court of Canada

<u>Case Name</u>	<u>Source</u>
<u>Egan v. Canada</u> [1995] 2 S.C.R. 513	1995 S.C.R LEXIS 375
<u>Law v. Canada (Minister of Employment & Immigration)</u> [1999] 1 S.C.R. 497	1999 S.C.R. LEXIS 14
<u>M. v. H.</u> [1999] 2 S.C.R. 3	1999 S.C.R LEXIS 128
<u>Reference re Same-Sex Marriage</u> [2004] 3 S.C.R. 698	2004 S.C.R. LEXIS 632

British Columbia

<u>EGALE Canada Inc. v. Canada (Attorney General)</u> [2003], 225 D.L.R. (4 th) 472 (B.C.C.A)	2003 D.L.R. LEXIS 105
--	-----------------------

Manitoba

<u>Vogel v. Canada (Attorney General)</u> [2004] 01T 3964 N.L. S.C.T.D.	2004 M.B.C. LEXIS 536
--	-----------------------

Nova Scotia

<u>Boutilier v. Nova Scotia</u> [2004] N.S.J No. 357 QUICKLAW	2004 N.S.C LEXIS 393
--	----------------------

Northwest Territories

<u>Case Name</u>	<u>Source</u>
<u>N.W. v. Canada (Attorney General)</u> [2004] S.J. No. 669 QUICKLAW	2004 SK.C. LEXIS 705

Ontario

<u>Halpern v. Canada (Attorney General)</u> [2003] 65 O.R. (3d) 161 (C.A.)	2003 Ont. Rep. LEXIS 153
---	--------------------------

Quebec

<u>Hendricks v. Québec</u> [2002] R.J.Q. 2506 (Sup. Ct.)	Available on Westlaw: 2004 CarswellQue 1927
---	--

Yukon Territory

<u>Dunbar v. Yukon</u> [2004] Y.J. No. 61 QUICKLAW	2004 BC.C. LEXIS 1707
---	-----------------------

Israel

HCI 3045/05 <u>Ben-Ari v. The Director of Population Administration in the Ministry of the Interior</u> [2006]	Case not Available in English. See Summary at: http://www.samesexmarriage.ca/advocacy/isr231106.htm
--	--

United Kingdom

<u>Case Name</u>	<u>Source</u>
<u>Hyde v. Hyde and Woodmansee</u> L.R. 1 P & D. 130, 133 (1866)	[1861-73] All ER Rep 175 (20 March 1866)(LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)
<u>Ghaidan v. Godin-Mendoza</u> [2004] 2 ALL E.R. 411	[2004] 2 EGLR 132 (21 June 2004) (LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)

South Africa

<u>Fourie and Another v. Minister of Home Affairs and Others</u> 2005 (3) BCLR 241 (SCA) (S.Afr.)	2004 SACLR LEXIS 36
<u>Minister of Home Affairs and Another v. Fourie and Another</u> 2006 (3) BCLR 241 (SCA) (S.Afr.)	Available online: http://www.constitutionalcourt.org.za/Archimages/5257.PDF
<u>National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs</u> 2000 (1) BCLR 39 (CC)	Available online: http://www.constitutionalcourt.org.za/Archimages/1962.PDF

European Court of Human Rights

<u>Case Name</u>	<u>Source</u>
<u>Ghaidan v. Godin-Mendoza</u> [2004] 2 ALL E.R. 411	[2004] 2 EGLR 132 (21 June 2004) (LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)
<u>Karner v. Austria</u> [2003] 14 B.H.R.C. 674 (Eur. Ct. H.R.)	[2003] ECHR 40016/98 (24 July 2003) (LEXIS, Global Legal, European Union, Case Law, Human Rights Cases)
<u>Goodwin v. United Kingdom</u> [2002] 35 E.H.R.R. 18 (Eur. Ct. H.R.)	[2002] 13 BHRC 120 (11 July 2002) (LEXIS, Global Legal, European Union, Case Law, Human Rights Cases)

INTERNATIONAL CASES CONTAINED IN THIS BRIEF

Supreme Court of Canada

<u>Case Name</u>	<u>Source</u>
<u>Egan v. Canada</u> [1995] 2 S.C.R. 513	1995 S.C.R. LEXIS 375
<u>Law v. Canada (Minister of Employment & Immigration)</u> [1999] 1 S.C.R. 497	1999 S.C.R. LEXIS 14
<u>M. v. H.</u> [1999] 2 S.C.R. 3	1999 S.C.R. LEXIS 128
<u>Reference re Same-Sex Marriage</u> [2004] 3 S.C.R. 698	2004 S.C.R. LEXIS 632

British Columbia

<u>EGALE Canada Inc. v. Canada (Attorney General)</u> [2003], 225 D.L.R. (4 th) 472 (B.C.C.A)	2003 D.L.R. LEXIS 105
--	-----------------------

Manitoba

<u>Vogel v. Canada (Attorney General)</u> [2004] 01T 3964 N.L. S.C.T.D.	2004 M.B.C. LEXIS 536
--	-----------------------

Nova Scotia

<u>Boutilier v. Nova Scotia</u> [2004] N.S.J No. 357 QUICKLAW	2004 N.S.C LEXIS 393
--	----------------------

Northwest Territories

<u>Case Name</u>	<u>Source</u>
<u>N.W. v. Canada (Attorney General)</u> [2004] S.J. No. 669 QUICKLAW	2004 SK.C. LEXIS 705

Ontario

<u>Halpern v. Canada (Attorney General)</u> [2003] 65 O.R. (3d) 161 (C.A.)	2003 Ont. Rep. LEXIS 153
---	--------------------------

Quebec

<u>Hendricks v. Québec</u> [2002] R.J.Q. 2506 (Sup. Ct.)	Available on Westlaw: 2004 CarswellQue 1927
---	--

Yukon Territory

<u>Dunbar v. Yukon</u> [2004] Y.J. No. 61 QUICKLAW	2004 BC.C. LEXIS 1707
---	-----------------------

Israel

HCJ 3045/05 <u>Ben-Ari v. The Director of Population Administration in the Ministry of the Interior</u> [2006]	Case not Available in English. See Summary at: http://www.samesexmarriage.ca/advocacy/isr231106.htm
--	--

United Kingdom

<u>Case Name</u>	<u>Source</u>
<u>Hyde v. Hyde and Woodmansee</u> L.R. 1 P & D. 130, 133 (1866)	[1861-73] All ER Rep 175 (20 March 1866)(LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)
<u>Ghaidan v. Godin-Mendoza</u> [2004] 2 ALL E.R. 411	[2004] 2 EGLR 132 (21 June 2004) (LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)

South Africa

<u>Fourie and Another v. Minister of Home Affairs and Others</u> 2005 (3) BCLR 241 (SCA) (S.Afr.)	2004 SACLR LEXIS 36
<u>Minister of Home Affairs and Another v. Fourie and Another</u> 2006 (3) BCLR 241 (SCA) (S.Afr.)	Available online: http://www.constitutionalcourt.org.za/Archimages/5257.PDF
<u>National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs</u> 2000 (1) BCLR 39 (CC)	Available online: http://www.constitutionalcourt.org.za/Archimages/1962.PDF

European Court of Human Rights

<u>Case Name</u>	<u>Source</u>
<u>Ghaidan v. Godin-Mendoza</u> [2004] 2 ALL E.R. 411	[2004] 2 EGLR 132 (21 June 2004) (LEXIS, Global Legal, United Kingdom, Case Law, UK Cases, Combined Courts)
<u>Karner v. Austria</u> [2003] 14 B.H.R.C. 674 (Eur. Ct. H.R.)	[2003] ECHR 40016/98 (24 July 2003) (LEXIS, Global Legal, European Union, Case Law, Human Rights Cases)
<u>Goodwin v. United Kingdom</u> [2002] 35 E.H.R.R. 18 (Eur. Ct. H.R.)	[2002] 13 BHRC 120 (11 July 2002) (LEXIS, Global Legal, European Union, Case Law, Human Rights Cases)