



flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de la femme à savoir

After Bill S-7: Women and New Laws Affecting Marriage

Tamar Witelson, Legal Director, METRAC
Silmi Abdullah, Lawyer

January 29, 2016

Funded by:

www.onefamilylaw.ca



METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca

www.undroitdefamille.ca

Presenters

Tamar Witelson

Legal Director, METRAC



Silmi Abdullah

Lawyer, Toronto



Topics to be Covered

1. What is Bill S-7?

2. What are the changes in law affecting marriage?

- a) New Criminal Offences of Underage and Forced Marriage (***Criminal Code of Canada***)
- b) New National Standard for Marriage: Minimum Age, Consent and Monogamy (***Civil Marriage Act***)
- c) Polygamy (***Immigration and Refugee Protection Act***) [**Not in effect as of January 29, 2016**]

3. Additional Resources

Information is accurate as of January 29, 2016



What is Bill S-7?

What is Bill S-7?

- Short title: “*Zero Tolerance for Barbaric Cultural Practices Act*”
- Legislation Introduced in November 2014 in the Senate, by the (Harper) Conservative government (now passed into law)

Note: New Bill S-210 introduced in the Senate under the (Trudeau) Liberal government (December 2015)

- may remove the title “*Zero Tolerance for Barbaric Cultural Practices Act*”
- will other changes follow?

What is Bill S-7?

Background

- Government purpose: to address early and forced marriage, and other forms of violence against women and girls, such as polygamy and “honour-based” killing

What is Bill S-7?

Background

➤ Forced marriage in Canada:

- Occurs in different communities and faiths, including Islam, Hinduism, Sikhism, Christianity
- Women/girls primarily affected (92%)
- Age 12 to 34 years (91%)

(South Asian Legal Clinic Ontario Report, 2013)

What is Bill S-7?

Background

- SALCO recommendations:
 - increase public awareness
 - educate about identification and support
 - increase support services in health, counselling, housing
 - do not make forced marriage a specific criminal offence

What is Bill S-7?

The Bill includes changes to 3 laws that affect marriage:

➤ *Criminal Code of Canada*

- forced and underage marriage
- limits defence for “honour-based” killing

➤ *Civil Marriage Act*

- capacity to marry (age, consent)

➤ *Immigration and Refugee Protection Act*

- polygamy



Forced and Underage Marriage

Forced and Underage Marriage

New sections of the *Criminal Code of Canada*

- New criminal offences related to **forced and underage marriage** (ss. 293.1, 293.2, and 273.3(1))
- A new kind of **Peace Bond** aimed at preventing forced and underage marriage (s. 810.02)

Forced and Underage Marriage

New criminal offences for:

- everyone who “celebrates, aids or participates” in a marriage ceremony and knows that one of the persons is being **married against their will**
- everyone who “celebrates, aids or participates” in a marriage ceremony and knows that one of the persons being **married is under the age of 16 years**
- Both offences are punishable with a **prison term up to 5 years**

Forced and Underage Marriage

New criminal offence for:

- doing anything to **remove a person** from Canada for the purpose of celebrating, aiding or participating in a marriage ceremony, if you know:
 - the person being married is **under age 16**, or
 - a person **under age 18 is being married against their will**

Adds to the offences for removing a young person from Canada, with the intention of committing specific offences outside of Canada (regarding offences against children, and youth under 18)

Forced and Underage Marriage

New kind of Peace Bond if a person fears the threat of a forced or underage marriage

- a person can get a **court order** to limit another person's behaviour, if there is a reasonable fear that another person will commit the offence of:
 - celebrating, aiding or participating in a forced or underage marriage, or
 - trying to remove a person from Canada for the purpose of a forced or underage marriage
- Peace Bond can last **up to one year**, or up to two years if the subject of the Peace Bond has already been convicted of a forced or underage marriage offence



Impact on Women and Girls

Impact on Women and Girls

Increased Likelihood of Women not Reporting Abuse

- Research has documented:
 - women and girls who are forced into marriage (mostly 16 to 24 years) are at risk of psychological and physical harm
 - But majority of women in forced marriage situations said they would not report concerns about forced marriage if it would expose their family members to criminal sanctions
 - Every family and community member may be at risk of imprisonment for participating in or celebrating a forced or underage marriage
- This will make it more unlikely for women to report and keep them trapped in forced marriages

Impact on Women and Girls

Increased Risk to Other Vulnerable Women

- other women in family and community may themselves be vulnerable to control, abuse, or punishment and not be able to refuse participating in a known forced or underage marriage ceremony

- these vulnerable women could face:
 - stress of charges and a criminal proceeding
 - risk of imprisonment
 - related negative impacts of criminalization, including:
 - restricted custody or access to children
 - intervention by child protection agencies
 - possible deportation for a criminal conviction, if they are a Permanent Resident

Impact on Women and Girls

New Barriers to Accessing Help

- Community practices will become secret to avoid criminal sanctions, making it more difficult for women and girls facing forced marriage to get help
- If their families are imprisoned and possibly deported, young vulnerable victims are least likely to have the financial and personal independence to find safe alternate housing and a source of financial support

Impact on Women and Girls

New Peace Bond may create “false sense” of safety

- requires a vulnerable woman or girl to appear in Court with the person who is considered a threat
- subject of the requested Peace Bond gets notice of the application and the chance to respond
- subject of the requested Peace Bond may be living in the same household or community with the vulnerable woman
- no lawyer to assist or represent the woman who feels afraid, unless she pays for a lawyer herself
- confrontation with an abusive family or community member, who may be represented by a lawyer in a legal conflict
- time between the application and the grant of a Peace Bond may significantly increase the risk of harm to a vulnerable woman



“Honour-based” Killing

“Honour-based” killing

New limited defence for killing related to family
“honour” (s. 232)

- *Criminal Code* includes a partial defence to murder, in cases where a person kills in a moment of passion because of a “wrongful act or insult” by the victim
- The defence now has a new limitation
- The defence can only be used if the “wrongful act or insult” would be a serious criminal offence (possible prison sentence of 5 or more years)

“Honour-based” killing

New limited defence for killing related to family “honour” (s. 232)

- intended to ensure it is not used in a case of murder related to family “honour”
- the defence has never been used in such circumstances in Canada
- the Supreme Court of Canada has already said that the defence cannot be used in such circumstances (*R. v Tran*)



Impact on Women and Girls

Impact on Women and Girls

The new limited defence of provocation:

- is not necessary to protect women in cases of “honour-based” killing
- may have a negative impact on women accused of killing an abusive partner
- will limit the cases when an abused women could argue that an abuser’s actions caused her to kill in a moment of passion
- does not include clear language that recognizes equality rights and the experience of intimate partner abuse

Presenters

Tamar Witelson

Legal Director, METRAC



Silmi Abdullah

Lawyer, Toronto





Civil Marriage Act
minimum age, consent,
monogamy

Civil Marriage Act

minimum age, consent, monogamy

New national standards to legally marry

- *Civil Marriage Act* determines “capacity to marry”

- requires that both partners:
 - are 16 years or older
 - give “free and enlightened” consent, and
 - are not married to anyone else

Civil Marriage Act

minimum age, consent, monogamy

New national standards to legally marry

- add to marriage laws in provinces/territories

Province/territory marriage laws:

- Have different minimum age to marry
 - 16 to 19 years
 - some exceptions for parental or court consent
- require that both partners consent
- require that both partners end all previous marriages

Civil Marriage Act

minimum age, consent, monogamy

New national standards to legally marry are incorporated into the *Criminal Code*

➤ It is a criminal offence:

- to knowingly perform a marriage that is not in accordance with the law (provincial **or federal**) (s. 294)
- to solemnize or pretend to solemnize a marriage without having legal authority, or to knowingly get an unauthorized person to perform a marriage
- to celebrate, aid or participate in a marriage ceremony knowing a person is under 16



Impact on Women and Girls

Impact on Women and Girls

- New national minimum age of 16 years to marry sends message that Canada supports the marriage of young women
- Minimum age of 16 years to marry is inconsistent with United Nations and other international standards (minimum age 18 years)
- Requirement for “free and enlightened consent” does not provide any meaningful protection to a 16 or 17 year old person
- A young vulnerable girl being pressured by influential family or community members may not be able to provide genuine consent

Presenters

Tamar Witelson

Legal Director, METRAC



Silmi Abdullah

Lawyer, Toronto





Polygamy

Polygamy

- Polygamy is already a criminal offence in Canada
 - Punishable by prison term up to 5 years (s. 293)
- Immigration law *may* change, adding new penalties for immigrants, based on polygamy (changes not in effect as of January 29, 2016)

Polygamy

➤ Immigration law *may* change, adding polygamy as a reason that a person is inadmissible to Canada:

(changes not in effect as of January 29, 2016)

- 1) practicing polygamy would be a new ground for not allowing an immigrant to stay in Canada
- 2) practicing polygamy would be a new ground for not allowing a person to enter Canada on a temporary visa (visitor, student, worker)
 - if the person practices polygamy outside of Canada and applies to enter with a spouse

Polygamy

- The new immigration law for polygamy would apply in very broad circumstances
- “practicing polygamy” under the *Immigration and Refugee Protection Act (IRPA)* would include:
 - if you “**are or will be** practicing polygamy”
 - “with a person who **is or will be** physically present in Canada” at the same time

Polygamy

If the new law comes into force, it would add to other laws already in force:

- practicing polygamy in Canada is a criminal offence (*Criminal Code*)
- a person practicing polygamy cannot enter Canada as a Permanent Resident (*Immigration and Refugee Protection Act*)
- a person practicing polygamy may only enter Canada as a Permanent Resident if they prove they do not have more than one spouse (*IRPA*)
- a Permanent Resident who is practicing polygamy can be deported if they lied about the polygamy in their PR application (*IRPA*)
- a Permanent Resident can be deported if they are convicted of some criminal offences in Canada (including the criminal offence of practicing polygamy) (*IRPA*)



Impact on Women and Girls

Impact on Women and Girls

Different rules for citizens and non-citizens

- anyone who practices polygamy in Canada may face criminal penalty
- new law would **add** immigration penalty (deportation) for non-citizens
 - immigration cases are easier to prove than criminal cases
 - definition of polygamy is very broad (“are or will be practicing”)

Impact on Women and Girls

Negative Impacts on women

- women may not have options to refuse or leave a polygamous relationship
- women may not know they are in a polygamous relationship
- increased risk of deportation
 - directly, for practicing polygamy
 - indirectly, through loss of status if sponsoring spouse is deported for practicing polygamy
- women will be less likely to seek help to leave a polygamous relationship or any abuse, because of fear of deportation



Exercise: Sample Situation

Sample Situation

Kiranjit is a 15 year old girl who lives with her mother, father and grandmother in Toronto. They are all Canadian citizens, but her parents and grandmother were born in Punjab, India. One day, Kiranjit's father announces to her that she must marry a friend's son, who is eighteen years older, and a complete stranger to her. Her mother and grandmother are afraid of her father and do not have much of a say in his decisions. They do not know how to help Kiranjit and begin to prepare for her marriage ceremony. Kiranjit has thought about running away from home, but does not know where to go or how to find help. She is completely dependent on her parents. She finally agrees to the marriage, unhappily giving consent at the ceremony.

Will this fall under the offence of underage marriage (according to the new changes in the *Criminal Code*)?

- a) Yes
- b) No
- c) Yes, but only if there is also an assault or threat of assault involved

Answer

a) Yes. Kiranjit is under 16 years of age. According to the changes made by Bill S-7 in the *Criminal Code of Canada*, everyone who “celebrates, aids or participates” in a marriage ceremony, and knows that one of the persons being married is under the age of 16 years, is liable to a prison term up to 5 years.

Sample Situation

If Kiranjit reports to the police, who could possibly be arrested in her family?

- a) Only her father, since he is the one responsible for the marriage
- b) Her mother and grandmother
- c) Her father, mother and grandmother
- d) Kiranjit

Answer

c) Her father, mother and grandmother.

Kiranjit's father is forcing her to marry, knowing that she is under the age of 16. If her mother and grandmother celebrate, aid or participate in the marriage ceremony knowing she is under 16, they would also be committing a criminal offence. They could all be arrested, and if convicted, they would all be at risk of being sent to prison for up to 5 years.

Sample Situation

If Kiranjit applies for a Peace Bond against her father, she will be completely safe from harm, as soon as she applies, and during the period that the Peace Bond is in effect.

- a) True
- b) False

Answer

b) False. From the time of application until she gets the Peace Bond, Kiranjit may be living in the same household as her father and may be subject to abuse. Her father will get notice of the application, therefore where ever she is living, she may be at risk. She may also be subject to confrontation in court with her father which puts her at further risk. Even if a Peace Bond is granted, it can never guarantee safety, and should always be part of a larger safety plan.

Sample Situation

Is this marriage valid under the *Civil Marriage Act*?

- a) Yes, because in Ontario a person under the age of 18 can marry, with parental consent
- b) Yes, because Kiranjit has given her free and enlightened consent to be married
- c) No, because Kiranjit is under 16 and she did not give free and enlightened consent
- d) No. Even though it is unclear whether her consent would be considered "free and enlightened" under the law, she is under 16 and that is enough to make the marriage invalid.

Answer

c) or d) No.

Kiranjit's consent was unlikely to be free and enlightened. But even with consent, she is under 16, and that is enough to make the marriage invalid.

The three requirements for a valid marriage under the *Civil Marriage Act* are the minimum age of 16, free and enlightened consent, and monogamy. If one of these requirements is not met, then the marriage will not be valid. In Kiranjit's case, with or without "free and enlightened consent", since she is under 16 years old, she does not meet the minimum age requirement, and the marriage is not valid.

Presenters

Tamar Witelson

Legal Director, METRAC



Silmi Abdullah

Lawyer, Toronto





Additional Resources

Domestic Violence and Abuse

For information, if your partner or family member is abusive or violent:

Assaulted Women's Helpline <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868

Legal Aid Ontario http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Family Violence Authorization Program (Legal Aid Ontario)

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

FLEW (Family Law Education for Women) Resources page

<http://www.onefamilylaw.ca/en/resources/>

Additional Resources (Family)

Legal Aid Ontario

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Centres (FLICs)

http://www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

Family Law Education for Women (FLEW)

<http://www.onefamilylaw.ca/en/resources/>

Femmes ontariennes et droit de la familles (FODF)

<http://undroitdefamille.ca/>

Ontario Women's Justice Network (OWJN)

www.owjn.org

Resources (Immigration)

Community & Specialty Legal Clinics

www.legalaid.on.ca/en/contact/contact.asp?type=cl

- Centre for Spanish Speaking Peoples
- Metro Toronto Chinese and Southeast Asian Legal Clinic
- Refugee and Immigrants Information Centre Toronto
- South Asian Legal Clinic of Ontario (SALCO)

South Asian Women's Centre

www.sawc.org/

FCJ Refugee Centre

www.fcjrefugeecentre.org/

- 416-469-9754

Canadian Association of Refugee Lawyers

www.refugeelawyersgroup.ca/

Resources (Immigration)

Refugee Law Office

www.legalaid.on.ca/en/getting/type_immigration.asp

➤ 416-977-8111

Refugee Lawyers Association of Ontario

www.rlaontario.com/

Canadian Council for Refugees

www.ccrweb.ca/en/home

➤ 514-277-7223

➤ Directory of immigrant and refugee serving organizations in your area

www.ccrweb.ca/en/links

Settlement.org

www.settlement.org/index.asp

➤ Information and answers on settling in Ontario

Resources (Immigration)

Citizenship and Immigration Canada

www.cic.gc.ca/english/index.asp

- Call Centre Toll-free: 1-888-242-2100
- TTY: 1-888-576-8502
- More Contacts: www.cic.gc.ca/english/contacts/index.asp

Ministry of Citizenship and Immigration (Ontario)

www.citizenship.gov.on.ca/

- Find information about citizenship and immigration in Ontario
- General Inquiry: (416) 327-2422
- Toll-free: 1-800-267-7329
- TTY: 1-800-555-5559

211 Canada.ca

www.211canada.ca/

- Find available immigrant and refugee serving organizations in your area

Additional Resources (General)

Law Society of Upper Canada Lawyer Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

Toolkit for a good Client-Lawyer Relationship

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

Ministry of the Attorney General

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Find a community legal clinic near you

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

211 Canada.ca

<http://211canada.ca/>