

July 23, 2009

Same-sex marriage complaint upheld

The Saskatchewan Human Rights Commission announced today it is pleased with the decision of the Court of Queen's Bench for Saskatchewan to uphold the decision of the Saskatchewan Human Rights Tribunal that M.J. was discriminated against when Marriage Commissioner Orville Nichols declined to marry him and his same-sex partner.

“Marriage commissioners are statutory officers appointed to perform civil marriages for individuals who do not want a religious marriage or are unable to be married within their religious group,” said Rebecca McLellan, Manager of Operations. “To allow public officials to insert their personal beliefs into decisions about who should and who should not receive a public service would undermine the protections of *The Saskatchewan Human Rights Code* against discrimination on the basis of all prohibited grounds of discrimination, including sexual orientation, gender, ancestry, marital status and religion.”

Marriage Commissioner Nichols argued in his appeal that he has the right to be accommodated for his religious beliefs by declining to officiate at same-sex marriages. In its decision, the Court of Queen's Bench stated that Mr. Nichols has a personal right to freedom of religion but, when serving as a public official, he has an obligation to carry out the duties required of him by *The Marriage Act* to perform civil marriages. It held that, while acting as a Marriage Commissioner on behalf of government, Mr. Nichols was not permitted to consider his personal religious views when performing his public functions.

The Court also noted that “. . . few religious institutions countenance gay marriage at this time. Without the availability of civil marriage, the promise of equal opportunity would be unrealized. If marriage commissioners are entitled to incorporate their personal beliefs into the requirements for civil marriage, equal opportunity is denied.”

“We are encouraged by the decision of the Court of Queen’s Bench for Saskatchewan which found Marriage Commissioners must perform their duties in a way that does not infringe on the rights of others,” said Ms. McLellan.

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