

**CONSTITUENCY OFFICE**  
Unit 119  
4800 Sheppard Ave. East  
Scarborough, Ontario  
M1S 4N5  
Tel: (416) 298-4224  
Fax: (416) 298-6035  
Web Site: [www.derekleemp.com](http://www.derekleemp.com)



**House of Commons  
Chambre des communes**

**OTTAWA OFFICE**  
Room 633, Confederation Building  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Tel: (613) 996-9681  
Fax: (613) 996-6643  
Email: [leed@parl.gc.ca](mailto:leed@parl.gc.ca)

**Derek Lee, M.P.**  
Scarborough - Rouge River

April 29, 2005

Dear Constituent,

Re: Civil Marriage Act (Bill C-38)

Thank you for raising the issue of same-sex marriage with me in recent correspondence. It will not surprise you to know that your letter was among many that I've received on this subject. The views expressed by my constituents – and Canadians in general – do vary significantly, so I'm glad to have an opportunity to respond with recent developments, as well as the position I've taken in Parliament, and intend to take in voting on this Bill.

As you may know, the Ontario Court of Appeal, in rendering a judgment in a Charter challenge case, and without prior notice to the public or Parliament, struck down the traditional definition of marriage as unconstitutional and replaced it immediately with a definition that allowed same-sex marriages to occur within hours in that province. Courts in several other provinces followed with similar decisions, and since then, same-sex marriages are taking place in some, but not all provinces.

At that time, I and my colleagues in the House of Commons Justice Committee were at work on that subject, referred to us by an Order of the House. We were searching for a legal solution to the alleged inequality of the law, which did not extend any legal framework which would accommodate the interests of common-law conjugal relationships of gay, lesbian and trans-gendered persons. With the Ontario Court decision, that work came to an abrupt halt. I regard the way the Court rendered its judgment as an inappropriate undermining of the proper legislative role of Parliament. Given that Canadians believe that this issue has social, moral and anthropological implications (not just the legal ones the Courts considered), the Court could have, and should have, allowed our Parliament to generate a resolution.

The several provincial court decisions were not appealed by the federal government, nor were they successfully appealed by others. In response, the government opted to draft legislation that would adopt this new marriage definition, and submitted it, along with specific questions, to the Supreme Court of Canada in a Reference. The Supreme Court found this new definition to be valid under the Canadian Constitution's Charter of Rights and Freedoms. It also confirmed that religious freedom to reject same-sex

marriage was equally protected. What this would mean is that under the proposed legislation, same-sex couples would be able to marry, but also that religious officials and institutions could not be forced to marry them against their beliefs.

However, the Supreme Court regrettably refused to answer a question, on technical grounds, that would have tested – at the highest level – the constitutionality of the traditional definition of marriage.

I have found reasons to regret all the court decisions and the federal Cabinet’s choice not to appeal, even though I see the legal reasoning lying behind them. While I accept that our law had become inadequate, in failing to accommodate and extend a framework for non-traditional relationships and the benefits of law generally, it was and continues to be my view that a solution to these deficiencies might be found by creating a new legal framework (perhaps called ‘Civil Union’) which all persons, including those in opposite-sex relationships, could access to formalize and protect their relationships. This would allow traditional marriage to remain unchanged for persons, faith groups and other bodies as they might wish. This is conceptually a little like building a new home for yourself and your new needs, instead of renovating the old one. Not all will agree with my views on this proposal, but it would allow religious bodies, cultural groups and persons to retain “marriage” as it has been for some centuries, without imposing a new type of marriage (designed by judges!) on them.

Following the Supreme Court Reference result, the federal government has taken the draft Bill, and with minor changes, introduced it as Bill C-38, the *Civil Marriage Act*. That might have been fine, if the Bill did in fact just deal (as the title suggests) with “civil marriage”, but it deals with all marriages and proposes the same definition of marriage designed by the judges of the Courts of Appeal and accepted by the Supreme Court of Canada in the Reference. Fortunately for our House of Commons and our Government Caucus, the Prime Minister has accepted the use of a free vote in the House (although Cabinet Ministers must support the Bill).

It will not surprise you that all political parties in the House of Commons have at least some division among their Members on this Bill. No party will have all its Members fully in favour or opposed. This, of course, reflects the division in opinion generally existing among the Canadians we represent. Having served the Riding of Scarborough–Rouge River for 16 years, I know our people well, and I find them massively opposed to the Bill as now drafted.

That being the case, **I will vote against Bill C-38**. Furthermore, I will be prepared to work for adoption of the “civil union” concept in new legislation, should Bill C-38 not become law.

Thank you for your interest – for contributing to the dialogue on this important issue, and for allowing me an opportunity to respond. Please feel free to contact my office if you require any further information.

Yours sincerely,



Derek Lee, M.P.