

Polygamy

and the Rights of Women

Opinion summary



Résumé - Opinion summary Polygamy and the Rights of Women

The study conducted by the CSF set out to analyze the issues around a possible legalization of polygamy in Canada from the angle of the social implications for women and children. It is based on a review of the literature on polygamy in different contexts and on the testimony of people who have lived in polygamy, as reported in various works, documentaries and videos.

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Introduction

Context

The question of polygamy's status in Canada emerged in the media after accusations of polygamy were brought by the government of British Columbia, in January 2009, against Winston Blackmore and James Oler, two religious leaders of the Mormon community of Bountiful. The members of this small community have practised polygamy for years in accordance with their religious beliefs. In October 2009 the government dropped the accusations and asked the province's Supreme Court to rule on the constitutionality of Section 293 of the Criminal Code, which forbids polygamy. The question is now under study. A decision concluding that the provision is contrary to the Canadian Charter of Rights and Freedoms could lead to it being struck down, which in the long term would have multiple implications for all Canadians.

In the current Québec context, polygamy is more a question linked to immigrant populations from African or Asian countries where the practice is permitted. In recent years, most Western countries have seen a rise in the number of polygamous marriages in their immigrant communities. Though at present polygamy is a minor phenomenon in these communities, the situation could change quickly due to the combined effects of rising numbers of immigrants from polygamous societies, a lack of state intervention and, in certain communities, the active promotion of polygamy in the name of tradition, religion or identity assertion. Thus the importance of seriously evaluating the social implications of possibly decriminalizing a practice that challenges the very principle of gender equality.

Generally conceived as the union of a man with multiple women, polygamy raises many questions that have yet to be answered. Does treating polygamy as a criminal offence interfere with freedoms guaranteed by the charters, the right to religious freedom in particular? Should we strengthen the ban against polygamy or instead, as some would prefer, tolerate and even decriminalize the practice in the name of cultural diversity? Is polygamy compatible with equality between the sexes and respect for the rights of women as we understand them today?

Purpose and presentation of the opinion

The study conducted by the Conseil du statut de la femme set out to analyze the issues around a possible legalization of polygamy in Canada from the angle of the social implications for women and children. It is based on a review of the literature on polygamy in different contexts and on the testimony of people who have lived in polygamy, as reported in various works, documentaries and videos.

The opinion begins with a brief survey of polygamy around the world, outlining the scope of the phenomenon and the status accorded this ancient practice in different societies. The remainder consists of three main sections. The first looks at polygamy among Mormons in North America. The second examines it in the Muslim and African contexts from which many immigrants have come. The third considers the implications of polygamy in the context of immigration, as illustrated by the case of France; the arguments for and against decriminalization are then evaluated in terms of women's rights and the challenges of polygamy wherever it is practised. The present summary provides an outline of the three parts comprising the opinion and the recommendations resulting from our analysis. The empirical facts and the detailed argument justifying our conclusions are presented throughout the opinion.

The full text of the opinion is available on our website at www.placealegalite.gouv.qc.ca. References in the present summary indicate the various chapters where topics are treated at length.

Polygamy among Mormons

One of the first findings of our review of the literature was that the few studies of Mormon polygamy are based almost entirely on the testimony of people in polygamous relationships. Such individuals tend to defend their way of life and to minimize its negative aspects. For a better view of the challenges of polygamy, we also considered the testimony of women who developed a more critical view after leaving the polygamous way of life. Comparing these discordant voices makes it clear that women are both full-fledged actors of the polygamous system – helping to build and maintain it, because at times they benefit from it – and its first victims.

Mormonism arose in the United States in the first half of the 19th century. An overview of its history (Chapter 1) reveals three important elements: first, the profound attachment of Mormon communities to the practice of polygamy when it was considered a “religious obligation”; second, the difficulty of dealing with the phenomenon by repression alone; and third, the fact that early in the 20th century the vast majority of Mormons renounced the practice, without however abandoning their faith. History shows that this result could not have been achieved without sustained state intervention to apply the law forbidding polygamy. Yet today a minority of dissident Mormons in the fundamentalist branch of the Mormon Church, including the community of Bountiful, continue to defy the law by practising polygamy. The situation persists due to general indifference and the laxity of the authorities.

Analysis of the religious doctrine behind Mormon polygamy shows that the practice is the cornerstone of the followers’ unshakeable faith; they are convinced it is their best assurance of an eternal life after death (Chapter 2). The insistence on continuing polygamy, despite the laws forbidding it, contributes to the excessive control of religious leaders over the members of their community, for to preserve their values and polygamous way of life they must live in isolation from the society around them. This authoritarian and repressive community model sets up conditions that are ripe for abuse, of which women and children are the victims.

Analysis of the issues around Mormon polygamy reveals that from the outset, the practice was instrumentalized to strengthen the dominance of religious leaders over their followers (Chapter 3). The abundant testimony of former members of these communities (cited in section 3.3) provides concrete evidence of how the polygamous system reinforces the subordination of women, inevitably denying their fundamental rights as well as those of their children.

Polygamy in the Muslim and African Context

In contrast to Mormonism, Islam, which arose in the 7th century, “authorizes” polygamy without considering it a “religious obligation” (Chapter 4). A patriarchal tradition that formerly was practised without restriction, polygamy had certain rules imposed on it by Islam, including a limit on the number of wives to four and the requirement that they be treated equally; this last is rarely respected. While legally accepted in most African and Muslim countries today, polygamy is increasingly a matter of controversy. More and more women’s groups and human rights organizations are demanding its abolition, citing the disastrous effects of polygamy on women and children.

For over a century, two currents of Islamic thought have clashed over the subject of polygamy, as over other questions related to the status of women. Conservative circles, taking a rigid, literal reading of the religious texts, consider polygamy “a right recognized by God” and insist on maintaining patriarchal traditions to preserve the privileges granted to men. Defending the opposite view, reformers argue for a more liberal reading of the same religious texts, seeking an Islamic vision that is more compatible with social evolution and respect for the rights of women.

In recent years, various Muslim countries have attempted to place legal restrictions on polygamy; they have failed due to fierce opposition by the conservative religious movements that have risen to dominance (Chapter 5).

Historically, there are two strategies for opposing polygamy in Muslim societies: a secular approach, often criticized for its association with the West, and a reformist Islamic approach that is considered more authentic. The first, illustrated by Turkey, which abolished polygamy in 1914, is based on a secular vision of society that seeks to reduce the influence of religion in the legal and political spheres. The second, illustrated by Tunisia, which banned polygamy in 1956, seeks legitimacy in the religious texts, reinterpreting them to promulgate a meaning compatible with modernity and the rights of women. The pertinence of one or the other strategy depends on the political and social context. In a context of religious fervour, a reinterpretation of religious texts seems imperative to reduce internal resistance to changes sought in the interests of women.

Finally, analysis of the African and Muslim contexts shows that the social effects of polygamy are predominantly negative, despite the fact that it is legally accepted.

Polygamy in the Context of Immigration

The case of France is highly relevant, since for many years the country had a family reunification policy that authorized immigration by the members of polygamous families (Chapter 6). According to research, the situation of African women living in polygamy in France is often worse than in their country of origin.

That research shows that the new wives of polygamous African men are often very young and have little education; sometimes they were married by force or without really having a choice. They find themselves isolated and under the total domination of their husbands, in a foreign country whose customs and sometimes even language they do not understand, far from the social and family network that might have helped them. Living in accommodations that are too small and ill-suited to large families, they are obliged to share the space with other co-wives and their children. This promiscuity leads to permanent conflict among co-wives and their respective children, resulting in physical and psychological violence that can have dramatic consequences. As well, these conflicts often spill over beyond the family into school and the immediate neighbourhood, with negative results for the children's development. Furthermore, given the difficult employment conditions for immigrants, many polygamous husbands are incapable of providing for their numerous offspring. As a result, the co-wives and their children are often dependant on social assistance, which contributes to exacerbating the racism and anti-immigrant sentiments stirred up by certain political groups.

Due to the multiple problems caused by the influx of polygamous families into France, the government changed course with the adoption of the Pasqua law of 1993, which prohibits the immigration of more than one spouse under family reunification. This politico-legal shift has had perverse effects on the women concerned, and polygamous families are still in a difficult situation. The French example argues against those who advocate being open to polygamy, demonstrating instead that it should be approached with great caution.

Different Contexts, Similar Implications

Despite the diverse contexts in which polygamy occurs, the human experience of those who live this way of life tends to be similar. The major ways in which polygamy is detrimental include the following:

- The polygamous system rests on patriarchal values that oppose the emancipation of women and restrict them to their traditional roles. In societies in which polygamy is practised, the acquisition of multiple wives generally improves the status of men, but deprives women and girls of the right to equality.
- Polygamy is closely associated with a high birth rate, primarily due to competition between co-wives. This reduces their chances of developing other skills allowing them to realize their potential and improve their economic condition.
- The fact that the women must share their husband with others puts them in a situation of permanent competition for access to family resources and their husband's favour. This causes considerable psychological stress, sapping their physical and mental health and violating their human dignity.
- Polygamy engenders family conflict and violence, with negative effects on the health of women and children.
- Having more spouses and thus more children increases the financial burden on the polygamous husband, which can become an obstacle for the health and education of the children. For that reason, children from polygamous families tend to be more at risk in terms of their health and safety. As well, their emotional and intellectual development is often compromised by the lack of parental investment.
- The polygamous system rests on a significant age gap between the husband and his wives. This reinforces the husband's dominance and the subordination of women.

- By authorizing influential men to appropriate as many young girls as they want, polygamy creates a numerical imbalance in communities, preventing other men from finding a wife to start a family. In polygamous Mormon communities, young men are expelled from the community for the least misconduct, sometimes when they are still minors.
- Studies show that by leaving a high proportion of men unable to find a wife, polygamy creates a more aggressive social climate and a higher crime rate.
- To compensate for the numerical imbalance, polygamy encourages the trafficking of women and exerts a downward pressure on the age at which young girls are married. Sometimes they are still minors, and they are not always allowed to finish their schooling. Moreover, the risks to health and life associated with early marriage and the resulting pregnancies are very real.
- Testimony by former members of polygamous Mormon communities has revealed the extent of the physical and psychological violence exerted on women to keep them, willingly or unwillingly, in a polygamous system that infringes their basic rights and violates their human dignity.

That is the background for the controversy surrounding polygamy today. It is therefore imperative to get past the rhetoric that invokes the “free choice” and “consent” of women to argue for decriminalization, with no concern for the social implications (Chapter 7). It is clear that the polygamous system generates an entire chain of consequences leading to multiple violations of the rights of women, children and young men. Even if only practised by a minority, polygamy has a structuring effect on an entire society. This is why the concepts of “free choice” and “consent” are irrelevant to the question of decriminalizing polygamy, which should be judged by its long-term social consequences.

Conclusion and Recommendations

Analysis of the facts and implications of polygamy, in various contexts, leads us to conclude that the decriminalization advocated by some is no solution to the complex problems associated with polygamy. It is naive to think that decriminalizing polygamy would eliminate its negative consequences. On the contrary, it would only amplify them, as is proven by the numerous detrimental effects of polygamy in all societies where the practice is legally accepted.

The consequences of decriminalizing polygamy in Canada would be significant (Chapter 8). First, if Canada were to authorize polygamy it would be the only Western country to do so, making it an attractive destination for those who practise or wish to practise polygamy. Such a policy would not be viable in the long term. Second, Canada would default on its international commitments to adopt measures ensuring equal rights for both sexes. That principle is totally denied in polygamous marriage, which is based on inequality between the sexes. Third, decriminalization would clearly violate the dignity of women and their right to equality, which is guaranteed under the Canadian Charter of Rights and Freedoms. The government would be acting against the interests of women, thereby scorning women around the world who are fighting against this patriarchal practice and for a life of greater dignity.

The status quo is equally unacceptable. The current policy of non-intervention gives free rein to those who violate the rights of the most vulnerable, women in minority groups. For a start, it must be recognized that polygamy's negative impact on women and children is more important than the cultural or religious arguments in its favour. That is the first step toward a coherent policy that would both eliminate this practice and protect the rights of women and children, while respecting the obligations and responsibilities of the state.

We propose a three-dimensional approach focusing on law, immigration and social aspects. Of course, these recommendations are based on the law as it stands now, on the assumption that Section 293 of the Criminal Code will be maintained.

Legal aspects

1. The criminalization of polygamy in Canada must be maintained, and governments must vigorously support the constitutionality of Section 293 of the Criminal Code before the courts.
2. Intervention policies must be developed to strengthen and focus state action against polygamy.

The authorities must be vigilant in cracking down on cases of polygamy, for even if the latter are a minor phenomenon they could encourage others to adopt the practice.

Legal action against polygamy should be applied with discretion. There is no need to conduct a witch-hunt to arrest everyone in the country who is in a polygamous marriage. Intervention should be focused, strategically, to dissuade as many people as possible in the communities concerned from practising polygamy. Intervention policies should be established and applied by Crown prosecutors, police forces, youth protection officers, educators and social services. For example, the first priority should be religious leaders who violate Canadian law by consecrating polygamous unions. It would also be important to deal severely with the most visible cases of polygamy, which serve as examples to community members. When a woman suspects her husband of active or planned polygamy, the matter should be investigated and dissuasion exerted. Logically, legal penalties should only be applied to polygamous men, since their wives have only a single husband. Any attempt to take action against women living in a polygamous union would be counter-productive.

However, before conducting any operation to strengthen the ban against polygamy, two conditions are necessary. First, it is crucial to raise public awareness on the matter, particularly among the media and human rights groups, by informing them adequately about polygamy's harmful effects and the reasons for the intervention. Second, any action to demand application of the law must be accompanied by adequate measures to protect the women and children who would be directly affected. If those two conditions are not met, public opinion would turn swiftly against such intervention, giving indirect support to polygamy. The history of the Mormons tells us that state intervention without previously raising public awareness would, in the long term, cause more damage than doing nothing.

Of course, as with other practices defended in the name of individual liberties or a culture, religion or identity, polygamy will no doubt always be a matter of controversy. Consequently, we cannot wait for unanimity before acting. But we must be prepared to face criticism, and must seek broad support for the ban against polygamy and for state intervention. Other strategic measures should also be developed, in close consultation with the women of communities where polygamy is practised, to reduce internal resistance to application of the law.

3. Existing laws against the delegation of family law to religious authorities must be maintained and strengthened.

Experience shows that religious authorities of all faiths are likely to apply rules of marriage and divorce that are not in line with civil law and the principle of equal rights. Entrusting marriage and family relations to non-public powers would impede the state's capacity to guarantee and apply the principle of equal rights for both sexes.

Immigration aspects

4. Canada, and Québec especially, must deny admission to any immigrant who is engaged in a polygamous marriage, in order to avoid increasing the number of polygamous families living here.

The current Canadian policy, which consists of accepting the immigration of a polygamous husband and a single spouse by considering the marriage monogamous, is incoherent and infringes on the rights of the other wives who are left behind in their country of origin. Furthermore, in fact the polygamous husband tends to immigrate with his favourite wife, who was not necessarily the first. He is then allowed to bring with him the minor children of his other wives, thus separating them from their mothers, who could not be accepted under the right to family reunification because their husband already has a wife in Canada.

To respect the rights of women and children from polygamous societies, it would be fairer to make polygamy a criterion rendering a person ineligible for immigration. It would be irresponsible to do the opposite, accepting all members of a polygamous family, as certain partisans of decriminalization suggest. That would open the door to enormous social problems. France experienced those problems before changing course and prohibiting the immigration of multiple wives with a polygamous husband.

5. Strengthen the rule by which citizenship obtained through misrepresentation regarding polygamy can be revoked, to cut down on fraud.

Social aspects

▪ Prevention and education

To eliminate polygamy, prevention and education are what is most important, particularly for minorities that accept the practice. It is therefore essential that the emphasis be placed on the following priorities:

6. Exercise greater vigilance toward private confessional schools of all origins to ensure the following three indispensable conditions:
 - a) that the curriculum taught in such schools complies fully with the requirements of the Ministère de l'Éducation;
 - b) that girls receive a complete education, identical to that of boys, so they can have access to all professions;
 - c) that there be no promotion of polygamy or any content of a misogynist or racist character in religious or other instruction. Ultimately, subsidies must cease to schools that in any way promote polygamy and inequality between the sexes.

In sum, we must affirm the principle that any educational program must respect the principles set forth in the charters of rights. That implies that all religious communities must voluntarily renounce the promotion of polygamy and the misogynist or racist interpretation of sacred texts, which is in no way a negation of religious freedom. The vigilance and support of the state are necessary to ensure that this minimum standard is respected by all faiths, without exception, to avoid the discrimination or victimization of women.

7. Provide adequate training to social workers in communities from polygamous societies, so they can recognize and understand the social implications of polygamy and can protect the rights of the women and children concerned.
8. Actively promote the rights of women and children, particularly among new immigrants and communities where polygamy is accepted, to prevent any increase of polygamous marriages here.

If we want to avoid an increase in the number of clandestine polygamous marriages in Canada, it is essential to take whatever steps are necessary to reach women and girls in communities where polygamy is traditionally accepted. Not only must they be informed of their rights as citizens, including the right to refuse or leave a forced or polygamous marriage, they must also be offered the support they need to resist pressure from those around them, thereby preventing polygamy and the violation of their rights.

We should also put greater emphasis on education about democratic values, about the harmful effects of polygamy on women and children, and about theological divergence on the subject of polygamy. Since polygamy is often a matter of sincere religious belief, a secular approach is not enough. Strategic alliances could be formed with people in the communities concerned, people who could propose an interpretation of the religious texts that is more in line with respect for women rights; this would reduce internal resistance to the changes sought.

- **Protecting persons at risk**

We must recognize of course that of itself, a law is not enough to fight effectively against polygamy and the rights violations it entails. It is essential to ensure in parallel the protection of women and children in polygamous families.

9. **Integrate into existing programs a component aimed at ensuring the protection of women and children in polygamous families, and provide for measures adapted to their needs.**

It is indeed critical that protection and adequate support be offered to persons at risk, so they can bring charges and protect themselves from the abuses associated with the polygamous way of life. To this effect, we must explore all existing anchor points by which these people could be reached, for example schools, the health system and social services.

10. Provide support to women and girls who want to leave the polygamous way of life.

The history of the Mormons reveals that the wives of a polygamous husband, even when married by force, shackled by a succession of pregnancies and reduced to the status of domestic slaves, nonetheless receive a form of security. For them, the idea of leaving their community is like jumping into the void, with no safety net. We believe that the same difficulty affects women immigrants who are in a polygamous marriage that they wish they could leave.

Consequently, it is essential to provide for measures that are tailored to each context, that would be part of a process of long-term support aimed at helping women overcome the multiple challenges of leaving their polygamous way of life. Such measures could include, for example, support in terms of housing, employment, professional training, parental support and social integration. We could consider the possibility of providing community associations, and particularly women's groups, with the means to fulfill this mission. We should put greater emphasis on civil society as the way to achieve the elimination of polygamy.

11. Finally, given the complexity of the questions raised by the practice of polygamy, funding should be provided for studies on women living or who were formerly living polygamous union in order to better understand their realities and needs. In the same vein, issue tables should be set up to initiate and pursue discussion with people in civil society, including women affected by polygamy, with the goal of stopping and eliminating this practice in due respect for the rights of women and children.

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The full version of the opinion and this summary are available on the website of the CSF at www.placealegalite.gouv.qc.ca.

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