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CALGARYHERALD.COM/OPINION

FRIDAY, JANUARY 13, 2012

EDITORIAL

Divorced from reality

Gay marriage firestorm a legal, not homophobic, issue

Calmer heads need to prevail after a media firestorm erupted Thursday over a same-sex divorce case playing out in an Ontario court. This is not a reversal of federal policy on same-sex marriage, contrary to the allegations of the lesbian couple's lawyer, Martha McCarthy, a well-known same-sex rights activist in Toronto. Rather, it is a legality in Canadian divorce law that requires one of two spouses be a resident in the jurisdiction where applying for the divorce.

McCarthy's clients are not Canadian and got married in this country as tourists. Even if they were a heterosexual couple, they wouldn't be able to get a Canadian divorce, without meeting the residency requirement.

Making this a same-sex issue seems political and reckless, certainly stirring fears Thursday within the homosexual community while fuelling conspiracy theories.

McCarthy's comments have been inflammatory with regards to the federal government's statement of response, released Thursday and hardly as "scandalous" as the lawyer made them out to be.

The statement says: "In order for a marriage to be legally valid under Canadian law, the parties to the marriage must satisfy both the requirements of the place where the marriage is celebrated... and the requirements of the law of domicile of the couple with regard to their legal capacity to marry one another."

Earlier, McCarthy expressed shock at discovering the Harper government views these marriages as invalid. "It's offensive to their dignity and human rights to suggest they weren't married or that they have something that is a nullity," she told the *Globe and Mail*.

For its part, the *Globe* overplayed the front-page story, including a bold and splashy headline: "The same-sex marriage trap."

How is it a trap? Same-sex couples coming to Canada to get married presumably already know their marriages won't be valid in the jurisdiction where they live. Why else come to Canada to get married, legally but symbolically, as it should go without saying that those legal rights do not travel with them.

The marriage is legal in Canada and would have been viewed as such, and divorce would have been allowed, had the couple stayed here, but they did not. They moved to jurisdictions that don't accept Canada's marriage law. Canada

can't force its rules on other jurisdictions, nor should it, for those other jurisdictions might want to force their rules upon Canada.

It would be like a Canadian couple getting married in a jurisdiction where it is legal to marry a 14-year-old, returning to Canada and asking that this country accept the legality of that marriage.

"Guess what, you're not legally married and you are committing a crime," says Aaron Martens, a Calgary family lawyer with Dunphy Best Blockson LLP. "You would not be shielded from criminal prosecution."

Martens says Canadian law lets you get married wherever you want, but when it comes to divorce, you have to live in the jurisdiction for at least one year for it to be recognized. That's to prevent what he calls "jurisdiction shopping" by one person in the now-broken partnership, looking for a quick divorce, perhaps for economic gain.

"You can't pick and choose laws in other jurisdictions that meet your needs and wants on any particular day."

Rightly so. This seems less like a same-sex debate and more like a conflict of laws issue, which pertains to laws of various jurisdictions and which ones apply.

The federal government's position speaks to the unfortunate reality of our society, that not all jurisdictions recognize same-sex marriage.

Canada can either stop granting out-of-country same-sex marriages, or, it can explore whether it wants to take on the costs and responsibilities of granting same-sex divorces to those couples who have come here to get married.

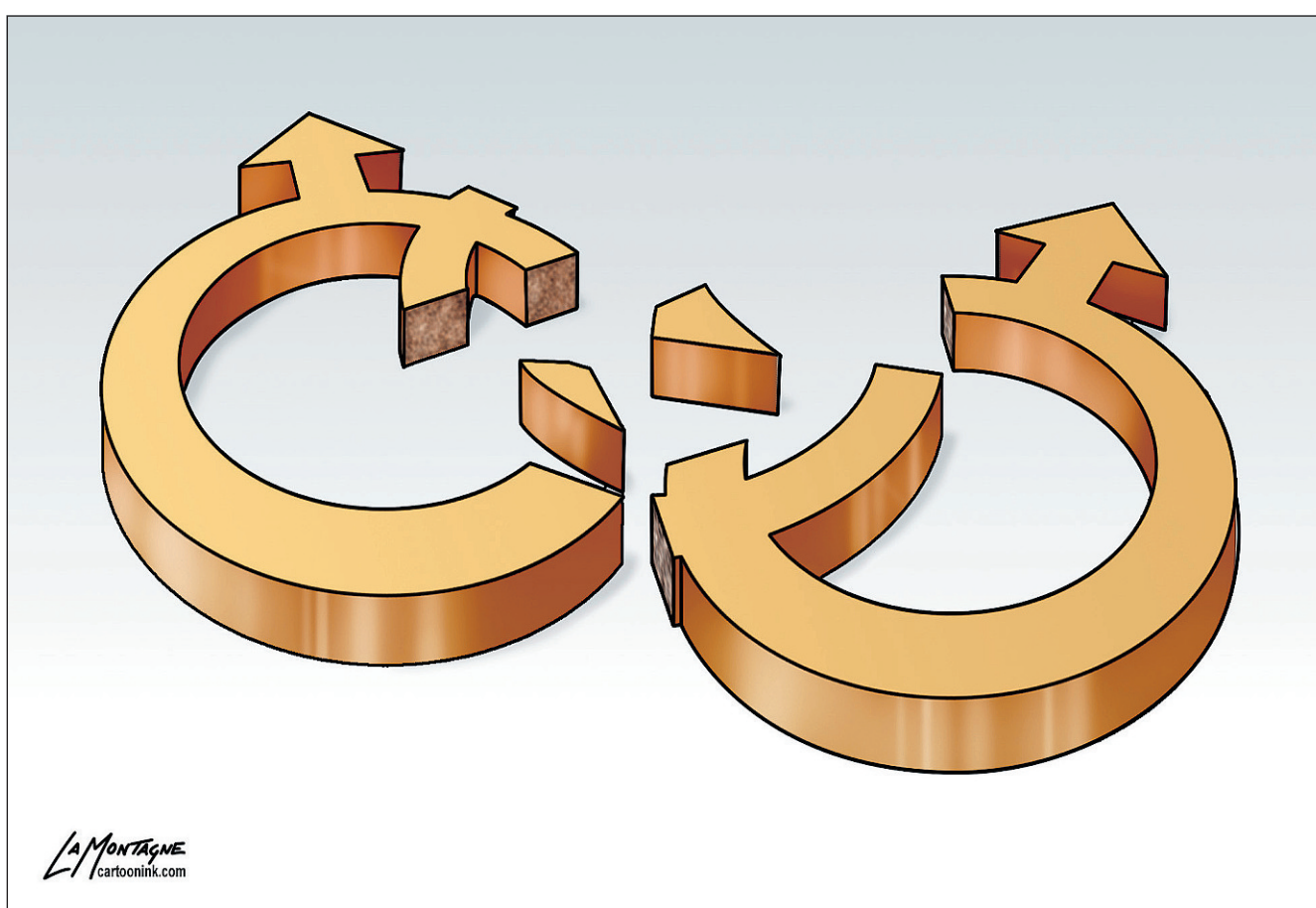
Justice Minister Rob Nicholson said Thursday he would be "looking at options to clarify the law so that marriages performed in Canada can be undone in Canada."

That statement alone indicates the Harper government has no intention of reversing the country's same-sex marriage laws.

But even if Canada granted divorces to foreign couples, like the marriage, the divorce would be symbolic. There would be no way of enforcing a Canadian judge's order in another country.

Most heterosexual couples would walk away relieved if they were told they don't need to get a divorce because their marriage was never recognized in the first place. The lesbian couple in this case should do the same.

Making this a same-sex issue seems political and reckless



Alberta politics have yet to step into the present



GRAHAM THOMSON

Outside my press gallery office at the Alberta legislature is a bulletin board where one of my colleagues has tacked up the front page of the *Globe and Mail* from Oct. 3 — the one with the picture of newly elected Progressive Conservative Leader Alison Redford and the controversial headline, "Alberta steps into the present."

The headline is condescending and unfair — and at the time, it understandably created a backlash from Albertans angry that a Toronto-based newspaper would imply the province, until getting a female premier, was a misogynistic backwater. It also produced plenty of wry smiles and head shaking from press gallery members who immediately recognize a bone-headed headline when we see one. The copy of the *Globe* was thus tacked to the bulletin board as a gentle rebuke to our eastern-based journalistic colleagues and has been hanging there for months.

The headline made me cringe at the time — but it's making me cringe now for a different reason.

The *Globe* got the headline wrong, not because of anything to do with us having a woman as premier, but because in some ways, our political system does seem

to be a backwater. We really haven't stepped into the present.

Just look at the investigation now underway by Alberta's chief electoral officer into potential illegal political donations involving 10 Progressive Conservative constituency associations as well as a number of municipalities.

Simply put, there are allegations that municipal politicians bought tickets to PC golf tournaments and fundraising dinners and charged the cost of the tickets back to their municipalities. In effect, municipal taxpayers were helping fund the PC party. That's illegal under the Election Finances and Contribution Disclosure Act. And it has allegedly been going on for years.

Municipal politicians know they have to curry favour with the PC government and one of the best ways to do that is to curry favour with the PC party. So, they go to PC dinners and PC golf tournaments to rub elbows with PC politicians. That wouldn't be a problem legally if they paid their own way, as many of them do. But there are some who don't. They bill the expenses back to their municipalities and probably don't have a clue they've done anything wrong.

It is a symptom of a corrupted political system that has had one party in power for 40 years. It is the stuff of banana republics and old-time, gerrymandering politics.

There's nothing new to these allegations. We've been hearing about them for some time, but nothing seems to ever get done.

Back in 2007, then-chief electoral officer Lorne Gibson reported his office had investigated nine examples where Alberta politicians and parties had received improper contributions from municipalities and publicly funded organizations. He recommended Alberta Justice prosecute all nine cases. Penalties under the act include a maximum penalty of \$10,000.

Instead, in six of the cases, Alberta Justice said there wasn't enough evidence to proceed, and in three of the cases, officials missed the two-year deadline to prosecute.

In 2004, two Metis settlements were charged with improperly donating \$3,000 to the campaign of MLA Pearl Calahasen, who was aboriginal affairs minister at the time. The case was tossed out of court because RCMP officers filed the paperwork incorrectly.

This is the stuff that sent Gibson into an understandable tizzy. Not only did he warn the government of potential illegalities over improper contributions, in 2006, he complained about Alberta's bizarre, antiquated and unfair practice of allowing the Conservative party to choose the provincial returning officers — the people who hire election workers and who oversee the counting of the ballots.

In other provinces, the chief electoral officer picks them from the general population based on skill and merit. In Alberta, the Conservative party nominated the returning officers and the provincial cabinet confirmed them.

Gibson also poked, prod-

ded and embarrassed the government by pointing out serious shortcomings in the 2008 general election, where 27 per cent of voters were left off the list and some people waited hours to vote.

The Alberta government did, in fact, eventually accept many of Gibson's recommendations to update the system (including getting the PC party out of selecting local returning officers), but not before he was fired. Technically, Gibson's contract was not renewed by an all-party legislative committee. But it was a gang-up against him by the government. Of the 11 members on the committee, all eight Conservatives voted to let him go; the three opposition members voted to keep him. Gibson has launched a lawsuit in response.

There is a chance we'll never know what the current round of investigations turn up. If chief electoral officer Brian Fjeldheim finds no evidence, the cases will die. If he does find evidence, he'll hand it over to Alberta Justice. But that department doesn't seem to have an impressive track record of pursuing charges under the election finances act.

We'll just have to wait and see what happens. Maybe, just maybe, a charge or two will be laid. It would be just the shock needed to send a jolt through a calcified and cynical political culture that has been ruled by one party for 40 years.

It might even help Alberta's politics step into the present.

GRAHAM THOMSON IS A COLUMNIST WITH THE EDMONTON JOURNAL.

Some presidential contenders deserve to be fired



KATHLEEN PARKER
WASHINGTON

One thing we've learned since the Republican primary season began: There's an awful lot of pious baloney out there.

The vast majority of it is on the plate of the man who coined the phrase — Newt Gingrich. Not that he's dining alone. Gingrich first tossed the holy lunch meat on the counter during one of the New Hampshire debates after Mitt Romney tried to aver that he never set out to be a career politician. He

was a businessman first, he said, who found his way to politics.

Gingrich, who has declared war on Romney, all but called the former Massachusetts governor a liar, and not for the first time. Fast forward a few days, and Romney's rivals have seized the baloney and slathered it with holy hoo-hah.

Some of them are frankly making fools of themselves by taking his comment about firing people way out of context and using it to characterize him as a job killer. The intended deception is obvious to anyone who has been following recent events and is so transparently dishonest as to be embarrassing.

To recap: Romney was speaking to an audience about health care and the

necessity of being able to select one's own insurance company. His complete quote went as follows:

"I want individuals to have their own insurance. That means the insurance company will have an incentive to keep you healthy. It also means that if you don't like what they do, you can fire them. I like being able to fire people who provide services to me. You know, if someone doesn't give me the good service I need, I want to say, 'You know, I'm going to go get somebody else to provide that service to me.'"

That's plain enough, right? Not if you're Jon Huntsman or Rick Perry, both of whom are trying to capitalize on the idea that Romney likes to fire people. They've selected a few words — "I like being able to fire people"

— and turned them into a mantra. Not that that's a ringing indictment. Some people deserve to be fired, but these GOP mudslingers are insisting a man who even considers firing people can't possibly be trusted to create jobs.

At least Gingrich, Ron Paul and Rick Santorum have declined to join the club of Mr. Silly. When asked what he thought about Romney's comment, Gingrich replied, "As soon as I saw the whole quote, I said that's not fair to take it out of context. He clearly was talking about the right to choose between service providers, you know, he wasn't talking about actually firing people, per se." For lack of a better word: Duh.

But the job-killing idea has picked up additional sauce,

sticking as we are with the baloney theme, with criticism that Romney's leadership of Bain Capital also resulted in some people losing their jobs. Well and indeed they did. That's what happens sometimes when companies are purchased, salvaged from poor management, revamped and, assuming competence at the top, made profitable.

Since when in a free, capitalist nation is it a sin to buy a company and turn a profit?

Romney can be criticized for lots of things, including his tin-eared attempts to get down with the people. Recently when he said that he, too, had worried about getting a pink slip, Gingrich might justifiably have called baloney. The millionaire's son may be driven to make

his own way, but his employment insecurity can't compare to what most jobless Americans experience.

But to nitpick his success, or to suggest that firing people for lousy service disqualifies him from being president, is an insult to all those everyday Americans who really aren't as dumb as these GOP candidates apparently think.

Sometimes people need to be fired and sometimes they shouldn't be hired at all. That's reality. The further, obvious reality is that several of those who do not deserve to have the jobs they seek are running for president of the United States.

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