

**IN THE COURT OF SHAKESPEARE**  
(On Appeal from the Ontario Court of Appeal)

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

Applicant

- and -

**PETE PEARS and BEN BRITTEN et al.**

Respondent

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**FACTUM OF THE APPLICANT**

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Group 9

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**INDEX**

FACTUM OF THE APPLICANT .....	1
INDEX .....	i
PART I - FACTS .....	1
PART II - ISSUES .....	2
PART III - ARGUMENT .....	3
I.    THE HARMONIZATION OF MALE AND FEMALE CONTRIBUTIONS, STRATEGIES, AND PERSPECTIVES REPRESENTS A VITAL ASPECT OF SHAKESPEARE’S INVESTMENT IN HETEROSEXUAL UNIONS. ....	3
1.1    Men and women occupy distinct roles within Shakespeare’s comedies, though they operate within a shared social context .....	3
1.2    The marriage of male and female principles, contributions, and strengths represents an essential, inalterable feature of sanctified marriage in Shakespeare, which necessarily must remain heterosexual .....	4
1.3    The principle of faith informs the character of heterosexual marriage, and represents an essential and primary characteristic of the heterosexual marriage-bond. 4	
1.4    The principle of faith embedded within heterosexual marriage connects marriage-bonds with a sanctified order within Shakespeare, and so ought to represent grounds for the legal preservation of marriage as an exclusively heterosexual institution. ....	6
II.   THE BLOOD BONDS OF OFFSPRING CREATED THROUGH HETEROSEXUAL MARRIAGE REPRESENT FUNDAMENTAL SOCIAL ORDERING PRINCIPLES AND ESSENTIAL ELEMENTS OF INDIVIDUAL IDENTITY IN SHAKESPEARE. ....	6
2.1    Procreation is a fundamental aspect of marriage in Shakespeare. ....	6
2.2    Procreation within marriage creates blood-bonds that function as important sources of social order in Shakespeare. ....	7
2.3    Procreation within marriage creates blood-bonds , which serve as significant sources of individual identity and moral character in Shakespeare. ....	7
III.  SHAKESPEARE’S EMPHASIS UPON HUMAN MORTALITY AND THE LINEAR STRUCTURE OF HUMAN LIFE UNDERWRITES HIS INTEREST IN BOTH INTRA AND INTER-GENERATIONAL BONDS OF KINSHIP, WHICH ARE STABILIZED BY HETEROSEXUAL MARRIAGE AND PROCREATION. ....	9
3.1    Characters in Shakespeare recognize their own mortality, and connect that mortality with the possibility of self-perpetuation through the generation of legitimate offspring within heterosexual marriage. ....	9
3.2    The importance assigned to duty to one’s blood-relatives and family in Shakespeare is a feature of characters’ awareness of the dues they owe to both their predecessors and future offspring, and reflects an awareness of temporal, linear qualities associated with individual human lives, which the institution of heterosexual marriage extends through the establishment of family legacy. ....	9

3.3 Same-sex love fails to take into account the basic exigencies of human temporal existence and, consequently, fails to emphasize the intra and inter-generational network of relations associated with familial bonds and responsibilities in Shakespeare. ....	10
IV. THE VALUES EMPHASIZED IN SHAKESPEARE AS ESSENTIAL TO MARRIAGE ARE STILL IMPORTANT WITHIN THE INTERPRETIVE COMMUNITY, AND AS SUCH, THE HETEROSEXUAL DEFINITION OF MARRIAGE SHOULD BE MAINTAINED. ....	11
PART IV – ORDER SOUGHT .....	13
PART V – LIST OF AUTHORITIES .....	1

## **PART I - FACTS**

1. Pete Pears and Ben Britten, along with seven other gay and lesbian couples, applied for civil marriage licenses from the Clerk of the City of Toronto, where they all live.
2. The Clerk applied to the court for directions on whether or not the licenses could be granted, as the existing definition of common law marriage was “the lawful and voluntary union of one man and one woman to the exclusion of all others” and did not allow the granting of a license to couples of the same sex.
3. The couples applied to the court themselves, and based on that application, the Ontario Divisional Court unanimously held that the common law definition of marriage infringed the couples’ equality rights guaranteed under the Canadian Charter of Rights and Freedoms.
4. The Attorney General of Canada appealed the judgment on the equality issue, but the Ontario Court of Appeal upheld the decision of the Divisional Court.
5. To remedy the infringement of the constitutional rights, the Court of Appeal declared the existing common law definition of marriage invalid; reformulated the definition as “the voluntary union for life of two persons to the exclusion of all others; ordered the declaration of the invalidity and the reformulated definition to have immediate effect; and ordered the Clerk of the City of Toronto to issue marriage licenses to the seven couples.
6. The Attorney General of Canada now appeals the judgment of the Court of Appeal of Ontario to the Court of Shakespeare, seeking to rescind the order to the Clerk of the City of Toronto to issue the marriage licenses.

## **PART II - ISSUES**

### **I. Is the transformation of the common law definition of marriage consistent with the laws of Shakespeare?**

8. The Applicant respectfully submits that the transformation of the common law definition of marriage is not consistent with the laws of Shakespeare.
9. Specifically, the Applicant respectfully submits that:
  - I. The harmonization of male and female contributions, strategies, and perspectives represents a vital aspect of Shakespeare's investment in heterosexual unions.
  - II. The blood bonds of offspring created through heterosexual marriage represent fundamental social ordering principles and essential elements of individual identity in Shakespeare.
  - III. Shakespeare's emphasis upon human mortality and the linear structure of human life underwrites his interest in both intra and inter-generational bonds of kinship, which are stabilized by heterosexual marriage and procreation.
  - IV. The values emphasized in Shakespeare as essential to marriage are still important within the interpretive community, and as such, the heterosexual definition of marriage should be maintained.

### PART III - ARGUMENT

#### I. THE HARMONIZATION OF MALE AND FEMALE CONTRIBUTIONS, STRATEGIES, AND PERSPECTIVES REPRESENTS A VITAL ASPECT OF SHAKESPEARE'S INVESTMENT IN HETEROSEXUAL UNIONS.

##### **1.1 Men and women occupy distinct roles within Shakespeare's comedies, though they operate within a shared social context**

12. Paul Yachnin points out that men act autonomously within the political world, while women who effect change within that world do so largely under the protection and agency of powerful men. *Twelfth Night's* Viola is an important example of this type of action couched in male authority; she is able to affect Olivia only once she positions herself within the sphere of Orsino's agency.

Paul Yachnin, "Gargantua's Mouth", in *Stage-Wrights* 129-169 (Philadelphia: University of Pennsylvania Press, 1997).  
*Twelfth Night*.

13. Shakespeare emphasizes the different positions and perspectives occupied by differently gendered marriage-partners. In *The Winter's Tale*, this is expressed in terms of the dream-world and the world of action. During Hermione's trial, she proclaims that her life "stands in the level of" Leontes' "dreams." For Leontes, Hermione's "actions are my dreams."

*The Winter's Tale*, 3.2.79-80.

14. In contrast to men, women represent a principle of interior conscience and ephemeral subjectivity, which is not able to express itself in the world in the overt way that male power, does. Hermione's powerful self-defense speech reveals the extent to which her husband's suspicion, backed by the political might he wields, condemns her to silence, and condemns her inward innocence to unrepresentable invisibility. Her innocence is true, yet it is "more than history can pattern."

*The Winter's Tale*, 3.2.21-53.

15. In matters of love, women contain more than their outward surface betrays. Viola likens the female experience of love to sitting "like Patience upon a monument, smiling at grief." *A Midsummer Night's Dream's* Hermia figures patience as a "customary cross, as due to love as thoughts, and dreams, and sighs, wishes and tears." These examples suggest at the existence of an interior essence that merely historical or objective proofs fail to evidence.

*Twelfth Night*, 2.4.111-119

*A Midsummer Night's Dream*, 1.1.153-155.

16. Powerful male characters in Shakespeare frequently act and exert their authority without sufficient awareness of the implications of their actions and without sufficient insight into truth or conscience. Leontes' suspicion of Hermione's infidelity is erroneous, but he nevertheless possesses the power to strip Hermione of all the comforts, privileges and rights due to a human being, wife, and mother. Male political power needs to marry true conscience if it is to be executed justly in Shakespeare.

*The Winter's Tale*, 3.2.89-104.

17. Conversely, Shakespeare recognizes that private, subjective emotionality, including the subjective experience of love, needs a political and social 'home' in order to flourish. Camillo reminds the young lovers Florizel and Perdita of this, once Perdita's dream of marriage to Florizel "awakes" to the reality of Polixenes' disapproval.

*The Winter's Tale*, 4.4.445-446, 4.4.563-571.

18. Despite the force of male-authorized political power, the force of Hermione's invisible innocence is keenly felt in *The Winter's Tale*, even after her death. Her faith in her innocence, albeit inward and unprovable, continues to affect politically powerful men like Antigonus and Leontes throughout the play. Antigonus describes the force of being visited by her ghost in powerful terms, as being "like very sanctity." He states that "dreams are toys, yet for this once, yea surreptitiously, I will be squared by this." Leontes continues to grieve for his wife fifteen years after her death, and refuses to remarry, though remarriage would greatly benefit the kingdom.

*The Winter's Tale*, 3.3.22, 3.3.38-40, 5.1.

**1.2 The marriage of male and female principles, contributions, and strengths represents an essential, inalterable feature of sanctified marriage in Shakespeare, which necessarily must remain heterosexual .**

19. When male and female principles fall out of balance, both natural and human worlds resonate with imbalance and injustice in Shakespeare. Titania and Oberon's rift produces chaotic effects in the natural world and unstable weather patterns. Leontes' failure to have any measure of faith in Hermione's innocence results in her unjust condemnation and in the exile and abandonment of their newborn daughter.

*A Midsummer Night's Dream*, 2.1.81-116.

*The Winter's Tale*.

20. Unity and balance result when both male and female principles are reconciled through marriage in Shakespeare. In *The Winter's Tale*, the reunion of man and wife, along with their child, is described as an emotionally and empirically convincing spectacle by onlookers. "There is such unity in the proofs," is the comment made by a messenger, leaving no doubt that the lost child has been found and the oracle fulfilled through the reunion of this family.

*The Winter's Tale*, 5.2.30-32.

**1.3 The principle of faith informs the character of heterosexual marriage, and represents an essential and primary characteristic of the heterosexual marriage-bond.**

21. Laws and customs are changeable, but faith and violations against it cannot be erased in Shakespeare. In *The Winter's Tale*, Time remarks that "it is in my power to o'erthrow law, and in one self-born hour to plant and o'erwhelm custom." If both law and custom are changeable, faith remains an unchanging criterion for the success of marriage within the play. Leontes' violation against the bonds of his marriage represents a violation of faith, expressed in the initial doubt he expresses over Hermione's

innocence. Revivifying his marriage becomes possible only once his faith is re-awakened, as when Paulina insists that “it is required you do awake your faith” in order for the statue come back to life.

*The Winter’s Tale*. 5.3.95.

22. Laws and customs are changeable, but faith and violations against it cannot be erased in Shakespeare. Where law and custom change according to the times, heterosexual marriage-bonds taken in faith are insoluble in Shakespeare. The faith that underwrites these marriages represents a principle that supersedes time’s ravages, and remains unchanged throughout plays like *The Winter’s Tale* that are concerned with marriage.

*The Winter’s Tale*, 4.1.7-9, 5.3.94.

23. The connection of faith with marriage lies at the heart of the oracle that serves as *The Winter’s Tale*’s moral and structural meta-principle. The oracle represents an important unifying principle within the play, and one that law, custom, and individual opinion cannot alter. The reverent language used to describe the “ear deaf’ning voice o’th’oracle, kin to Jove’s thunder” depicts human encounters with it as deeply humbling experiences. Cleomenes’ experience before the oracle affords him with the perspective that “I was nothing” - in other words, his individual will is completely overwhelmed by his contact with its transcendent largesse. The oracle’s insistence upon heterosexual marriage and progeny provides an overwhelming argument for heterosexual coupling as participation in a transcendent, eternal union.

*The Winter’s Tale*, 3.1.5-11.

24. Even where individual instances of heterosexual pairings do not convincingly point towards a stable heterosexual dynamic between fiancées (as in *Twelfth Night*, where the choice of marriage-partners borders on the spontaneous and arbitrary), heterosexual marriage still provides the general means for individuals to participate in the transcendent structure insisted upon by Shakespeare in plays like *The Winter’s Tale*. There is no suggestion within Shakespeare that the overarching structural principle of heterosexual marriage is subject to redefinition, only the suggestion that some marriages may be more stable and happy than others. The possibility for meaningful individual happiness in Shakespeare always remains embedded within overarching normative heterosexual principles and structures.

*Twelfth Night*.

*The Winter’s Tale*.

25. What Shakespeare does emphasize in plays like *A Midsummer Night’s Dream* and *Twelfth Night* is the instability and fickleness of erotic attraction. If erotic desire alone is to form the basis for entrance into the sanctified order of marriage, there appears to be little hope that the vows taken will afford a meaningful or lasting bond. In *A Midsummer Night’s Dream*, erotic love is reduced to a mere trick played on humans by faeries. In *Twelfth Night* love’s object is as changeable as, for example, Olivia’s quick replacement of Viola for Sebastian - the replacement of one love-object for an oppositely-gendered one.

*A Midsummer Night’s Dream*.

*Twelfth Night*.

**1.4 The principle of faith embedded within heterosexual marriage connects marriage-bonds with a sanctified order within Shakespeare, and so ought to represent grounds for the legal preservation of marriage as an exclusively heterosexual institution.**

26. The law ought to accord with Shakespeare's representation of heterosexual marriage as nested in faith. The principle of faith affords the possibility that not all heterosexual marriages will be guaranteed the same degree of happiness or functionality, but it does afford the possibility of uniting men and women under a higher principle that binds them together in a sanctified institution.

27. Characters in Shakespeare occasionally acknowledge individual human agents' limited ability to work out complex and highly volatile circumstantial particulars. Viola, for instance, pleads for time to "untangle this, not I; it is too hard a knot for me to unwind." The principle of faith is a type of surrender to the structural binding principle inherent in the sanctified higher order, represented in sanctified heterosexual marriage. Hermione's hope of having her innocence ultimately validated is bound up with her faith in a transcendent principle of justice that will right the wrong committed against her. She proclaims: "If powers divine behold our human actions, as they do, I doubt not then but innocence shall make false accusation blush and tyranny tremble at patience." When Hermione's statue comes to life, Leontes declares: "O, she's warm! If this be magic, let it be an art as lawful as eating!" His recognition of the warm life radiating from the statue is a recognition of his own error in judgment, and a validation of Hermione's blamelessness, as well as a validation of her 'invisible' contribution to their marriage. The scene's 'magical' overtones for Leontes evidence his wonder both at faith's power and his own marriage's embeddedness within that sanctified, invisible order, along with his debt to Hermione's inward sense of conscience and virtue.

*Twelfth Night*, 2.2.40.

*The Winter's Tale*, 5.3.110-111, 3.2.27-31.

28. Although it is within the realm of possibility to include homosexuals within the legal definition of marriage, such decisions would not be in accordance with the principle of faith in so doing. Where Shakespeare's comedies as a whole seem to experiment with individual characters' suitability for marriage and compatibility with other, oppositely-gendered characters (with some couples more convincingly suited to it than others), the experiment always ends in marriage, and the play's homosocial and homoerotic digressions are made to conform through the arc of the drama to comic conventions and the convention of heterosexual marriage.

**II. THE BLOOD BONDS OF OFFSPRING CREATED THROUGH HETEROSEXUAL MARRIAGE REPRESENT FUNDAMENTAL SOCIAL ORDERING PRINCIPLES AND ESSENTIAL ELEMENTS OF INDIVIDUAL IDENTITY IN SHAKESPEARE.**

**2.1 Procreation is a fundamental aspect of marriage in Shakespeare.**

29. Throughout the laws of Shakespeare, emphasis is placed on the procreative aspect of marriage. In *As You Like It*, Rosalind's love for Orlando is figured a desire to procreate with him. She describes him as her "child's father."

*As You Like It*, 1.3.11.

30. Procreation is also of paramount significance in the faeries' final blessing of the lovers in *A Midsummer Night's Dream*, which ensures that their children will be lucky and properly-formed, that "all the couples three ever true in loving be; and the blots of nature's hand shall not in their issue stand."

*A Midsummer Night's Dream*, 5.1.396-405.

31. Finally, Hymen's song in *As You Like It* also points to procreation as the most important aspect of marriage: "'Tis Hymen peoples every town; high wedlock then be honorèd."

*As You Like It*, 5.4.137-138.

## **2.2 Procreation within marriage creates blood-bonds that function as important sources of social order in Shakespeare.**

32. *The Winter's Tale* demonstrates that the blood bonds created within heterosexual marriage are important social ordering principles. Camillo's plea to Polixenes to take back his wife, despite Leontes' suspicion of her having been unfaithful, underscores the central role blood bonds play in maintaining the kingdom's political and social stability.

*The Winter's Tale*, 1.2.330-336.

33. Once his son and wife die, Leontes' future legacy becomes unstable. Dion makes this point clear in emphasizing to Paulina that her reluctance to allow Leontes to remarry marks a lack of sympathy with state concerns. Dion remarks: "consider little what dangers, by his highness' fail of issue, may drop upon his kingdom and devour incertain lookers on."

*The Winter's Tale*, 5.1.25-30.

34. The oracle's decree that "the King shall live without an heir if that which is lost be not found" directly links the re-establishment of stability in the kingdom to the recognition of and respect for blood bonds.

*The Winter's Tale*, 3.2.130-133.

35. Ultimately, the action of the play fulfils the oracle: in order to atone for his lack of faith and judgment, Leontes mourns the death of his son and wife until his daughter Perdita returns to him. Once the princess is finally recognized as a princess, Hermione comes back to life and the kingdom of Sicilia is stabilized, ruled by a king, a queen, and their true heir. Hence, the general arc of the action in *The Winter's Tale* highlights the importance of the stability and order flowing from the blood bonds created by marriage.

*The Winter's Tale*.

## **2.3 Procreation within marriage creates blood-bonds , which serve as significant sources of individual identity and moral character in Shakespeare.**

36. *The Winter's Tale* illustrates that even when ignored, the blood bonds created by marriage are a source of true identity and moral character. Perdita, separated from her noble family at birth and cast into the woods to be raised as a shepherdess, radiates an inward nobility that impresses those who come into contact with her. Upon observing

her, Polixenes remarks: “nothing she does or seems but smacks of something greater than herself, too noble for this place.”

*The Winter’s Tale*, 4.4.156-159.

37. Perdita’s case is not unique. In *As You Like It*, Orlando’s parentage and noble nature shines through, despite the thoroughly ignoble education he has received. Oliver remarks of Orlando: “he’s gentle, never schooled and yet learned, full of noble device, of all sorts enchantingly beloved.”

*As You Like It*, 1.2.153-154.

38. Shakespeare also represents blood bonds as capable of transferring a moral legacy from parents to children. Leontes initially describes Mamillius’ nose as “a copy out of mine.” As the play progresses, Leontes’ suspicions of Hermione’s virtue cause him to question the extent of his son’s biological inheritance from her. Once his suspicions take root, he declares: “I am glad you did not nurse him. Though he does near some signs of me, yet you have too much blood in him.” Hermione later emphasizes the sense of moral legacy and the hereditary legacy of honor from parents to children when she pronounces in her self-defense that “honour ‘tis a derivative from me to mine”.

*The Winter’s Tale*, 1.2.121, 2.1..56-58, 3.2.42-43.

39. Throughout Shakespeare, blood family acts as an anchor, a source of sustained true selfhood, which, in the end, is invariably recognized and reinforced. Just as what was lost is found in *The Winter’s Tale*, and the feuding brothers Oliver and Orlando reconcile in *As You Like It*, the noble-born twins Sebastian and Viola reunite in *Twelfth Night*. *Twelfth Night*’s reunion of long-lost siblings is, arguably, the most emotionally forceful aspect of that play for the audience.

*The Winter’s Tale*.

*As You Like It*.

*Twelfth Night*.

40. In examining the laws of Shakespeare, it becomes clear that the blood bonds created by heterosexual marriage stand for far more than biology. They are indicators of social status, indelible marks of personal identity, signs of moral character and even determinants of destiny. In Shakespeare, heterosexual marriages and the blood bonds produced therein represent sustainable sources of social organization and kinship, which in turn create networks of loyalties and allegiances that pay homage to generations past and provide for stable and ordered futures. Maintaining the definition of marriage as exclusively heterosexual will ensure blood bonds will continue to play this important role.

**III. SHAKESPEARE’S EMPHASIS UPON HUMAN MORTALITY AND THE LINEAR STRUCTURE OF HUMAN LIFE UNDERWRITES HIS INTEREST IN BOTH INTRA AND INTER-GENERATIONAL BONDS OF KINSHIP, WHICH ARE STABILIZED BY HETEROSEXUAL MARRIAGE AND PROCREATION.**

**3.1 Characters in Shakespeare recognize their own mortality, and connect that mortality with the possibility of self-perpetuation through the generation of legitimate offspring within heterosexual marriage.**

41. Marriage affords a kind of permanence and the promise of self-perpetuation in the face of individuals’ limited life-spans in Shakespeare. The priest in *Twelfth Night* who marries Olivia and Sebastian measures the elapsing of time in linear, three-dimensional terms when he remarks: “my watch hath told me, toward my grave I have but traveled two hours”. The priest’s remark recalls the mortal nature of individual lives; he conceives of the elapsing of time in terms of the limited, fixed length of his own life, and each passing moment in terms of an ever-growing proximity toward death. The individual’s life-span lies in contrast with his depiction of the “contract of eternal bond of love” represented by marriage.

*Twelfth Night*, 5.1.156-163.

42. Marriage affords the possibility of self-perpetuation in spite of death’s inevitability, because it encourages the generation of legitimate offspring. In *Twelfth Night*, Viola suggests that Olivia’s beauty will not outlast her own limited lifetime if she fails to produce an heir. Viola insists that Olivia will “lead these graces to the grave, and leave the world no copy.” To counter the prospect of an inevitable extinction of her mortal beauty, Olivia suggests that Olivia marry in order to pass her physical characteristics on to her offspring.

*Twelfth Night*, 1.5.237-243.

**3.2 The importance assigned to duty to one’s blood-relatives and family in Shakespeare is a feature of characters’ awareness of the dues they owe to both their predecessors and future offspring, and reflects an awareness of temporal, linear qualities associated with individual human lives, which the institution of heterosexual marriage extends through the establishment of family legacy.**

43. Shakespeare insists that the recognition and fulfillment of obligations to blood-relations are integral components of self-awareness, virtue, and personal honor. In *The Winter’s Tale*, Camillo attempts to persuade Leontes to preserve the integrity of his family, in spite of his suspicion of Hermione’s infidelity, “even for your son’s sake, and thereby for sealing the injury of tongues in court and kingdoms known and allied to yours.” Camillo counsels familial integrity for the sake of stabilizing the family as a unit,

and also because of that individual family unit's relationship to the larger kingdom's social fabric.

*The Winter's Tale*, 1.2.334-336.

44. Leontes' failure to recognize both aspects of marriage evidences a disconnection from his conscience, which results in the irresponsible and tragic punishment of his wife and child.

*The Winter's Tale*.

45. Viola's search for her missing brother Sebastian recognizes the importance of kinship bonds. Moreover, these bonds reflect an awareness of a common ancestry, and a common biological convergence point located in the past, in Viola's and Sebastian's deceased father.

*Twelfth Night*.

46. *The Winter's Tale*'s conclusion suggests that family bonds and the fulfillment of kinship bonds associated with heterosexual marriage and procreation provide a stable positioning for individuals within a present-centered context that remains responsive to both past and future concerns. Through Leontes' recuperation of faith in his wife's innocence, the sanctity of his marriage is restored. Hermione explains her return to life as the fulfillment of her desire to see her daughter, Perdita – "I... have preserved myself to see the issue". Hermione thereby witnesses the possibility for the continuance of her and Leontes' line. Kinship bonds represent a nexus of connections that evidence a deep reverence for the past and regard for the future. This reverence for the past is of interest to the court to maintain the roots of the living tree, as Justice Yachnin's precedent emphasizes. It is only with this type of temporally-inclusive focus that Shakespeare allows for the possibility of a dynamically fulfilling present in *The Winter's Tale*.

*The Winter's Tale*, 5.3.127-128.

*In Re Attorney General for Canada, ex parte Heinrich* (2003) at 7.

### **3.3 Same-sex love fails to take into account the basic exigencies of human temporal existence and, consequently, fails to emphasize the intra and inter-generational network of relations associated with familial bonds and responsibilities in Shakespeare.**

47. Same-sex love is figured as an Edenic, pastoral, and is associated with the unruptured innocence of childhood in Shakespeare. Polixenes figures his childhood friendship with Leontes using pastoral imagery, and describes them as "twinned lambs that did frisk i'th'sun, and bleat the one at th'other." He emphasizes the lack of consciousness of temporality inherent in that pastoral, in describing the memory as "two lads that thought there was no more behind but such a day tomorrow as today, and to be boy eternal." In *Twelfth Night*, Viola's unscripted appeal to Olivia also recalls pastoral imagery when she suggests she would "make me a willow cabin at your gate and call upon my soul within the house." Critic Jami Ake notes that Viola's pastoral profession of love marks a stark contrast with Orsino's style of wooing, and presents Olivia with an alternative to heterosexual courtship. If Viola's alternative, pastoral figuration can be said to carry homosexual rather than heterosexual overtones, the alternative she provides is unsustainable and fleeting, given her love for Orsino.

*The Winter's Tale*, 1.2.61-63, 66-73.

*Twelfth Night*, 1.5.269-277.

Jami Ake, "Glimpsing a 'Lesbian' Poetics in *Twelfth Night*" (Spring 2003) 43 *Studies in English Literature 1500-1900*, at 374-394.

48. Thomas Rosenmeyer claims that wherever pastoral imagery is evoked, Epicurean philosophical underpinnings are also given life. Among those aspects of Epicurean philosophy recalled are the sense of freedom from urban, courtly concerns, values, and hierarchies, and freedom from the linearity associated with time's passage. Although seductive and appealing as a respite from the exigencies of temporal and courtly social existence, neither Polixenes' nor Viola's figurations of pastoral timelessness represent a sustainable vision in Shakespeare. The Epicurean pastoral fails to adequately and maturely address questions of filial responsibility, and responsibility to time's linear structure (past and future). The pastoral fails to maturely integrate the concerns that, for example, Hermione so astutely picks up on in *The Winter's Tale* when she remarks that, relative to the blissful, timeless pastoral of homosociality, the bonds of heterosexual marriage figure Polixenes' and Leontes' queens as "devils". Clearly Hermione is no devil; she is a loving, chaste wife who provides Leontes with a legitimate heir.

Thomas G. Rosenmeyer, *The Green Cabinet* (Berkeley: University of California Press, 1969).

*The Winter's Tale*, 1.2.81.

49. Because of the heterosexual family's ability to stabilize identity and social relationships, because of its ability to be temporally encompassing with respect to the past and the future, and because of the significant difference of the contributions made by men and women within marriage and the mutual interdependence of those contributions, the law ought to maintain the state of marriage as a union solely between a man and a woman.

**IV. THE VALUES EMPHASIZED IN SHAKESPEARE AS ESSENTIAL TO MARRIAGE ARE STILL IMPORTANT WITHIN THE INTERPRETIVE COMMUNITY, AND AS SUCH, THE HETEROSEXUAL DEFINITION OF MARRIAGE SHOULD BE MAINTAINED.**

50. If, as Cover argues, our interpretive commitments determine what law means today and what it shall be in the future, we still must interpret the law so as to respect its past. As Yachnin J. put it in *Heinrich*, the past is not prologue: the law may be a "living tree," but we cannot disregard the tree's roots.

Robert Cover, "Nomos and Narrative" (1983) 97 *Harv. L. Rev.* 4 at 7.

*In Re Attorney General for Canada, ex parte Heinrich* (2003) at 7.

51. If we allow the focus of marriage to move away from the values articulated in Shakespeare's texts, we will be disregarding a central part of what marriage is and what it has been for the last several hundred years, not only to Shakespeare, but to the community at large. Such an interpretation of marriage would threaten the aesthetic integrity of the law that Dworkin insists is so important. It would also ignore the unifying narrative of principle that links the laws of Shakespeare with our time. In *Heinrich*, Manderson J. specifically cautions against fashioning a legal present without considering

the past: “it will not do to interpret the law of Shakespeare without an eye on the trajectory of meaning that unites his time and ours.”

Ronald Dworkin, “Integrity in Law” in *Law’s Empire* (Cambridge, Mass: Belknap Press, 1986) 225-239.

Desmond Manderson, “In the tout court of Shakespeare” (2003) *Journal of Legal Education* [forthcoming] at 11.

52. Therefore, the continued significance of the harmonization of male and female contributions, the importance of procreation and blood bonds, and the focus on kinship as a means of unifying the present within our society suggests that even if there were room within the laws of Shakespeare to expand the common-law definition of marriage to include same-sex unions, we do so at our own peril.

**PART IV – ORDER SOUGHT**

The Applicant therefore requests that this Honourable Court

**ALLOW** the appeal;

**REVERSE** the decision of the Court of Appeal of Ontario;

**RESCIND** the order to the Clerk of the City of Toronto to issue the marriage licenses to the seven couples;

**DECLARE** the common-law definition of marriage as “the lawful and voluntary union of one man and one woman, to the exclusion of all others” to be valid and consistent with the laws of Shakespeare.

The above is respectfully submitted.

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20 October 2003

**PART V – LIST OF AUTHORITIES****Case Law:**

*In Re Attorney General for Canada, ex parte Heinrich* (2003) Not Yet Reported (Court of Shakespeare).

**Codex, Institutes, Digest:**

*A Midsummer Night's Dream*

*As You Like It*

*The Winter's Tale*

*Twelfth Night*

**Secondary Material/Doctrine:**

Ake, Jami. "Glimpsing a Lesbian Poetics in *Twelfth Night*" (Spring 2003) 43 *Studies in English Literature 1500-1900*.

Cover, Robert. "Nomos and Narrative" (1983) 97 *Harvard Law Review* 4.

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