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It takes more than a verdict to win equality

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Where and when is equality realized? What steps are required to make it concrete? Those are the bigger questions I draw from Thursday's wild ride over the federal government's position on foreign gay and lesbian couples who wed in Canada.

It began with a story in The Globe and Mail about a new position advanced by the federal government. It arose in a case concerning a challenge to the rule requiring 12 months of residency before divorce proceedings can be launched in a Canadian province.

Lawyers and scholars have known for years that the residency requirement would cause headaches for foreign couples. Thousands of them have flocked to Canada to marry since the first legal weddings at Toronto City Hall in 2003.

What nobody expected was that the federal government would deploy rules from a highly complex body of law called conflict of laws in order to undercut the equal-marriage provisions of which many Canadians, gay or straight, are rightly proud.

There's no need for divorce, the government's lawyer suggested – there isn't any marriage to begin with if the parties couldn't have married in their home country.

A firestorm of outrage greeted the story and, by afternoon, Justice Minister Rob Nicholson felt the need to respond, insisting that the government has no intention of reopening the marriage debate. He promised to investigate options to clarify the law so marriages done in Canada can be undone in Canada.

Prime Minister Stephen Harper said on Thursday he was unaware of what his lawyers were doing in this case. The charitable reading is that someone in the Department of Justice simply made a gaffe.

Those of us outraged by the initial news story in this matter may be heaving a sigh of relief, warily. But the need for caution remains. For one thing, it remains unknown what options the minister will consider and what will result.

For another, what's plain is that, even after a big victory such as same-sex marriage, equality can be eroded in incremental, bureaucratic ways. The big idea of equal marriage in Canada, associated with legal victories several years ago, needs to be sustained and protected over time.

Although Parliament passed the Civil Marriage Act in 2005, the federal government of the day

didn't systematically review all the laws and policies that might need adjustment. The result is that legal problems for married gays and lesbians have persisted in administrative areas, such as immigration.

Parliament may have passed a law, but its intent is thwarted if changes aren't also made in the policy manuals by which laws are made real. Equality is also thwarted if government lawyers don't absorb the principles underlying that law into their conduct.

It's worth noting that the Harper government's lawyers are also involved in another matter that risks passing under the radar as a technicality. It concerns same-sex relationships formalized abroad.

In 2004, Britain legislated for gay equality by creating the civil partnership. The government there says a civil partnership is equal to marriage.

A Canadian citizen who had a civil partnership in Britain is seeking recognition of his relationship under Canadian law. The Ontario government raises no objection, but the federal government is intervening, at taxpayers' expense, to oppose recognizing the civil partnership as equivalent to a same-sex marriage performed in Canada.

The government's action undermines Britain's efforts to recognize the equality of same-sex relationships, but the Justice Minister has issued no public justification for his policy in that case.

As other groups have learned, equality is not something achieved in a moment of legal victory. It needs to be fought for repeatedly, in many contexts, over time. It requires vigilance and persistence, and all Canadians have a stake in making sure that our government doesn't use technicalities to undermine it.

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