

# Polygamy – Canada Decides

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*n.*

**1.** The condition or practice of having more than one

spouse at one time. Also called *plural marriage*.

**293.** (1) Every one who

(*a*) practises or enters into or in any manner

agrees or consents to practise or enter into

(i) any form of polygamy, or

(ii) 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.**

# Article #1: Landmark B.C. polygamy case in judge's hands (CBC)

The fate of Canada's 121-year-old ban on polygamy is in the hands of a B.C. judge, after months of landmark hearings wrapped up Friday. But whatever the court ultimately decides, the hearings also revealed allegations of child trafficking and abuse that could result in criminal charges regardless of what happens to the polygamy law.

B.C. Supreme Court Chief Justice Robert Bauman spent several months hearing testimony and legal arguments about whether the prohibition on multiple marriage is constitutional, and much of the case focused on allegations of abuse in the small religious commune of Bountiful, B.C. The court heard evidence that teenage girls were taken across the Canada-U.S. border to be married, prompting RCMP in January to announce a renewed criminal investigation into the community about 1,000 people in southeastern B.C.

Seized church records outlined more than two dozen such marriages involving girls as young as 12, who were moved to the U.S. to marry older men. Several girls from the U.S. were also married to men in Bountiful, according to the documents. It's not clear when the RCMP investigation will be finished. Bauman's decision is likely months away, with some observers predicting it will eventually end up at the Supreme Court of Canada.

The competing legal processes — one a constitutional court case, the other a police investigation — reveal the one of the major issues in the case itself: Is the polygamy law necessary, or even effective, to prevent abuse?

Janine Benedet, a law professor at the University of Victoria who has been following news coverage of the case, said laws against sexual exploitation and human trafficking have been unable to address abuse in Bountiful, despite various investigations during the past two decades. "We've had that evidence for years in different forms, we've had women from that community come forward and make allegations that they or their children were abused, we've had ample evidence about problems with the educational system, evidence of movement across borders," Benedet said Friday as the last arguments were made in court.

"And the response from the authorities has always been, 'Well, closed communities are difficult to get evidence.' That, in and of itself, should make us want to put some effort into that." The provincial and federal governments have pointed to that inability to lay charges, under the polygamy law or any other, as a reason to uphold the multiple marriage ban.

The polygamy law, the governments say, is the only way to prevent and punish such crimes in a closed religious community that shuns outside scrutiny and where the plural wives themselves are unwilling to co-operate with police. Challengers say the Criminal Code covers offences such as sexual exploitation, human trafficking and kidnapping. Polygamy, they claim, isn't the issue.

The constitutional case was prompted by the failed prosecution of two men from Bountiful who were charged in 2009 with practicing polygamy. Residents follow the Fundamentalist Church of Jesus Christ of Latter-Day Saints, or FLDS, which, unlike the mainstream Mormon church, holds polygamy as a tenet of the faith. The hearings focused heavily on life in Bountiful, where government records reveal high rates of teen pregnancy and marriage, and low enrolment at two publicly funded schools. Court heard stories of psychological control, physical violence and sexual abuse from former residents.

The case also featured contradictory evidence from academic experts on whether those harms are the predictable, inevitable outcome of polygamy. Three women living in Bountiful, two of them married, testified anonymously, telling the court they were happy and chose to live as "celestial" wives. However, some of them told court about 15-year-old sister wives and being married to the same men as their own sisters by blood.

Mary Ellen Turpel-Lafond, B.C.'s representative for children and youth, said she's been watching the case and has an "open file" on Bountiful. Turpel-Lafond said she was pleased the B.C. government has been fighting hard to keep the polygamy law on the books, though she wants to hear what the province's Children Ministry plans to do about what's happening in Bountiful — regardless of the polygamy law.

"I'm very pleased that evidence has been brought forward, it's something that's concerned me and, with all the stops and starts this has had, finally it's had a public airing in an independent setting," she said.

"And there is a need to do child welfare investigations in these areas and to make sure we have a strong process to do that, and that standards that we have for children have to apply across the board, no matter what your religion."

**Article #2 : Canada: Reference case on anti-polygamy law can go ahead without Polygamist leader (Vancouver Sun)**

The participation of Winston Blackmore, Canada's most notorious polygamist, would be welcome in the reference case on the anti-polygamy law's constitutionality, but the chief justice of the B.C. Supreme Court said Tuesday that it's not necessary. In a written decision, Robert Bauman said that not only is Winston Blackmore's participation and that of his 500 or so followers from the community of Bountiful, B.C. not necessary, there is no reason for taxpayers to pay their legal costs of participating in the reference case.

Blackmore was one of two men charged in January 2009 with practising polygamy, which has been a criminal offense since 1890. The charges were later quashed on a technicality and rather than appealing that decision, Attorney General Mike de Jong decided to refer two questions to the B.C. Supreme Court. The action was joined by the federal Justice Department.

Those two questions are: Is the anti-polygamy law consistent with the Charter of Rights and Freedoms? And, does the prohibition on polygamy require the involvement of a minor, exploitation, abuse of authority, a gross imbalance of power or undue influence?

So far, 12 interested parties have been accepted as participants in the case which is likely to go to trial in mid-November. Among the parties is Jim Oler, the other man charged in 2009 with polygamy. He is the bishop for the Fundamentalist Church of Jesus Christ of Latter Day Saints in Bountiful. In his judgment, Bauman said while Blackmore's participation "would help in developing the record which will assist the court in answering the questions in the reference, but that participation is not 'necessary' . . . any more than is the participation of the [12 other] interested persons."

The chief justice noted, "No proceedings are extant against Mr. Blackmore. He may possibly face a prosecution under s.293 of the Criminal Code in the future, but that is pure speculation." Bauman went on to say that while the outcome "may possibly, but not necessarily, affect Mr. Blackmore and his followers in future," that is not enough to grant them party status equal to the federal and provincial governments and to the court-appointed amicus who will argue that the law is invalid.

He also noted that Blackmore has filed a civil suit against the province for damages arising from the failed prosecution. Adding Blackmore to this case, Bauman wrote "would transform a reference case, which is not an adversarial proceeding . . . into just that." However, if Blackmore and his congregation wish to be given status as interested parties, Bauman said he would grant that.

As for advancing Blackmore's legal costs, which were estimated to be $1 million or more, Bauman described it as an extraordinary request with no legal precedents. The chief justice noted that the test for advance funding is a determination that an injustice would occur without that party's participation. He rejected that in Blackmore's case. And while Blackmore had provided "fairly significant disclosure of his personal financial situation," Bauman said there was no evidence that the congregation was unable to raise the money.

**Article #3: Polygamy law doesn’t breach religious freedom guarantee, lawyer argues (Vancouver Sun)**

Religious freedom is the most important guarantee in the Canadian Constitution and any limits on it must be taken very seriously. That concern about limiting religious freedom is the reason that the Christian Legal Fellowship intervened in the constitutional reference case to determine whether Canada’s polygamy law is valid, lawyer Gerald Chipeur said Friday in B.C. Supreme Court.

One of the fellowship’s purposes in intervening in the case, he said, was to argue for “a generous reading of the guarantee of religious freedom.” But the polygamy law does not infringe religious rights, Chipeur said in his closing argument. He also said that no weight should be given to the testimony of the fundamentalist Mormon witnesses from Bountiful, who practise polygamy. Chipeur likened their testimony to that of slaves being asked by their masters to give an opinion of slavery.

The Christian Legal Fellowship’s lawyer argued that the polygamy law is consistent with the Charter because Parliament has defined marriage as a union between two persons. The fellowship’s position is completely opposite to that of the Fundamentalist Church of Jesus Christ of Latter Day Saints, which is another of the interested parties in the case. FLDS followers -- who account for about half of the 1,000 residents in Bountiful, B.C. -- have as a core belief that a man needs more than one wife to enter the highest realm of heaven. Much of the evidence in the reference case has centred on Bountiful, B.C. where fundamentalist Mormons have been practising polygamy for nearly 60 years.

The FLDS argues that the prohibition of polygamy does infringe their religious rights since they believe that men require multiple wives to reach the highest heavenly realm. But Chipeur said, “The purpose of this reference is not to inquire into the religious beliefs of the inhabitants of Bountiful. Their religious practices can have no impact on the constitutionality of a Criminal Code provision of general application.” The group urged Chief Justice Robert Bauman to uphold the law, but it doesn’t want to close the door on the argument. Chipeur said the court ought to leave open the possibility that if individuals are criminally charged, they could argue that the restrictions against polygamy are not justifiable in a free and democratic society.

**Article #4: Why is polygamy illegal?**

### Wendy Kaminer , www.secularhumanism.org

So why is polygamy illegal? Why don’t Mormons have the right to enter into multiple marriages sanctified by their church, if not the state? There’s a short answer to this question but not a very good one: polygamy is illegal and unprotected by the Constitution because the Supreme Court doesn’t like it. Over one hundred years ago, the Court held in *Reynolds v. U.S*. that polygamy was “an offence against society.” The *Reynolds* decision upheld the criminal conviction of a man accused of taking a second wife in the belief that he had a religious duty to practice polygamy, a duty he would violate at risk of damnation. The Court compared polygamy to murders sanctified by religious belief, such as human sacrifice or the burning of women on their husbands’ funeral pyres.

Even in Victorian America, this comparison made little sense. (Most Victorian women, I suspect, would have chosen polygamous marriages over death by burning.) Today the Court’s analogy is as anachronistic as a ban on adultery. After all, what’s the difference between an adulterer and a polygamist? And if it’s not illegal for a married man to support a girlfriend or two and father children out of wedlock with them, how can it be illegal for him to bind himself to them according to the laws of his church? Why is a practicing Mormon with two wives a criminal while Staten Island Congressman Vito Fosella, recently embarrassed by the discovery of his second family, is simply a punchline? What’s the moral and practical difference between a man who maintains multiple families without the approval of any church and a man who maintains multiple families with his church’s approval?

Nontheists who favor civil unions for everyone—taking the state out of the business of approving or disapproving religious matrimonial rites—should be especially supportive of the First Amendment right to engage in polygamous marriages sanctified by any faith. Whether or not polygamy should be legalized so that people in polygamous marriages enjoy equal rights and entitlements (like Social Security benefits), it should at least be decriminalized. Why should we care about other people’s private religious ceremonies? How dare we criminalize them? “Polygamy encourages child abuse,” people say, citing instances involving the marriage of older men to underage girls. Assuming for the sake of argument that this is true, it still doesn’t justify categorical prohibitions on polygamy. Alcohol consumption may encourage sexual violence; it’s often blamed for date rape. Should we prohibit its use, as members of the Women’s Christian Temperance Union demanded over one hundred years ago? Or should we prosecute alcohol-fueled violence whenever we find it?

We rightly prohibit violence, not drunkenness, even though some drunks are violent; we should prohibit child abuse, not polygamy, even though some polygamists are abusers. To do otherwise is to court worse abuses than we seek to prevent, as the raid on the Search for Zion compound in Texas this past April demonstrated. On the basis of one anonymous phone call (that later appeared to be a hoax), Texas authorities forcibly removed more than 460 children from their parents without evidence of actual abuse in each case. Parents and children were ordered to undergo DNA testing (Who knows how long the state will maintain the DNA database, or to what uses it will be put?), and the children were summarily consigned to the notorious Texas foster-care system. They were subsequently reunited with their parents on order of Texas courts, which rightly held that the state had acted unlawfully, but who knows how much damage was done?

It’s hard to explain the relative complacency or cautiousness that initially greeted this extraordinary abuse of power, except with reference to religious bigotry or squeamishness about polygamy. Members of the Search for Zion sect tried taking their case to the public—some attorneys defended their rights, and the American Civil Liberties Union eventually expressed more than cautious concern for them—but predictably, the national conversation generally reflected little sympathy for the civil liberties of people involved in a religious group far outside the mainstream. Imagine the reaction had the state instead invaded a community of Christian Scientists and removed all their children after receiving an anonymous tip that one child had been harmed by the refusal of his or her parents to provide medical care.

The Search for Zion case is different, some reply, because polygamy is illegal. Exactly. Polygamy’s illegality doesn’t make the state’s actions less abusive—imagine the reaction if the state summarily removed all the children from a commune in which parents were suspected of smoking dope—but it does provide authorities with an argument, however flawed.

Of course, I’m not suggesting that any parent have a religious right to harm their children by denying them medical care, subjecting them to sexual molestation, or otherwise abusing them. I’m simply pointing out that the state should not abuse the power to prosecute people or forcibly remove their children because authorities don’t approve of their “lifestyle.” Gay men were once routinely suspected of being pedophiles, a suspicion that persists today but with considerably less prevalence and respectability. Indeed, opposition to gay marriage still relies on specious arguments about the harm it poses to children. Some fools still compare homosexuality to bestiality, just as the Supreme Court once compared polygamy to human sacrifice. We progress when we base the extension of rights on reason, not bias or judicial hyperbole.