

CANADIAN LEADERS AGREE TO PROPOSE GAY MARRIAGE LAW

RESPONSE TO THE COURTS

Legislative Approval Expected — Rights Advocates See an Example for the U.S.

By CLIFFORD KRAUSS

TORONTO, June 17 — The Canadian cabinet approved a new national policy today to open marriage to gay couples, paving the way for Canada to become the third country to allow same-sex unions.

"You have to look at history as an evolution of society," Prime Minister Jean Chrétien told reporters after a meeting of his cabinet. "According to the interpretation of the courts these unions should be legal in Canada. We will ensure that our legislation includes and legally recognizes the union of same-sex couples."

The decision to redefine marriage in Canada to include unions between men and between women will immediately take effect in Ontario, Canada's most populous province and one that borders the United States. Last week, the province's highest court ruled that current federal marriage laws are discriminatory and therefore unconstitutional.

Once aides to Mr. Chrétien draft the necessary legislation, the House of Commons is expected to pass it into law in the next few months. Although leaders of the two conservative parties and some Liberals have expressed reservations, there is little organized opposition to such legislation, and public opinion polls show a solid majority in favor of the change.

The policy opens the way for same-sex couples from the United States and around the world to travel here to marry, since Canada has no marriage residency requirements. In addition, gay-rights advocates in the United States are already declaring that Canada will serve as a vivid example to Americans that same-sex marriage is workable and offers no challenge to traditional heterosexual family life.

No American state allows same-sex marriage, but Vermont has enacted a law providing for civil unions, which allow gay couples many of the benefits of marriage.

Canadian marriage licenses have always been accepted in the United States, but now that the definition of marriage in the two countries appears likely to diverge, legal challenges to same-sex couples claiming rights and privileges deriving from their Canadian marriages seem certain to arise in at least some states. Issues over adoption rights, inheritance, insurance benefits and matters as mundane as sharing health club memberships are likely to arise in courts and state legislatures.

Canada's new marriage policy

Canadian Leaders Decide to Propose a Same-Sex Marriage Law

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comes at a time when the government is also pushing for legislation that would decriminalize the possession of small amounts of marijuana, another policy that diverges sharply from American federal practices.

Polling experts and social scientists note that conservative religious views are much less influential here than in the United States, with regular church attendance far lower and with fundamentalist Protestant groups attracting far less support.

Mr. Chrétien said the government would also ask the Supreme Court for advice to make the new legislation invulnerable to appeals by provincial governments seeking to invalidate it in their jurisdictions.

However, the conservative premier of Alberta, Ralph Klein, has threatened a legal fight to exclude his province from the new rules.

Gay-rights advocates celebrated the decision as a civil-rights milestone.

"June 17 of 2003 is going to be a day gay and lesbian people remember for a long, long time to come," said Svend Robinson, a gay member of the House of Commons from the left-of-center New Democratic Party, in a television interview immediately after the announcement.

Canada's action follows in the steps of the Netherlands and Belgium, but it is likely to have a much larger impact on the United States. Only a few American same-sex couples have taken advantage of expanded marriage laws in the Netherlands because of its long residency requirement, and Belgium will only allow marriages of foreign couples from countries that already allow such unions. But Canada is nearby and has no such restrictions.

"What this presents for American couples is an opportunity to easily enter into a legal marriage and come back to the United States with a powerful tool to break down the remaining discrimination here," said Lavi Soloway, a Canadian-born lawyer and founder of the Lesbian and Gay Immigration Rights Task Force in New York.

Mr. Soloway said Canada's marriage reform would go a long way to changing public perceptions and attitudes in the United States, although he added that the march to full acceptance would be slow.

"What we are in for is a long gradual struggle to win full equal recognition of these marriages," he said.

Since the Ontario appeals court ruled last Tuesday in favor of same-sex unions, only a few minor hurdles stand in the way of legalizing them throughout Canada. Since the court decision last week, Ontario has already issued 131 marriage licenses to same-sex couples, including four from the United States.

The most important remaining step is a vote in the House of Commons sometime in the next few months, one in which Mr. Chrétien said he will allow Liberal members to vote their consciences.

Leaders of the Bloc Québécois and the New Democratic Party have said their members are solidly behind the change, and with a majority of Liberals they should be able to enact the legislation easily despite opposition from two conservative parties.

The Supreme Court, which has ruled repeatedly in favor of extending gay rights, appears to support

the efforts of the government to extend marital rights.

"Every movement has its human rights milestones," said John Fisher, director of advocacy for Égale Canada, a group that has been working for same-sex marriage in the courts. "Just as the day women acquired the right to vote, when racial segregation was ruled as unconstitutional, so too, same-sex couples have finally acquired the right to marry."

To protect religious freedom, the cabinet decided that the planned federal legislation would allow religious institutions to refuse to conduct

same-sex marriages.

A three-member panel of the Ontario Court of Appeal declared unambiguously last week that the definition of marriage as currently set by federal government — as a union between a man and a woman — was invalid and must be changed immediately to include same-sex couples.

It ruled that under the Charter of Rights and Freedoms, roughly the Canadian equivalent of the Bill of Rights, "the existing common-law definition of marriage violates the couple's equality rights on the basis of sexual orientation."

It added, "In doing so, it offends the dignity of persons in same-sex relationships."

The ruling was similar in argument but more immediate in impact to two previous decisions by provincial courts in Quebec and British Columbia.

Last year, the Quebec Superior Court ruled that the prohibition of same-sex marriage was unconstitutional, and the British Columbia Court of Appeal did likewise last month. They gave the federal government until mid-2004 to change its marriage rules. Since then legislative panels have been studying ways to put the rulings into effect.

Members of the Liberal federal cabinet overwhelmingly supported

granting same-sex couples marriage rights, but members were divided over whether to legislate an immediate change or first to request guidance from the federal Supreme Court. After hours of debate, the cabinet decided to do both, hoping for the imprimatur of both government bodies to assure maximum popular acceptance of the new law.

"I think on balance people recognize that the decisions of the courts are really pointing in a direction from which it would be difficult — if we wanted to — to turn back," said Deputy Prime Minister John Manley, who is also a candidate to replace Prime Minister Chrétien as Liberal Party leader later this year.