

Manitoba Court Rules In Favour Of Gay Marriage, Unopposed By Ottawa

Michelle Macafee, Canadian Press

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WINNIPEG (CP) - Two days before their long-planned United Church nuptials, Laura Fohse and Jordan Cantwell picked up an unexpected wedding present Thursday - a marriage licence granted just hours after a Manitoba judge declared same-sex unions legal.

"It's amazing, like whew!" Cantwell said after receiving the licence at a downtown vital statistics office. Cantwell said she and Fohse, both ministers in the United Church, have been planning their wedding since February.

But they are overjoyed with the timing of a court decision that declared the province's previous definition of marriage as a union between a man and a woman to be unconstitutional.

Instead, Justice Douglas Yard of Court of Queen's Bench ordered the definition of marriage to be "reformulated to mean a voluntary union for life of two persons at the exclusion of all others."

"I'm extremely pleased that our wedding this weekend will not only be celebrated and witnessed by our friends and family and by God in the sanctity of our church, but it will also be recognized by our government," said Fohse.

"It just makes the whole event seem so much more complete."

Yard's ruling followed an unprecedented decision by the federal government not to oppose, or ask for an adjournment of, a same-sex marriage lawsuit in Canada.

The Manitoba government also chose not to fight the case, which was brought forward last month by Fohse and Cantwell and two other gay couples.

The province is the fifth jurisdiction, behind the Yukon, British Columbia, Ontario and Quebec, to legalize same-sex marriage.

A similar case is to be heard in Nova Scotia this fall.

Yard said he based his decision on the "overwhelming and cumulative effect" of court rulings across Canada, including three different Court of Appeal decisions, that found the traditional definition of marriage violates the equality provision of the Charter of Rights and Freedoms.

He described the precedents as "elegant, cogent and compelling."

While Yard's ruling was met with applause, hugs and tears of joy among the many supporters crowded into the small courtroom, opponents were quick to express their disappointment.

Roman Catholic Archbishop James Weisgerber of Winnipeg called the traditional definition of marriage "a foundational principle of our society."

"It is difficult to understand how the unique importance of marriage to both children and society will not be gravely undermined by including in the definition of marriage unions which are not equipped for reproduction," Weisgerber said in a statement.

Advocates of same-sex marriage say they expect similar cases to be filed in all remaining jurisdictions in Canada.

However, they support the federal government's decision to refer its proposed same-sex marriage legislation to the Supreme Court of Canada. The case will be heard Oct. 6.

While the current provincial court decisions on the issue will be influential for the Supreme Court, the highest court's opinion is key to setting national precedent, said Karen Busby, a constitutional law professor and member of the gay rights lobby group Egale.

"Theoretically a different federal government could come along and pass federal law to take away the right to same-sex marriage," said Busby.

"If we have the Supreme Court of Canada saying it's unconstitutional not to permit same-sex marriages, then it's harder for the federal government to pass legislation that goes in the other direction."

A federal Justice Department spokeswoman downplayed the government's decision to no longer ask for adjournments in provincial cases.

Renee Filiatrault said Ottawa's position has been consistent. The various court decisions across Canada only strengthen the

government's argument that a reference by the Supreme Court of Canada would ensure all Canadians are treated equally, she added.

The federal government has jurisdiction over the definition of marriage. It had argued, to no avail, against changing it in cases in B.C., Ontario and Quebec.

In the Yukon this year, the federal government didn't oppose the case, but failed in a bid for an adjournment pending the Supreme Court reference.

Manitoba Justice Minister Gord Mackintosh said his government chose not to fight the lawsuit because it wants the federal government to come up with a law that will apply to everyone.

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