


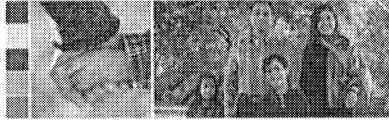
November 2014

 Citizenship and Immigration Canada / Citoyenneté et Immigration Canada



Citizenship and Immigration Canada

***Zero Tolerance for
Barbaric Cultural
Practices Act***



Canada

The Need for Change

- Early and forced marriage, so-called “honour”-based violence and polygamy are occurring in Canada with severe and even fatal consequences. Women in Canada, including immigrant women, can face a number of barriers in protecting themselves and in getting help.
 - 219 reported cases of forced marriages in Ontario between 2010 and 2012 - 92% of these cases involved female victims, with 30% involving girls between the ages of 12 and 18;
 - 100 requests for consular assistance from Canadians related to forced marriage since 2009;
 - at least 20 people were convicted in Canada of homicide where there was some indication that the killing was related to family honour; and
 - more than 1,000 people living in the polygamous community of Bountiful, B.C., some may have been brought into the country to “marry” Canadian residents.

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In the 2013 Speech from the Throne, the Government committed to taking steps to ensure that early and forced marriages, and other forms of barbaric cultural practices, do not happen in Canada.

To better understand how to address these forms of violence, Minister Alexander held roundtable discussions with representatives of organizations that provide services to immigrant women and victims of abuse. Many of these same groups also appeared before the House of Commons Standing Committee on Citizenship and Immigration, which is studying how to strengthen protection for immigrant women. What we heard is that, when compared to Canadian-born women, newcomer and immigrant women face additional barriers in protecting themselves and in seeking assistance. These barriers include isolation; lack of language proficiency; lack of awareness of their rights; fear of immigration consequence; lack of financial independence; and concerns about retaliation for seeking help or alerting authorities of their abusive situations.

While incidents of early and forced marriage and forms of violence often go unreported, the statistics on the screen give an indication of what is happening.

- A 2013 report by the South Asian Legal Clinic of Ontario found 219 cases of forced marriage in Ontario between 2010 and 2012. All the victims had experienced some form of violence.
- At least 20 people were convicted in Canada of homicide where there was some indication that the killing was related to family honour; the vast majority of these cases occurred in the past 15 years.

The cases that have gained public attention speak to the personal and societal losses associated with these harmful cultural practices. These practices go against Canadian values, cause harm to women and girls, and prevent their full participation in society.



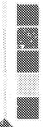
Early & Forced Marriage: *Criminal Code* Amendments


Current Status:


- Existing *Criminal Code* provisions already cover the use or threats of force typically used to make a person marry against their will.

Proposed amendments

- Proposed amendments would fill gaps in the law by criminalizing:
 - Knowingly officiating an early or forced marriage;
 - Knowingly and actively participating in a wedding ceremony in which one party is marrying against their will or is under 16; and
 - The removal of a child from Canada for a forced or early marriage.
- In addition, amendments are proposed to create a forced or early marriage peace bond to prevent these crimes from happening; breaching the new peace bond would be a crime.




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- Many crimes related to forced marriage are already covered in the *Criminal Code*. However, some gaps remain. Building on the proposed amendments to the *Civil Marriage Act*, the bill would also amend the *Criminal Code* to provide additional protections to prevent forced or underage marriages.
- The proposed amendments would:
 - Amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law to clarify that this also includes a marriage that is contrary to federal law, including a forced or underage marriage— this offence is punishable by up to two years in prison;
 - Create two new offences prohibiting the active and knowing participation in a forced or underage marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced or underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage - these offences would be punishable by a maximum of five years' imprisonment;
 - Expand the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced or underage marriage outside of Canada – this offence is punishable by a maximum of five years' imprisonment; and
 - Introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced or underage marriage will otherwise occur. Peace bonds could be used to require passport surrenders, as well to prevent a child from being taken out of the country.

"Honour" - based Violence: *Criminal Code* Amendment

- The defence of provocation has been raised in several cases of so-called "honour" killings in Canada. Though unsuccessful to date, the availability of the defence sends the message that killing in anger in response to insulting or offensive behaviour mitigates murder.

Proposed Amendments:

- The bill proposes to limit the defence so that it would only apply where the victim's conduct that "provoked" the killing constituted a criminal offence punishable by at least 5 years in prison. This would ensure that killings in response to perceived insulting, offensive or disrespectful conduct never mitigates an "honour" killing or other similar killings.

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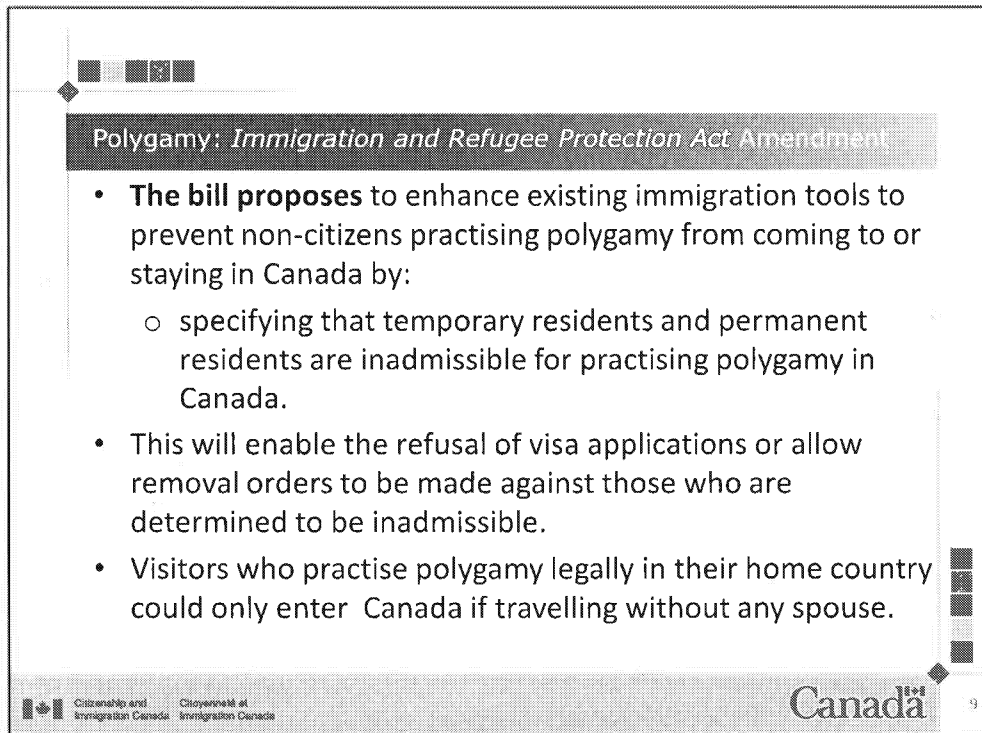
Under section 232 of the *Criminal Code*, the defence of provocation can be raised by an accused charged with murder, and where successful, it produces an acquittal for murder but a conviction for manslaughter even though the killing legally amounts to murder.

Manslaughter carries a maximum sentence of life in prison, but no minimum term of incarceration (unless a firearm is used, in which case the mandatory minimum sentence is 4 years.) Second degree murder, by contrast, carries a sentence that is largely fixed by law: it is punishable by a mandatory life sentence and parole ineligibility of between 10 and 25 years.

Currently, the defence will succeed where an accused killed after having lost control due to a sudden "wrongful act or insult" by the victim. The "wrongful act or insult" by the victim can be words or gestures that are lawful, as long as it is by the victim, unexpected, and "sufficient to deprive an ordinary person of the power of self-control". Also, the accused must have killed while in the "heat of passion".

The defence of provocation has been raised in several so-called "honour" killing cases in Canada, although to date, no claim has been successful. The alleged provoking conduct in these cases was real or perceived marital infidelity and other forms of perceived disrespect, defiance or insulting words on the part of the victim toward her husband or her father/family, given their cultural backgrounds.

The proposed amendment would limit the circumstances in which a person can claim provocation where they murdered another person by replacing the extremely broad notion of "a wrongful act or insult" with a narrower class of conduct, namely conduct of the victim that amounted to a criminal offence punishable by at least 5 years in prison. No matter how insulting or offensive another person finds it, conduct of the victim that is lawful and which expresses their personal choices such as insulting words or gestures and the exercise of personal choices about lifestyle and dating or marriage partners, should not excuse homicidal violence.



Polygamy: Immigration and Refugee Protection Act Amendment

- **The bill proposes** to enhance existing immigration tools to prevent non-citizens practising polygamy from coming to or staying in Canada by:
 - specifying that temporary residents and permanent residents are inadmissible for practising polygamy in Canada.
- This will enable the refusal of visa applications or allow removal orders to be made against those who are determined to be inadmissible.
- Visitors who practise polygamy legally in their home country could only enter Canada if travelling without any spouse.

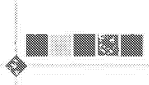
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The proposed amendments to IRPA would:


- Allow officers to deny visas when, on balance, they have sufficient grounds to find that the applicant will be practising polygamy in Canada, and
- Allow the Immigration Division to make a finding of inadmissibility against a temporary resident or permanent resident where the Board has, on balance, sufficient credible evidence that they are or will be practising polygamy in Canada. A finding of misrepresentation or criminality will not be needed. If found inadmissible, the person could be issued a removal order.



Visitors (who practise polygamy legally in their home country) would only be permitted to travel to Canada alone, i.e., without any of their spouses.



Other Federal Initiatives

- The bill would complement other government initiatives that are protecting and supporting vulnerable women and girls.
- Internationally, Canada has made ending child, early and forced marriage a foreign policy and development priority, with many successful initiatives underway.
- Domestically, the government is working with PTs and non-governmental partners to provide support, protection and services for immigrant women and girls.



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Canada is spearheading efforts internationally to put an end to early and forced marriages and other harmful cultural practices. These efforts include contributing \$20 million to UNICEF in support of programs aimed at ending child, early and forced marriage in several countries where these practices are prevalent.

The Government is working with PTs and non-governmental organizations to provide support, protection and services for immigrant women and girls. For example, Canadian missions provide people immigrating to Canada, including women, with information about their rights and living in Canada. Once in Canada, women can access a range of support and services, such as women's only language classes; skills development and job training; counselling and referrals to other social agencies.

A number of federal government departments provide funding to support projects that address forced marriage and "honour" -based violence. As well, specific training and workshops on these topics are being offered to frontline professionals, including police and RCMP officers, crown attorneys, victim services, child protection officials, shelter workers and health care workers.

The *Zero Tolerance for Barbaric Cultural Practices Act* complements these efforts and will help better protect and support vulnerable immigrant women and girls. The Bill also sends a clear message to those coming to this country that harmful cultural practices are unacceptable and will not be tolerated.

Speaking Points on Bill S-7 / New inadmissibility for practicing polygamy

- In response to the Speech from the Throne commitment to ensure that early and forced marriages and other harmful practices do not occur on Canadian soil, the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7) was introduced in the Senate on November 5, 2014.
- The Bill proposes changes to three main pieces of legislation – the *Immigration and Refugee Protection Act*, the *Civil Marriage Act*, and the *Criminal Code*.
- Proposed amendments to the *Civil Marriage Act* and the *Criminal Code* are to prevent early and forced marriage, and so-called “honour”-based violence from occurring in Canada. The Bill also proposes to amend the *Immigration and Refugee Protection Act* (IRPA) to create a new inadmissibility for practising polygamy. This would increase the availability of tools within the immigration program to prevent polygamy from occurring in Canada and to take enforcement action where evidence is available.
- Proposed new inadmissibility would apply in both the temporary and permanent immigration streams.
 - A person part of a polygamous union who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada (without requiring evidence that the person misrepresented their situation or has a criminal conviction).
 - In the permanent stream, permanent residents will still be required to immigrate with only one spouse after having dissolved other marriages to “convert” their polygamous marriage to a monogamous one.
 - In the temporary stream, visitors, students and workers who practise polygamy abroad could only come to Canada without any of their spouses.
- In the case of foreign representatives in Canada of international organizations and states, IRPA is administered in a manner consistent with Canada's treaty obligations, as incorporated in the *Foreign Missions and International Organizations Act* (FMIOA) and related Orders in Council. The FMIOA s. 5(4) could be used to exempt accredited foreign officials travelling on official government business from inadmissibility provisions. Spouses could also benefit from this exemption.

- In addition, discretionary measures under IRPA may be used in exceptional cases to exempt a person from the inadmissibility provisions for a temporary purpose. However, the use of a temporary resident permit or a national interest temporary resident visa would have to be carefully examined on a case-by-case basis, as officers would have to take into consideration that the individual would be practising polygamy on Canadian soil and could be subject to criminal prosecution.