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Illegal for Marriage Commissioners to Turn Away Same-Sex Couples

“The Saskatchewan Human Rights Commission is very pleased that the Saskatchewan Court of Appeal decided proposed changes to *The Marriage Act* were unconstitutional,” said Chief Commissioner Judge David Arnot today. “The Court’s decision affirms the equality of all persons and the importance of the fundamental protections set out in *The Saskatchewan Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.”

The proposed changes would have allowed marriage commissioners to refuse to perform civil marriages if doing so would be contrary to their religious beliefs. Events leading up to the Court of Appeal decision began with a complaint to the Commission in 2005 when a marriage commissioner refused to perform a civil marriage for an applicant because his partner was another man. The complainant said the experience was devastating: “I couldn’t believe that as a human being I wasn’t going to be treated as a real person.” Civil marriages are often the only option for same-sex couples, because courts have held that religious officials can refuse to marry people because of their sexual orientation.

The complaint was upheld by the Saskatchewan Human Rights Tribunal and Court of Queen’s Bench and was in the process of being appealed to the Court of Appeal when the government drafted changes to the *Marriage Act* and asked the Court of Appeal to comment on whether they were consistent with the *Charter*. In finding the amendments to be discriminatory, Justice Richards referred to the “historical marginalization and mistreatment of gay and lesbian individuals.” He said that putting gay and lesbian

individuals in a situation where marriage commissioners could refuse to provide their services solely because of sexual orientation would “perpetuate disadvantage and involve stereotypes about the worthiness of same-sex unions.”

Many of the rights and freedoms protected by the *Charter* are also protected by *The Saskatchewan Human Rights Code*, which the courts have described as “quasi-constitutional” because of the importance of human rights. However, the proposed amendments stated that they would apply “notwithstanding *The Saskatchewan Human Rights Code*.” The Court of Appeal described the use of such a broad override of the *Human Rights Code* as extraordinary and unprecedented.

“This decision does not interfere with freedom of religion,” said Chief Commissioner Arnot. “It simply says that when people choose to become government officials, they must perform their role in a non-discriminatory way.” Justice Richards stated, “Marriage commissioners do not act as private citizens when they discharge their official duties. Rather, they serve as agents of the Province.” He referred to Saskatchewan’s proud tradition of public service in which “the apparatus of the state serves everyone equally without providing better, poorer or different services to one individual compared to another by making distinctions on the basis of factors like race, religion or gender.”

“This decision upholds the fundamental right of all Saskatchewan residents to equality, dignity and equal access to public services,” said Chief Commissioner Arnot. “It is a victory for human rights, for disadvantaged groups, and for our community as a whole.”

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For more information, contact:
Karen Ross
Saskatchewan Human Rights Commission
(306) 933-5952