

## **Viewpoint**

### **Executive Summary**

The Canadian Chamber of Commerce in Japan (CCCJ) recommends that the Government of Japan (GOJ) end the exclusion of same-sex couples from marriage to promote social harmony and inclusion, to eliminate the injustices and real injuries that the denial of marriage inflicts on these couples and their children, and to remove handicaps that both Japanese companies and international companies doing business in Japan face in recruiting and retaining talent and treating their workforce fairly. Granting same-sex couples the same freedom to marry as heterosexual couples currently enjoy supports their equal status in the eyes of the law, fulfills the command of the Constitution, and reaffirms the value of marriage and family for all members of our society. Furthermore, doing so would cement Japan's presence on the international stage as a world leader in human rights and as a protector of individual human rights and equality. With the Olympics fast approaching, Japan is in the international spotlight, and Japan's record on the rights of lesbian, gay, bisexual and transgender individuals ("LGBT") will undoubtedly be a topic of conversation. Japan is the only one of the G7 countries that does not permit same-sex couples the freedom to solemnize their relationship; now is the time for Japan to make a change.

Granting same-sex couples the freedom to marry would also help companies doing business in Japan by removing some of the handicaps that they face when competing for talent, and in treating their employees equally. Excluding same-sex couples from marriage makes Japan a less appealing destination for employees who are in high demand. Furthermore, treating all employees fairly helps both employees and employers, as employees are happier and more devoted to their work places, and inclusion of those in same-sex relationships increases productivity and profitability. Lastly, support for allowing same-sex couples the freedom to marry is growing: a number of municipalities and local governments in Japan have begun to register same-sex couples, and a majority of Japanese citizens also believe in marriage equality. For all of these reasons, the CCCJ believes that now is the time to remove the barriers to marriage that same-sex couples currently face in Japan.

### **Issues**

The CCCJ believes that extending the freedom to marry to same-sex couples, and providing marriage equality to all Japanese residents, is necessary to ensure Japan's continuing leadership as a modern, progressive democracy that protects individual rights, and makes it attractive to companies doing business in Japan.

Many of Japan's trading partners (including the world's most vibrant economies—in North and South America, the United Kingdom, and the European Union) give same-sex couples the freedom to marry, and more countries follow suit every year. Japan, in fact, is the only one of the G7 countries that does not provide an avenue for same-sex couples to legally solemnize their relationship; five of the six other G7 countries provide such recognition through the

freedom to marry.<sup>1</sup> In the eyes of many democratic, modern nations, Japan is lagging behind; Japan must end this perception. Furthermore, by removing the hurdles same-sex couples face when wanting to marry, Japan would honour commitments it has made to promote human rights and eliminate discrimination against LGBT people.

Allowing same-sex couples the freedom to marry would help companies doing business in Japan, and the Japanese economy as a whole. Japan currently suffers, and is expected to continue to suffer, from a labour shortage. It would help our members recruit LGBT employees to work in Japan, and would also improve Japan's image as an attractive place to relocate for highly-skilled professionals, who may be gay or lesbian themselves, or are generally supportive of same-sex marriage and equality for LGBT people. Crucially, providing the freedom to marry to same-sex couples is necessary to permit our members to offer standardized benefits packages for all employees, which would eliminate burdensome administrative inefficiencies that our members currently face due to the current inability of same-sex couples to marry.

Finally, upholding the freedom to marry would symbolize Japan's commitment to the inclusion of people from different backgrounds, and would also benefit companies doing business in Japan. Diversity has been shown to improve corporate performance: companies make better decisions when they are able to draw on employees' diverse experiences and backgrounds. Inclusion improves workplace morale because all employees feel valued, which then leads to greater productivity. LGBT employees are more productive and loyal in workplaces where they are not compelled to hide their identities on a daily basis. Freedom for all people to marry would help LGBT individuals as well as Japan and the Japanese economy.

## 1. International Reputation

Giving same-sex couples the freedom to marry is not only the right thing to do, but is also an important method of bolstering Japan's status on the international stage. Virtually all major human rights non-governmental organizations condemn discrimination based upon sexual orientation, and many modern democracies, including most of Japan's major trading partners, recognize that same-sex couples want to marry for the same reasons as other couples—to create a stable family and care for one another. Marriage for same-sex couples is legal in 25 countries<sup>2</sup> and, as mentioned above, in all of the G7 countries except Japan and Italy (which has enacted civil partnership as a step toward marriage). In 2017, Asia saw momentum toward the freedom to marry: in May 2017, Taiwan's highest court ruled that laws preventing same-sex couples from marrying violated their constitutional rights,<sup>3</sup> ordering marriage equality to begin within two

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<sup>1</sup> The last country, Italy, began offering civil unions to same-sex couples in 2016. Nancy Snow, *Japan's race for the LGBT gold in Asia*, JAPAN TODAY, September 30, 2017, <https://japantoday.com/category/features/lifestyle/japan%E2%80%99s-race-for-the-lgbt-gold-in-asia> (last accessed March 28, 2018).

<sup>2</sup> *Id.*; see also *Gay Marriage Around the World*, PEW FORUM, August 8, 2017, <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/> (last accessed March 28, 2018).

<sup>3</sup> *Taiwan's top court rules in favour of same-sex marriage*, BBC NEWS, May 24, 2017, <http://www.bbc.com/news/world-asia-40012047> (last accessed March 28, 2018).

years, and in December 2017, Australia amended its law to allow same-sex couples to marry.<sup>4</sup> The time is ripe to now allow same-sex couples in Japan to marry.

A mountain of evidence and experience from other countries across the world, compiled by legislatures, courts, and other organizations, shows that ending restrictions on marriage helps families, and hurts no one. Unlike other policy changes, extending the freedom to marry to same-sex couples does not require taking resources from one sector of society to give to another—it takes nothing away from anyone. The experience of other countries has established a clear track record that the claims of negative consequences of extending the freedom to marry are unfounded. Embracing the freedom to marry is not a novel question, not an experiment, not unpredictable, but, rather, consistent with Japan’s values and human rights as well as the experience of its most reliable friends and partners.

The CCCJ is concerned that Japan’s status as a progressive, inclusive society may be seriously diminished if it fails to take action to provide equal freedom to marry for gay and lesbian couples. For example, Japan is a party to the United Nations (UN) International Covenant on Civil and Political Rights, which broadly bans discrimination. Japan has faced criticism from the UN Human Rights Committee for effectively excluding same-sex couples from protections extended to married heterosexual couples—such as access to public housing, and protection under the Law for the Prevention of Spousal Violence and the Protection of Victims.<sup>5</sup> The Office of the UN High Commissioner for Human Rights has also published Standards of Conduct for Business in order to tackle discrimination against LGBT and intersex people; many major international companies, including companies that do business in Japan, support these standards.<sup>6</sup> Allowing same-sex couples to marry would address these concerns.

The Olympic Charter is also committed to ending discrimination on the basis of sexual orientation.<sup>7</sup> As the 2020 Olympics approach, Japan is increasingly in the spotlight on the international stage. In 2014, Russia hosted the Winter Olympics in Sochi. At that time, Russia’s laws banning the promotion of “non-traditional” sexual relations inspired protests against the Russian government in 19 cities worldwide and tarnished Russia’s image at a time that should have been a proud moment.<sup>8</sup> After the Sochi 2014 Winter Games, the International Olympic Committee introduced a specific anti-discrimination clause to its host city contract, based upon principle six of the Olympic Charter, which was finalized in 2017 and will first go into effect in

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<sup>4</sup> Paul Karp, *Australian Parliament says ‘yes’ to same-sex marriage*, THE GUARDIAN, December 7, 2017, <https://www.theguardian.com/australia-news/2017/dec/07/marriage-equality-law-passes-australias-parliament-in-landslide-vote> (last accessed March 28, 2018).

<sup>5</sup> *International covenant on civil and political rights*, UNITED NATIONS HUMAN RIGHTS COMMITTEE, October 2008.

<sup>6</sup> *Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People: Standards of Conduct for Business*, United Nations Human Rights Office of the High Commissioner, <https://www.unfe.org/standards/> (last accessed March 28, 2018).

<sup>7</sup> *Olympics: Host City Contract Requires Human Rights*, HUMAN RIGHTS WATCH, February 28, 2017, <https://www.hrw.org/news/2017/02/28/olympics-host-city-contract-requires-human-rights> (last accessed March 28, 2018).

<sup>8</sup> *Sochi 2014: Gay rights protests target Russia’s games*, BBC NEWS, February 5, 2014, <http://www.bbc.com/news/world-europe-26043872> (last accessed March 28, 2018).

the 2024 Olympic Games.<sup>9</sup> Making marriage a possibility for all couples would validate Japan's commitment to the principles espoused in the Olympic Charter, and serve as a powerful demonstration that all are welcome here, regardless of whom they love. It would also avoid injustice and embarrassment when athletes, coaches, spectators, and media come from freedom-to-marry countries and find themselves denied respect for their lawful status in Japan.

## 2. Competitiveness in the Labour Market

The CCCJ believes that the lack of freedom for same-sex couples to marry hampers the ability of all employers located in Japan to recruit and retain the most talented workforce possible. This is particularly true for global firms located in Japan which must compete for top talent in multiple labour markets; the current lack of protections for same-sex couples make Japan an unappealing location for gay and lesbian employees, as well as others who believe in marriage equality. A shortage of qualified employees is a major problem for Japanese firms—a Ministry of Finance survey of 1,341 companies released on January 31, 2018 revealed that 71 percent of Japanese companies report being short of workers.<sup>10</sup> Over half of those firms surveyed also felt that the labour shortage has worsened since 2016.

Policies that treat LGBT employees fairly would allow employers in Japan to improve recruitment and retention. The freedom to marry is not just important from an emotional or symbolic perspective; it also has practical implications for same-sex couples. For example, the lack of legal status creates difficulties for same-sex couples to buy property or rent apartments. It follows that to a talented individual in a same-sex relationship, relocating or choosing to live in a country that would jeopardize his or her partner in this way is unappealing. Talented individuals are forced to decline work in Japan, despite being otherwise very positive about relocating to Japan, due to the current inequality in its marriage laws. The sooner all couples are equally free to marry, the better for Japan, and the companies that do business here.

Currently, companies in Japan are also hindered in offering their Japanese employees in gay and lesbian relationships the same benefits given to heterosexual couples, such as spousal health care benefits, or housing benefits. A competitive benefits package is often a very important part of recruiting and retaining the best employees. There are also many health insurance benefits that are traditionally granted only to spouses. Accordingly, employees in same-sex relationships wanting the same health benefits for their partner may have to purchase expensive private health insurance or pay separate healthcare premiums, an additional burden that heterosexual couples do not have to face. Under the current legal landscape, same-sex couples who are offered these types of benefits must individually carry an additional tax burden. The CCCJ believes that by obstructing companies from providing the same benefits to those in same-sex relationships, the current legal landscape prevents Japanese companies from recruiting and retaining talent, which in turn hurts the Japanese economy.

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<sup>9</sup> Owen Gibson, *Olympic anti-discrimination clause introduced after Sochi gay rights row*, THE GUARDIAN, September 25, 2014, <https://www.theguardian.com/sport/2014/sep/25/olympic-anti-discrimination-clause-sochi-gay-rights-row> (last accessed March 28, 2018); see also *Olympics: Host City Contract Requires Human Rights*.

<sup>10</sup> *71% of Japanese firms short of workers: survey*, THE MAINICHI, February 1, 2018, <http://mainichi.jp/english/articles/20180201/p2a/00m/0na/005000c> (last accessed March 28, 2018).

### 3. Standardization Benefits Employers and Employees

In addition, both Japanese companies doing business overseas and international companies doing business in Japan would benefit from the extension of marriage rights to same-sex couples. Many of Japan's major business and trading partners are countries in which adults have the freedom to marry regardless of sexual orientation; as a result, many companies in Japan already provide benefits to those in same-sex marriages overseas. For example, when Nomura Holdings Inc. bought the European and Asian operations of Lehman Brothers Companies, it also adopted their equality policies.<sup>11</sup> Giving same-sex couples the freedom to marry would make things simpler for global corporations: treat all marriages the same.

For global companies doing business both overseas and in Japan, dealing with inconsistent laws around marriage is an added administrative burden. In the case of international hires, a Japan-based company may face potential issues applying for the visas of an employee's same-sex spouse, as Japanese law does not recognize their marriage. The current regulations only allow a Designated Activities visa for foreign couples who are married outside Japan, in which both individuals are citizens of countries that allow same-sex couples to marry, rather than a spousal visa that is available to heterosexual couples.<sup>12</sup> The application is burdensome and not always granted.<sup>13</sup> Even when visas are eventually approved, uncertainty, hurdles and delays in approving an employee or partner's immigration status inevitably cost the company, both in administrative resources and in lost productivity.

This legal landscape hampers Japan's economic growth and innovation by forcing large global companies to expend more resources to achieve the same returns. International and domestic companies have to divert significant time and money to maintain complex administrative systems to work around how to treat employees based upon each country's marriage laws. Allowing same-sex couples to marry would bring Japan in line with the majority of its trading partners and other economic world powers, remove wasteful administrative burdens, and reduce uncertainty for global companies.

### 4. Diversity Is Good for the Bottom Line

Expanding the freedom to marry would allow same-sex couples to be treated fairly, which would nurture greater inclusivity in the work place and improve morale. Disparate treatment of employees can cause rifts in the human relationships between coworkers and in the

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<sup>11</sup> Elaine Lies, *Japan election manifestos free LGBT rights from political closet*, REUTERS, July 7 2016, <https://www.reuters.com/article/us-japan-election-lgbt/japan-election-manifestos-free-lgbt-rights-from-political-closet-idUSKCN0ZM2L6> (last accessed March 28, 2018); see also *Diversity and inclusion*, NOMURA HOLDINGS, <http://www.nomuraholdings.com/csr/employee/di.html> (noting that the Code of Ethics of Nomura Group "forbids discrimination based on nationality, ethnic origin, race, gender, age, religion, beliefs, social standing, gender preference, gender identity, disability or any other attribution.") (last accessed March 28, 2018).

<sup>12</sup> Kenneth Lau, *Japanese Visa Options for Same-Sex Spouses*, FRAGOMEN, October 19, 2015, <https://www.fragomen.com/insights/blog/japanese-visa-options-same-sex-spouses> (last accessed March 28, 2018).

<sup>13</sup> *Same-Sex Marriage*, FELLOWS LEGAL SERVICES, <http://www.fellows-legal.jp/en/same-sex-marriage.html> (last accessed March 28, 2018).

employer-employee relationship. Employees who have been treated unfairly by their employers are also more likely to leave, or otherwise feel less loyalty towards their employers.

Diversity also strengthens companies. Inclusive companies, in which opinions from people with diverse backgrounds are appreciated, are more open-minded and innovative. When employees are comfortable being true to themselves in the workplace, they bring greater creative energy and productivity. A study conducted by McKinsey of 366 companies across a range of industries and countries show that companies which are in the “top quartile for gender diversity are 15 percent more likely to have financial returns above their respective national industry medians,” and those in the top quartile for racial and ethnic diversity are 35 percent more likely to perform above median.<sup>14</sup> An inclusive and diverse workplace brings tangible results: improved team collaboration leads to higher profits and better decision-making. In addition, a workplace that treats LGBT employees equally increases job satisfaction, improves workplace relationships among LGBT employees, and reduces employee turnover in the workplace.

In recognition of the benefits that inclusion and equality bring, many large Japanese corporations and international corporations with Japanese operations, have enacted policies to treat employees in same-sex relationships equitably with their heterosexual peers. For example, in February 2016, Sony announced that employees in same-sex relationships would now receive the same family benefits as all other employees by default.<sup>15</sup> Panasonic has adopted a policy of acknowledging same-sex marriages.<sup>16</sup> Within the SoftBank Group same-sex partners are eligible to receive spousal benefits equal to those of other married couples.<sup>17</sup> IBM Japan and Microsoft Japan also treat same-sex partners as equals to opposite-sex spouses.<sup>18</sup> Aligning the national laws with the way many large Japanese corporations already run their businesses would benefit not only employees who are in same-sex relationships, but also our corporations.

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<sup>14</sup> Vivian Hunt, Dennis Layton, and Sara Prince, *Why Diversity Matters*, MCKINSEY & CO., January 2015, at <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> (last accessed March 28, 2018).

<sup>15</sup> *Panasonic, Sony moves advance diversity trend in corporate Japan*, NIKKEI ASIAN REVIEW, Feb. 19, 2016, <https://asia.nikkei.com/Life-Arts/Japan-Trends/Panasonic-Sony-moves-advance-diversity-trend-in-corporate-Japan>; see also *Sony Group receives gold rating in the Pride Index for corporate LGBT initiatives*, Diversity & Inclusion, SONY, [https://www.sony.net/SonyInfo/diversity/report/05\\_11.html](https://www.sony.net/SonyInfo/diversity/report/05_11.html) (last accessed March 28, 2018).

<sup>16</sup> HR Development and Diversity: Diversity, PANASONIC, <https://www.panasonic.com/global/corporate/sustainability/employee/diversity.html> (last accessed March 28, 2018).

<sup>17</sup> *Promotion of Diversity*, SOFTBANK GROUP, <https://www.softbank.jp/en/corp/hr/personnel/diversity/> (last accessed March 28, 2018).

<sup>18</sup> *Panasonic, Sony moves advance diversity trend in corporate Japan*, NIKKEI ASIAN REVIEW, Feb. 19, 2016; see also 同性パートナー登録制度を新設し人事プログラムを拡大, IBM Press Release, IBM, November 30, 2015, <http://www-06.ibm.com/jp/press/2015/11/3001.html> (last accessed March 28, 2018); Lindsay-Ray McIntyre, *IBM Stands Strong with its LGBT Employees*, IBM THINK BLOG, June 23, 2016, <https://www.ibm.com/blogs/think/2016/06/standing-together/> (last accessed March 28, 2018); 新たな「ファミリーフレンドリー休業制度」を開始, MICROSOFT NEWS, September 5, 2017, <https://news.microsoft.com/ja-jp/2017/09/05/170905-family-friendly-leave/> (last accessed March 28, 2018).

Lastly, Japan's current marriage laws mean that employers treat their gay and lesbian employees differently than other employees. This often violates the corporate philosophies of global companies, including CCCJ members. Marriage discrimination in the law means that employers are pressed into treating employees in same-sex relationships differently from those in heterosexual relationships, even when such disparity goes against that company's stated practices. It also dissuades other international companies that value the equal treatment of LGBT people from working with Japanese companies. Even minor differences in how employees are treated can communicate a strong message about how the company values its employees, and CCCJ members strongly desire to communicate to their employees that same-sex couples are valued on an equal level with different-sex couples, that all families are worthy of respect, and that marriage is marriage for LGBT and non-LGBT people alike.

## 5. Public Support for Same-Sex Marriage

For all of the reasons noted above, extending the freedom to marry to same-sex couples in Japan would help bolster Japan's labour market, and would encourage LGBT consumers and travelers to visit Japan and buy Japanese products. At the same time, granting the freedom to marry would cost the GOJ little. Beyond amending the relevant laws slightly to remove the different-sex restriction, the change would have little to no costs: allowing same-sex couples to marry requires no annual budget, and the requisite changes in legislation are not complex. In short, giving same-sex couples the same freedom to marry as other couples enjoy is a low-risk, low-cost move that would result in significant concrete benefits for Japan, as well as for Japan's gay citizens, their children and loved ones, and those doing business with them.

In addition, thanks to the inherent fairness of the Japanese people, public sentiment is ready for the freedom to marry. An NHK poll in March 2017 reported that 51%, a majority, support the freedom to marry for loving and committed same-sex couples,<sup>19</sup> confirming a similar finding in a 2015 study by the National Institute of Population and Social Security Research, which likewise showed that a narrow majority of Japanese citizens supported same-sex couples having the right to marriage.<sup>20</sup> There is significant international momentum toward the freedom to marry; more than 1.1 billion people worldwide now live in a country where LGBT people can share in marriage. As noted, Taiwan and Australia saw advances in marriage equality in 2017, and Malta and Germany also removed discrimination from their marriage laws. In several of the freedom to marry countries—such as the United Kingdom, New Zealand, Germany, and Australia—this legislation was enacted under right-of-center governments.

In every country where same-sex couples have secured the right to marry, public support has increased quickly as marriages have taken place; in none has the public support decreased. This public support has tangible benefits: research has also shown that extending the freedom for

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<sup>19</sup> NHK 世論調査, NHK, May 9, 2017, [https://www.nhk.or.jp/bunken/research/yoron/pdf/20170509\\_1.pdf](https://www.nhk.or.jp/bunken/research/yoron/pdf/20170509_1.pdf) (last accessed March 28, 2018).

<sup>20</sup>同性婚「賛成」51% 全国調査、世代間の認識に差, NIKKEI, November 29, 2015, [https://www.nikkei.com/article/DGXLASDG29H29\\_Z21C15A1000000/](https://www.nikkei.com/article/DGXLASDG29H29_Z21C15A1000000/) (last accessed March 28, 2018).

same-sex couples to marry lowers the rate of teen suicide.<sup>21</sup> There is little reason to think this could not be replicated in Japan. Unlike in Western countries, in Japan, sexual conduct between same-sex partners has long been decriminalized, and Japan does not have the same history of widespread violence against LGBT individuals.

Domestically, the trend is also towards respecting same-sex couples and recognizing their hopes and needs. Multiple local governments have begun programs to allow same-sex couples to receive partnership certificates; a change at the national level would allow all of Japan to support same-sex couples on a united front. In March 2015, Shibuya ward enacted an ordinance under which it awards partnership certificates to same-sex couples.<sup>22</sup> In July of the same year, Setagaya ward followed suit. In December 2016, Sapporo announced it would also start issuing partnership certificates to same-sex couples, beginning in March 2018. Other Japanese cities with similar plans include Iga in Mie Prefecture, Takarazuka in Hyogo Prefecture, and Naha in Okinawa Prefecture.<sup>23</sup> In February 2018, the city of Fukuoka announced it would begin recognizing same-sex couples in April.<sup>24</sup> As public support for the freedom to marry grows both internationally and domestically, the CCCJ believes that the time is ripe for the GOJ to end discrimination in marriage and join the democracies that have lived up to their promise of equality and dignity for all under the law.

## Conclusion

The CCCJ recommends that the GOJ extend the freedom to marry to same-sex couples for a variety of reasons. First, ending the exclusion of same-sex couples from marriage would help real families while harming no one. Second, it would re-affirm Japan's status on the world stage as a country that prioritizes individual liberty and inclusion of its entire people. Third, it would give companies doing business in Japan an edge in competing for top talent. Fourth, it would help companies treat all of their employees fairly, which benefits both employees and employers. Fifth, diversity of employees has been shown to increase productivity and profitability at the workplace; countries, like companies, benefit when they are pluralistic, welcoming, and faithful to their constitutional values. Finally the Japanese people are fair, already show majority support for the freedom to marry, and are ready for the inclusion and equal treatment that marriage for same-sex couples brings and enhances. For all of these reasons, the CCCJ requests that the GOJ end the denial of the freedom to marry to same-sex couples, promoting social harmony and allowing gay Japanese to share in the responsibilities,

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<sup>21</sup> Tara Helle, *Fewer Teens Die By Suicide When Same-Sex Marriage is Legal*, FORBES, February 20, 2017, <https://www.forbes.com/sites/tarahelle/2017/02/20/fewer-teens-die-by-suicide-when-same-sex-marriage-is-legal/> (last accessed March 28, 2018).

<sup>22</sup> Shusuke Murai, *Tokyo's Shibuya and Setagaya wards issue first same-sex partnership papers*, THE JAPAN TIMES, November 5, 2015, <https://www.japantimes.co.jp/news/2015/11/05/national/social-issues/shibuya-set-issue-first-certificates-recognizing-sex-couples/> (last accessed March 28, 2018).

<sup>23</sup> *Id.*

<sup>24</sup> *Fukuoka city to become Japan's seventh municipality to recognize LGBT couples*, THE JAPAN TIMES, February 14, 2018, <https://www.japantimes.co.jp/news/2018/02/14/national/social-issues/fukuoka-city-become-japans-seventh-municipality-recognize-lgbt-couples/> (last accessed March 28, 2018).



meaning, and dignity that marriage represents. The law should bring people in, not drive them apart. It is time for the freedom to marry in Japan.

### **Appendix : Canada's Experience With Same-Sex Marriage**

#### *Brief History*

Fueled by the recognition that society was changing and that it was time to question certain old vestiges of the British common law, Canada moved from initial hostility to ultimate acceptance toward same-sex marriage in just over two decades (and much of the change occurred between 2000 and 2005). While early common law pronouncements placed prohibitions on same-sex marriage (e.g., by defining marriage as a union between “one man and one woman”),<sup>25</sup> the passage in 1982 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) paved the way toward marriage equality. The *Charter*, which is a part of the Constitution of Canada, guarantees certain human rights, including equality rights, to every individual in Canada.<sup>26</sup>

In a landmark decision in 2003, the highest court in Ontario, the most populous Canadian province, that a common law definition of marriage that creates a formal distinction between opposite-sex and same-sex couples on the basis of sexual orientation is a form of discrimination that violates Section 15 of the *Charter*.<sup>27</sup> The court recognized that the exclusion of same-sex couples from a fundamental societal institution such as marriage, and the societal significance of marriage itself and the corresponding benefits of which same-sex relationships were deprived, perpetuated the notion that same-sex relationships were less worthy of recognition than opposite-sex couples.<sup>28</sup> The first same-sex marriages in Canada occurred on the same day the decision was announced: June 10, 2003.<sup>29</sup>

Following a number of additional victories at the provincial level, and clear momentum toward recognizing same-sex marriage, Canada enacted in July 2005 the *Civil Marriage Act*,

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<sup>25</sup> *North v. Manitoba (Recorder of Vital Statistics)* [1974] 20 R.F.L. 112 (Manitoba County Court); *Hyde v. Hyde and Woodmansee* [1866] L.R. 1 P&D 130.

<sup>26</sup> The guarantee of equality provides: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” *Canadian Charter of Rights and Freedoms*, Section 15(1). However, under Section 1, a discriminatory law may still be justified on the ground that the limitation of the right is “demonstrably justified in a free and democratic society.” *Id.* Section 1. See *R. v. Oakes* [1986] 1 S.C.R. 103. The Supreme Court of Canada has held that sexual orientation is also protected as analogous to Section 15’s enumerated grounds because it is a “deeply personal deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal cost.” *Egan v. Canada* [1995] 2 S.C.R. 513 at 515 (Supreme Court of Canada).

<sup>27</sup> *Halpern v. Canada (Attorney General)* [2003] CanLII 26403 (ON CA).

<sup>28</sup> *Id.* at para. 94.

<sup>29</sup> Andrea Battiston, *The Legal History of Same Sex Marriage in Canada*, 39 Can. L. Libr. Rev. 36.8, 8 (2014).

which defines marriage as between “two persons”,<sup>30</sup> with the goal of reflecting “values of tolerance, respect and equality, consistent with the *Canadian Charter of Rights and Freedoms*.”<sup>31</sup> The legislation followed a number of decisions by Canada’s courts finding that denying same-sex couples the right to marry violates the constitutional equality guarantee. These rulings at the provincial level ensured that about 94 percent of same-sex couples Canadians already had the right to marry by the time Parliament acted. Parliamentary debates centered on several issues, including potential infringement on religious freedom and whether civil unions would constitute an acceptable alternative to same-sex marriage. Ultimately, legislators agreed with the courts that freedom of religion would still be protected under the *Charter* and that civil unions fell short of true equality.

### *Impacts of Allowing Same-Sex Marriage*

More than a decade after Canada legalized same-sex marriage, there have only been positive societal impacts—such as an increase in support and acceptance of LGBT individuals and same-sex couples, more happy family occasions, and a greater recognition that fundamental rights are available to all—and none of the negative predictions made by opponents of same-sex marriage have materialized.

Legalizing same-sex marriage has helped legitimize such marriages in the mind of the public. Following enactment of the *Civil Marriage Act*, Canada’s national acceptance of same-sex marriage and of LGBT individuals has increased substantially.<sup>32</sup> From 2001 through 2006, only about one-third of Canadians supported same-sex marriage. That number increased to 43 percent in 2010,<sup>33</sup> and to 70 percent in 2015, with approval ratings in Quebec, the largest province by territory and second-largest by population, at an overwhelming 78 percent.<sup>34</sup> Increased acceptance of same-sex marriage was also associated with a broader acceptance of LGBT individuals in public life. Between 2008 and 2012, the percentage of Canadians who approved of LGBT persons running for public office increased from 55 percent to 67 percent, while those who strongly disapproved fell from 7 percent to 4 percent.<sup>35</sup>

The Canadian economy has also benefited from marriage equality. In general, as discussed above, nation-wide recognition of same-sex marriage removes a barrier to labour

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<sup>30</sup> *Civil Marriage Act*, S.C. 2005, c. 33, § 2.

<sup>31</sup> Parliament of Canada, Bill C-38, 38th Parliament, 1st Session, [http://www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?ls=c38&Parl=38&Ses=1](http://www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c38&Parl=38&Ses=1).

<sup>32</sup> Christopher Flavelle, “What Canada Can Tell Us About Gay-Marriage Decisions”, *Bloomberg* (26 June 2013, 2:34pm) <https://www.bloomberg.com/view/articles/2013-06-26/what-canada-can-tell-us-about-gay-marriage-decisions->.

<sup>33</sup> *Id.*

<sup>34</sup> “US Court Ruling Boosts Approval of Same-Sex Marriage in Canada”, *Forum Research, Inc.*, (29 June 2015) <http://poll.forumresearch.com/post/307/increase-in-approval-seen-among-oldest/>.

<sup>35</sup> Flavelle, *supra* note 29.

mobility. Previously, same-sex couples legally married in one province might not desire to move to another province that did not recognize their marriage. Studies have found that irrational discrimination, such as on the basis of sexual orientation, reduces productivity of the group discriminated against, and that countries with more competitive economies tend to be more accepting on the basis of sexual orientation.<sup>36</sup> This was starkly illustrated in the economic backlash that businesses imposed on North Carolina when it enacted a discriminatory LGBT law. Canada was one of the jurisdictions that benefited from the relocation of economic activity from North Carolina to jurisdictions that supported LGBT equality. Additionally, the Canadian same-sex wedding industry is estimated to be worth CAD 567 million (approx. JPY 44.2 billion) annually, generating additional gains for the economy.<sup>37</sup>

Extending the right to marry to same-sex couples also had a positive impact on family formation. Many same-sex couples took advantage of finally being able to legitimize their relationships and ensure full access to the legal rights and protections afforded to their partners. Unsurprisingly, the annual number of same-sex couples in Canada (and the proportion of married same-sex couples) increased from 45,345 couples (16.5 percent of same-sex couples married) in 2006, to 64,575 couples (about one third of same-sex couples married) in 2011.<sup>38</sup> Additionally, the legal recognition of marriage equality has helped rebuild estranged relationships between same-sex couples and their families.<sup>39</sup>

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<sup>36</sup> Peter Spence, “Same-Sex Marriage Will Make Us All Richer, Says Economists”, *The Telegraph* (8 July 2015), <http://www.telegraph.co.uk/finance/economics/11725633/Same-sex-marriage-will-make-us-all-richer-say-economists.html>.

<sup>37</sup> Penelope Graham, “\$566,585,415: The Same Sex Wedding Gift to the Canadian Economy”, *RateSupermarket* (26 June 2013), <https://www.ratesupermarket.ca/blog/566585415-the-same-sex-wedding-gift-to-the-canadian-economy/>.

<sup>38</sup> *Id.*

<sup>39</sup> Diana Mehta, “10th Anniversary of Same-Sex Marriage Highlights Progress, Equality,” *The Globe and Mail* (9 June 2013, 6:01pm), <http://www.theglobeandmail.com/news/world/10th-anniversary-of-same-sex-marriage-highlights-progress-equality/article12442394/>.