

## POLYGAMY and CHILD MARRIAGE in CANADA

In Canada, child marriage is closely linked to polygamous marriage. In Bountiful, a community of about 1,000 in southern British Columbia, polygamy has been openly practiced for more than half a century. It is practiced by members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS). Polygamy is a central tenet of their faith. It is common among them for men to marry many wives. There are thousands of other FLDS members and members of other sects practicing polygamy in Utah, Arizona, Texas, Idaho, and Mexico. None of these sects are associated with the larger Church of Jesus Christ of Latter-day Saints, which disavowed polygamy in 1890.

### Risk Factors Associated with Polygamy

- Increased chance of emotional, behavioral, and physical problems in children
- Lower educational achievement and a devaluation of education
- Rivalry amongst co-wives
- Increased risk of health problems due to early sexual activity and pregnancy
- Young men being forced out of the communities because of competition for wives and consequently having few social supports
- The perpetuation of harmful gender stereotypes

There are serious allegations of child sexual abuse occurring among the FLDS. Allegations have been made that girls as young as 14 and 15 have been married in the community to much older men and that these girls have been told that refusing these unions would ensure their eternal damnation. Former FLDS members also allege that girls as young as 13 are trafficked across the BC/Idaho border to become brides.

Former polygamous wives contend that typical religious polygamy elevates some men above all others, and women and children are nothing more than property. Women and children may also become more vulnerable to abuse because they are deprived of education. Underage girls are taken out of school to marry and expected to bear as many children as possible, leaving them dependent on their husbands and unable to support themselves.

### International Law

Several international covenants reference polygamy. These include: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Elimination of all forms of Discrimination against Women. While direct wording is often lacking, interpretation of general provisions show a negative international perception. It is generally now understood that customary international law prohibits polygamy.

## Domestic Law

Practicing polygamy is against the law in both Canada and the United States. Section 293 of the *Criminal Code* states that anyone who enters into “any kind of conjugal union with more than one person at the same time, whether or not it is by law recognized as a binding form of marriage...is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”

The Bountiful community has been the subject of several police probes since the late 1980s. Winston Blackmore and James Oler, leaders of opposing factions of the Bountiful community, were charged with polygamy in January 2009. These charges were stayed due to questions of how the Crown selected its prosecutors. However, these charges led the BC government to bring the Polygamy Reference to the British Columbia Supreme Court to clarify whether s. 293 is constitutionally valid.

The 2011 Reference asked if the criminalization of polygamy is consistent with the s. 2a of the Charter (freedom of religion). The court found that s. 293 of the *Criminal Code* is a violation of s. 2a of the Charter; however, it concluded that the violation was justified by Section 1 because of the harms that polygamy causes to women, children, and society in general. It further concluded that it is legitimate for Parliament to act proactively to prevent harm. The BC government has indicated that it is satisfied with this outcome and that it is not planning to appeal to the Supreme Court for a comprehensive decision. In March 2012, it cleared the way for assessment of an ongoing RCMP investigation to begin. This will determine if there is sufficient evidence for polygamy charges to be brought against Blackmore and others.

S. 153 of the *Criminal Code* also relates to polygamy and child marriage. S. 153 allows for a judge to draw an inference of sexual exploitation where a person is in a relationship with a young person that is exploitative because of its nature and circumstances, including the age of the young person, the age difference involved, the evolution of the relationship, and the degree of control or influence by the person over the young person.

## Sources

- Daphne Bramham, *Secret Lives of Saints: Child Brides and Lost Boys in a Mormon Sect* (Toronto: Vintage Canada, 2009).
- *Canadian Criminal Code*, R.S.C. 1985, c. C-46, s. 293 and 153.
- M. Hamilton, *God vs. the Gavel: Religion and the Rule of Law* (New York: Cambridge University Press, 2005) at 73.
- *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588, 28 BCLR (5th) 96, 279 CCC (3d) 1.
- Wendy Steuck and Hunter, Justine. “BC Court Upholds Anti-Polygamy Law as Constitutional” *The Globe and Mail* (3 February 2012), online: <[m.theglobeandmail.com/news/british-columbia/bc-politics/bc-court-upholds-anti-polygamy-law-as-constitutional/article2246238/?service=mobile](http://m.theglobeandmail.com/news/british-columbia/bc-politics/bc-court-upholds-anti-polygamy-law-as-constitutional/article2246238/?service=mobile)>.
- “No Further Reference in Polygamy Case” (26 March 2012) <[www.newsroom.gov.bc.ca/2012/03/no-further-reference-in-polygamy-case.html](http://www.newsroom.gov.bc.ca/2012/03/no-further-reference-in-polygamy-case.html)>.