

# **Preventing sexual abuse in a polygamous community**

by David Matas

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## **I. Introduction**

Beyond Borders, Child Find Manitoba, Soroptomist International of Winnipeg, UNIFEM, the Council of Women in Winnipeg and the Provincial Council of Women in Manitoba co-sponsored a roundtable in Winnipeg at the Fort Garry Hotel on February 18 2005 on the issue of preventing sexual abuse in a polygamous community. This report deals with the substance of the issue, drawing on the discussions at the roundtable.

Unless otherwise noted, the report sets out the conclusions of the author only. The conclusions are presented for discussion to all the sponsoring organizations and the community at large.

In Canada, sex between adults of no matter what age and children between the ages of 14 and 18 is legal. A polygamous community in a country where sex between adults and children between the ages of 14 and 18 is legal presents unique challenges in preventing child sexual abuse.

Though some of the options considered deal with polygamy directly, the focus of this report is not polygamy as such, but rather sexual abuse of children. Discussion about polygamy that does not relate to sexual abuse of children is outside the scope of the report.

The same can be said of the community Bountiful, British Columbia. Though the Bountiful community represents an example of a polygamous community, the report is not aimed at determining what, in fact, is or is not happening in that community. The focus on preventing sexual abuse in the context of a polygamous community should not be interpreted as an allegation that there is

sexual abuse of children in the Bountiful community.

The conjunction of laws that allow a child to consent to sex at the age of 14 plus tolerance of polygamous communities works against the equality of women and girls. The practical reality is that a polygamous community presents a number of older men in positions of authority married, polygamously, to girl children, and not the reverse. These communities do not present the phenomenon of older women each married to a number of boys. Powerful older men are having multiple child girl sex partners through "celestial" unions. Polygamous communities where there is a low age of consent for sex create a gender and age power imbalance, in favour of older men and against girl children. Polygamous communities in conjunction with a low age of consent disadvantage girl children in relation to older men.

Child sexual abuse can happen in any context. The concern the roundtable addressed was not just the celestial marriages between aging male polygamous community leaders and girl children. It is also the standard child sexual abuse one could find anywhere. Polygamous communities are not immune from this form of abuse. One roundtable participant observed: "Perpetrators are everywhere". Another stated: "No child is safe".

The typical sexual abuser works through grooming, complicity, shaming. The victim child is often reluctant to come forward, feeling herself partially responsible for what happened.

Polygamous communities, in this context too, present a particular problem. Once child sexual abuse occurs, the closed nature of the communities, the fact that there are few, if any outsiders operating within the community who have access to the children and can deal with problems of sexual abuse, the solidarity amongst the adults one finds in polygamous communities makes preventing and

dealing with child sexual abuse particularly difficult. Polygamous communities need a light shone on them.

Marriage of children, which happens regularly in polygamous communities if not controlled, presents a particular problem. Marriage is a lifetime decision. Children, especially those younger than seventeen, are, in the words of one roundtable participant "too young to make life time decisions". They are ill placed to assess what those decisions would mean for their whole life span. Another participant observed that children do not perceive the lifetime consequences of their decisions.

Polygamous communities present two related problems because of their closed nature. One is that it is difficult to get information in about preventing child sexual abuse and out about child sexual abuse that occurs. When a child informs against an adult in the community there is a tendency not to want to deal with the information.

The other is that expulsion from the community or shunning by the community presents a threat to those who would combat or confront child sexual abuse against the wishes of leaders of the community. Those who inform on child sexual abuse or act on information may weaken their welcome in the community. This threat is an inhibition to combatting child sexual abuse which does not normally exist outside the confines of polygamous communities.

In a polygamous community, the leadership typically consists of elder males. A participant at the roundtable noted that children can not distinguish between love and control. Another participant observed that girl children in polygamous community see their leaders in the same way as girl children in the general community see rock stars. The problem a polygamous community presents for girl children is not just predatory elder males. It is also the manner in which the

community influences the desires of girl children. A child's need for belonging, the confusion in perception between the expression of love and the expression of power, attracts girl children to elder male leaders. Policy needs to be developed that would impact on this dynamic.

## **II.UN Convention**

The United Nations Convention on the Rights of the Child has a number of provisions relevant to the issues of this report. They are:

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>1</sup>

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>2</sup>

"States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."<sup>3</sup>

"States Parties shall take all appropriate legislative, administrative, social

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<sup>1</sup> Article 1.

<sup>2</sup> Article 3(1).

<sup>3</sup> Article 5.

and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."<sup>4</sup>

"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."<sup>5</sup>

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

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<sup>4</sup> Article 19

<sup>5</sup> Article 12(1).

(c) The exploitative use of children in pornographic performances and materials."<sup>6</sup>

### **III. Options**

Options the roundtable considered for dealing with the problem of sexual abuse of children in polygamous communities were raising the age of consent for consensual sex, raising the age of consent for marriage, requiring the consent of both children and parents to polygamous unions, requiring a set of rules of conduct of the community that addresses sexual abuse of children, enforcing the prohibition in the Criminal Code against bigamy more rigorously, enforcing the law on sexual exploitation more rigorously, investigation of historical offences, banning polygamy in a more explicit fashion to encompass community practices, mandatory reporting by medical personnel of pregnancies of the underaged, mandatory third party disclosure of birth records of children born to underaged mothers, requiring outside independent school counsellors in community schools, increased education of children directed to preventing their sexual abuse and increased education generally. This report considers each of these options in turn.

#### **A. Raising the age of consent for sex**

An adult of no matter what age can have sex with a children aged seventeen, sixteen, fifteen or fourteen without any legal consequence. Beyond Borders has already taken the position that the age of consent for consensual sex should be raised from 14 to 16. Sex at those ages should be permissible only if the sexual partner of the child is no more than four years older than the child. For children between the ages of 16 to 18 sex should be prohibited when it is exploitative.

The disadvantaged situation in which girl children are placed in polygamous

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<sup>6</sup> Article 34.

communities gives a further reason for endorsing this recommendation. At the roundtable on February 18, 2005 there were a number of representatives of the polygamous community Bountiful. Those representatives endorsed raising the age of consensual sex from 14 to 16, to protect their own girl children. The discussion of the roundtable reinforces the position of Beyond Borders that the age of consensual sex should be raised.

Sex with a child can be consensual and still abusive, depending on the age and maturity of the child. As noted the primary consideration in the matters concerning children, according to the UN Convention on the Rights of the Child, is the best interests of the child and not the views of the child, although those are to be taken into account and given the weight that the age and maturity of the child suggests.

It has been the view of Beyond Borders that consensual sex engaged in by a child under 16 with anyone more than four years older than the child, is never in the best interests of the child and that children of that age do not have the maturity for their views to be given much weight. A roundtable participant observed "Fourteen year olds do not have the maturity to make decisions [about sex]". Another participant observed that girl children are "not in a good situation to make good decisions".

Polygamous communities highlight a problem with the age of consent. Law respecting polygamous communities where there is an age of consent which does not encompass children would, by definition, not present a problem of sexual abuse of children, though there are, arguably other matters of general public concern posed by these communities. The combination of a polygamous community and a low age of consent are mutually reinforcing factors working together to disadvantage children more acutely than a low age of consent alone would do.

The criminal law sets a standard. It can not be the only remedy to deal with child sexual abuse. But if the criminal law standard is not there, it gives a green light to those who would sexually abuse children. In a polygamous community, marriage to the male elders of the community has status, respectability, generating an incentive to girl children, encouraging them to marry older men. A higher age of consent would work against that status, that incentive.

### **B. Raising age of consent for marriage**

The age of consent for marriage falls within provincial jurisdiction, and the age varies considerably amongst the provinces. In British Columbia children, that is to say, those under nineteen, can marry with their parents consent. In Quebec, children under sixteen can not marry. In Manitoba, seventeen year olds must have the consent of parents to marry. Those under seventeen can not marry. In Ontario, children aged sixteen and seventeen can marry with the consent of their parents. Those under sixteen can not marry.

The marriages in polygamous communities are not marriages that go through the legal formalities. So these ages of consent do not inhibit polygamous celestial marriages. Nonetheless, they set a standard for what society considers acceptable. The age of marriage for children should be consistent across Canada and should be no lower than sixteen.

### **C. Requiring the consent of both children and parents to polygamous unions**

As noted, one component of the UN Convention on the Rights of the Child is that states parties should respect the responsibilities, rights and duties of parents or to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. Even in situations where marriage between children and adults is permitted, the marriage should require the consent of the

parents.

Provincial laws provide that legal, formal marriages of children require the consent of parents. All forms of marriage, insofar as they are tolerated despite the bigamy laws, should also require parental consent.

A member of the law enforcement community present at the roundtable observed that the best protection of children is parents, not the law. Proactivity is the best defence possible against child sexual abuse. Law enforcement is reactive. Parents can be proactive.

Another participant observed that parents themselves in a polygamous community are under threat. A polygamous community is free to expel any one of its members. Members of the community who hold membership dear may be prevented by the fear or threat of expulsion from dealing forthrightly in asserting the best interests of their child. So parental consent alone is not a panacea.

As well, a parent himself may be a child sexual abuser. Statistically 80% of child sexual abusers are family members of the victim.

Nonetheless, the parents are the members of the community most likely to have the best interests of the child at heart. The requirement of consent of the parents is an extra check helping to prevent the creation of an inappropriate relationship. A child may look on the leadership of a polygamous community with reverence and awe and be poorly defended against the sexual ambitions of that leadership. The parents of the child are going to provide a more mature and realistic assessment of the benefit to the child of a relationship with a polygamous community leader than the child herself will provide.

**D. Enforcing the prohibition in the Criminal Code against bigamy more**

**rigorously.**

The Criminal Code defines bigamy in this way:

"(1) Every one commits bigamy who

(a) in Canada,

(i) being married, goes through a form of marriage with another person,

(ii) knowing that another person is married, goes through a form of marriage with that person, or

(iii) on the same day or simultaneously, goes through a form of marriage with more than one person; or

(b) being a Canadian citizen resident in Canada leaves Canada with intent to do anything mentioned in subparagraphs (a)(i) to (iii) and, pursuant thereto, does outside Canada anything mentioned in those subparagraphs in circumstances mentioned therein.

(2) No person commits bigamy by going through a form of marriage if

(a) that person in good faith and on reasonable grounds believes that his spouse is dead;

(b) the spouse of that person has been continuously absent from him for seven years immediately preceding the time when he goes through the form of marriage, unless he knew that his spouse was alive at any time during those seven years;

(c) that person has been divorced from the bond of the first marriage; or

(d) the former marriage has been declared void by a court of competent jurisdiction.

(3) Where a person is alleged to have committed bigamy, it is not a defence that the parties would, if unmarried, have been incompetent to contract marriage under the law of the place where the offence is alleged to have been committed.

(4) Every marriage or form of marriage shall, for the purpose of this section, be deemed to be valid unless the accused establishes that it was invalid."

(5) No act or omission on the part of an accused who is charged with bigamy invalidates a marriage or form of marriage that is otherwise valid."<sup>7</sup>

As one can see, the Criminal Code defines the offence of bigamy to encompass any form of marriage. Polygamous marriages are not just common law liaisons. There is a form of marriage involved. This form of marriage makes the union between an older man and a girl child more acceptable to a polygamous community than it would otherwise be. Rigorous enforcement of the Criminal Code provision would serve to protect girl children from sexual abuse.

At the very least, this law should be enforced when one of the partners to the marriage is a child. There may be religious freedom justifications for not enforcing this law against adults. However, in a situation where the principle of freedom of religion and the best interests of the child work at cross purposes, the best interests of the child must prevail. As noted in the UN Convention on the Rights of the Child, in all matters concerning children, the best interests of children must be the primary consideration.

#### **E. Enforcing the law on sexual exploitation more rigorously**

The Criminal Code currently provides:

"153. (1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person,  
or

(b) for a sexual purpose, invites, counsels or incites a young person to

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<sup>7</sup>

Section 290

touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

(2) In this section, "young person" means a person fourteen years of age or more but under the age of eighteen

Leaders of polygamous communities are persons in a position of trust or authority towards children in that community. Celestial marriages between leaders of polygamous communities and children of that community are always sexual exploitation. These marriages run afoul of this law and should be the subject of prosecution. Religious freedom here as elsewhere is no real answer to denying the best interests of children.

#### **F. Banning polygamy in a more explicit fashion**

If polygamy is consistent with the bigamy laws of Canada, those laws can be changed. The intent of the bigamy laws was to prohibit polygamy. If polygamy is nonetheless legal, then the bigamy laws are not working. While the legality or illegality of polygamy raises issues which go beyond the protection of children from sexual abuse, one fall out from more rigorous laws prohibiting polygamy would be enhanced protection of children from sexual abuse.

There are other factors that have to be considered in deciding whether polygamy should be banned in an effective fashion. The principle of freedom of religion needs consideration, since polygamous communities typically function out of religious conviction. Wherever these other factors lead, the factor of preventing sexual abuse of children militates in favour of banning polygamy.

## **G. Rules of conduct**

Polygamous communities can voluntarily adopt rules of conduct which address sexual abuse of children. Alternatively, provincial agencies responsible for the protection of children could require the adoption of rules of conduct for the community which addresses sexual abuse of children.

This report does not set out a model set of rules of conduct. The report does make some suggestions about what a set of rules of conduct might contain.

The rules could define what constitutes sexual abuse. They could encompass mandatory reporting to the appropriate authorities. They could provide that statements made by children about sexual abuse should be recorded in the child's own words. Interviews of children after the initial complaint should be conducted only by the appropriate authorities. Members of the community could be required to allow access to the complaining child to interview the child.

The responsibility for contacting parents should rest with the appropriate designated official. One roundtable participant observed that there should be no requirement that parents must be informed and asked to report child sexual abuse, with independent reporting a last resort only if parents do not.

Where an investigation determines that a complaint is unfounded, all persons involved would be informed. Where an investigation indicates that abuse has taken place, the authorities would take appropriate remedial, disciplinary, and prosecutorial action.

## **H. Mandatory reporting by medical personnel of pregnancies of the underaged**

Sexual abuse of children normally occurs in private. Polygamous communities are closed communities. Celestial marriages in a polygamous community

between adults and children may not be known outside the confines of the community.

Mandatory reporting by medical personnel to the police of pregnancies of the underaged is a means by which sexual abuse of children can be detected. Though mandatory reporting by medical personnel of pregnancies of the underaged is a policy that goes beyond polygamous communities, one advantage it would have is lifting the veil of polygamous communities and allowing the detection of sexual abuse in those communities.

### **I. Mandatory third party disclosure of birth records of children born to underaged mothers**

The same is true of mandatory third party disclosure to the police of birth records of children born to underaged mothers. Mandatory third party disclosure of birth records of children born to underaged mothers is a policy that goes beyond polygamous communities.

Nonetheless, such mandatory disclosure would have the advantage of lifting the veil of polygamous communities and allowing the detection of sexual abuse in those communities. The mandatory disclosure would provide a means by which the sexual abuse of children could be detected.

### **J. Investigation of historical offences**

Child sexual abuse stays with the child throughout adult life. It is an offence with continuing victimization, impacting on and mars adult sexual relationships. Once the crime is committed, the injustice remains until it is remedied.

The struggle against sexual abuse is not just a struggle against present and future abuse. It is also a struggle against past abuse. An investigation in the commission of sexual abuse must not just focus on present crimes. It must also

focus on past crimes. Mandatory reporting of child pregnancies or child births should be historical as well as present day. When the veil is lifted from polygamous communities, when reporting on child births and pregnancies becomes mandatory, the authorities should be prepared to prosecute past crimes as well as present crimes. There is no statute of limitation for the crime of sexual abuse.

Child victims of sexual abuse are generally reluctant to come forward, and even more so in polygamous communities. The victim may be willing to come forward only after the victim has achieved the maturity, independence and perspective of an adult. The authorities should be prepared to prosecute the offence at no matter what stage the victim comes forward.

#### **K. Requiring outside independent school counsellors in community schools**

Community schools within polygamous communities fall subject to the control of the elder male polygamous leaders. Even outside of polygamous communities, where the perpetrator of child sexual abuse is a family member, going to other family members for help may just elicit indifference or cover up or coercion of the child. This problem is compounded with polygamous communities, where the whole community may react the way unhelpful family members would.

Independent school counsellors provide an outside recourse. Sexually abused children can complain to outside independent school counsellors without fear of running afoul of the community power structure.

Polygamous communities develop a sense of solidarity which can undercut effective action against claims of sexual abuse, particularly when those complaints are lodged against someone with seniority and status in the community. One roundtable participant stated that children need to have the

opportunity to come "forward to an independent and objective person." The person has to be someone with whom the child feels comfortable. The presence of an independent outside school counsellor who has no loyalty to the community as such, whose first concern is the well being of the children in the community helps to ensure that community solidarity does not undermine effective action to prevent and react to sexual abuse.

#### **L. Increased education of children directed to preventing their sexual abuse**

Educators have developed a number of programs and lessons to sensitize children to the nature of sexual abuse. One participant to the roundtable observed that children do not necessarily recognize child sexual abuse for what it is. At the roundtable, the *Kids in the Know* program was cited. Risks are explained. Children can be taught what to do if they should become victims.

Education of children to recognize, prevent and react to sexual abuse is valuable in any context. It is particularly important for children in closed polygamous communities. This sort of education should be mandatory generally and certainly mandatory in closed polygamous communities.

Education is connected to rights. The greater the legal protection against child sexual abuse, the more there is to teach children, and the more effective the message about preventing abuse is.

#### **K. Increased education generally**

Girl children who are well educated are more likely to make informed, mature choices in their best interests than the uneducated. Though promoting education generally is a far broader issue than preventing child sexual abuse, one fallout of this promotion of education is the prevention of child sexual abuse.

Education expands the range of choices available to girl children. Advanced education means that children have other meaningful paths open to them besides marriage and children of their own at an early age.

Again here polygamous communities present particular problems because of their closed nature. Home schooling is common. Getting the community to accept a school within the community that has the properly certified staff, which may comprise outsiders, may be difficult.

Education and preventing child sexual abuse have a symbiotic relationship. Celestial polygamous marriages often lead to childhood pregnancies. These marriages and pregnancies in turn often lead to girl children leaving school at an early age. If the age of consent for sex and marriage are raised, girl children are more likely to stay in school and achieve a higher education.

#### **IV. Conclusion**

This report recommends all of the options canvassed. If polygamy is banned, then several of the other options become unnecessary. If polygamy remains legally possible, then all the other options can be implemented in tandem and would work together. Implementing any one of these options is better than doing nothing.

#### **V. Further reading**

Jan Krakauer "Under the Banner of Heaven: A Story of Violent Faith" Anchor Books New York 2004.

Maclean's, December 13, 2004, Ken MacQueen "The Battle for Bountiful"

Chatelaine September 2004 Sally Armstrong "Trouble in Paradise".

Committee on Polygamous Issues, "Life in Bountiful", prepared for the British Columbia Ministry of Women's Equality April 1993