

## ISSUES THAT CONCERN NCWC

### Update on Polygamy Case in British Columbia

On September 2nd, 2015, I happened to see an article by The Canadian Press/Staff online. Apparently, the lawyer for [accused polygamist Winston Blackmore](#) has waived a preliminary hearing and will go straight to trial. The Attorney General in B.C. has signed off on the request of the special prosecutor, Peter Wilson, to proceed with a direct indictment against the accused who has chosen to be tried by judge and jury. No date has been set for the trial as yet but it is expected to take place in Cranbrook, British Columbia. (Canadian Press, Sept. 2/15)

On September 2nd, 2015, I happened to see an article by The Canadian Press/Staff online. Apparently, the lawyer for accused polygamist Winston Blackmore has waived a preliminary hearing and will go straight to trial. The Attorney General in B.C. has signed off on the request of the special prosecutor Peter Wilson to proceed with a direct indictment against the accused who has chosen to be tried by judge and jury. No date has been set for the trial as yet but it is expected to take place in Cranbrook, British Columbia. (Canadian Press, Sept. 2/15)

Going back a little further online, I found a story dated June 25, 2015, by The Canadian Press stating that B.C. Supreme Court Justice Austin Cullen had dismissed Blackmore's petition to have the charges against him dismissed. [In 2011 the B.C. Supreme Court answered a reference case and ruled that polygamy laws were constitutional and did not violate religious liberties guaranteed in the Charter of Rights and Freedoms.](#) Judge Cullen wrote *"that the reference case had sufficiently altered the Canadian legal landscape by 'providing unequivocal notice to the Bountiful community of the unlawfulness of polygamy.'*" (Canadian Press, June 25/15)

In an online CBC article posted August 13, 2014, it was stated that B.C. Justice Branch approved polygamy charges against Winston Blackmore and James Oler. Oler, Brandon Blackmore and Emily Crossfield are charged with "unlawfully removing a child under 16 from Canada 'with the intention that an act be committed outside Canada that would be an offence under Section 151 (sexual interference) or 152 (invitation to sexual touching)'. Special prosecutor Peter Wilson said that the latest RCMP report (January 2014) contained material that was "new and derived from investigations in the United States that involved members of the FLDS communities in Arizona, Texas and Utah." Note: FLDS is the Fundamentalist Church of Jesus Christ of Latter-Day Saints which believes polygamy to be a tenet of their faith. (CBC, Aug. 13/14)

In 2007, special prosecutor Richard Peck, who had been appointed by the Ministry Justice in B.C. to explore laying charges of polygamy, stated that the chances of convicting anyone were weak and recommended to B.C.'s Attorney General that they ask the B.C. Appeal Court "for an advisory opinion on whether the Criminal Code offence of polygamy can withstand a constitutional challenge." (The Globe and Mail, editorial Aug. 3/07)

In April 2008 the provincial court in B.C. had to decide whether to send to the courts the question of the legality of practicing polygamy in Bountiful, after a decision made by Leonard Doust, a senior member of the B.C. Bar. "The serious misconduct in Bountiful will likely continue until the constitutionality of Sec. 293 is authoritatively decided by the Supreme Court of Canada," wrote Doust.

## ISSUES THAT CONCERN NCWC

### Update on Polygamy Case in British Columbia

To better understand this saga, the CBC article of August 13/14 lays out a timeline as below:

2005 – RCMP Investigation into polygamy

2007 – 1<sup>st</sup> Special prosecutor Richard Peck recommends consulting courts re polygamy

2008 – 2<sup>nd</sup> Special prosecutor L. Doust agrees with Peck

2008 - 3<sup>rd</sup> Special prosecutor T. Robertson appointed

2009 – Robertson recommends charges (Jan.)

2009 – Winston and Oler charged in Jan/charges thrown out in Sept.

2009 – B.C. Supreme Court says Crown acted improperly by “special prosecutor shopping”

2009 – Province asks B.C. Supreme Court to look at constitutionality of polygamy (Oct.)

2011 – B.C. Supreme Court rules that polygamy law is constitutional

2012 – Peter Wilson appointed special prosecutor

2014 – Wilson recommended charges

2014 – W. Blackmore/J. Oler charged with polygamy; Oler, Blackmore, Crossfield charged with unlawfully removing 2 children from Canada in 2004

*Background:* The National Council of Women of Canada has policy against polygamy, against the immigration and emigration of women and female children for sexual and breeding purposes, and against the abuse of women and children in polygamous communities. As President, I addressed this issue in 2008 and 2009.

For years, we have been strongly urging the Federal government to improve policies and practices so as to prevent the immigration and emigration of female children for sexual and breeding purposes under the pretext of “celestial marriages.” We have also urged all provinces to enforce the relevant sections of the Criminal Code so as to end polygamy in Canada and to prevent the abuse of female children in what are presently polygamous communities, the most notorious being Bountiful in British Columbia.

Polygamy is a violation of Section 293 of the Criminal Code of Canada; sexual assault, having regard to Section 273.1, is a violation of Section 273 of the Criminal Code. Procuring or knowingly aiding in procuring a feigned marriage is a violation of Section 292 of the Criminal Code, and sexual exploitation of a young person by a person in a position of authority is a violation of Section 153 of the Criminal Code of Canada.

Sections 15 and 28 of the Canadian Charter of Rights and Freedoms guarantees females equal protection and benefit “before and under the law” and that “notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.”

The fundamental freedom of conscience and religion, as set out in section 2 (a) of the *Canadian Charter of Rights and Freedoms*, often cited as a defence or reason not to intervene to help these female children, is subject to section 1 of the said *Canadian Charter of Rights and Freedoms* which states: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

## ISSUES THAT CONCERN NCWC

### [Update on Polygamy Case in British Columbia](#)

Furthermore, polygamy has already been condemned as a contravention of women's equality rights by the United Nations Office of the High Commissioner for Human Rights. The UN Declaration and Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is the women's Human Rights Convention and came into force in 1979. Canada signed on December 10, 1981. Articles 3 and 5 state that actions including legislation are to be used to protect women (and the girl-child) from being discriminated against in cultural and social fields. Article 16 addresses the issues of inequalities embedded in many marriage customs like polygamy, and includes the obligation to ensure proper registration of marriages and to set a minimum age.

*Results to date:* In 2011 the B.C. Supreme Court answered a reference case and released a 335-page decision with Chief Justice Robert Bauman ruling in favour of the Criminal Code outlawing polygamy. This decision came after 42 days of legal arguments from interested parties. ***Chief Justice Bauman stated "I have concluded that this case is essentially about harm..... More specifically, Parliament's reasoned apprehension of harm arising out of the practice of polygamy. This includes harm to women, children, to society and to the institution of monogamous marriage."*** (CBC News, posted Nov. 23/11)

Since 2005 when the RCMP began investigating allegations of polygamy, this story has taken a somewhat circuitous path to where we are now. [Special prosecutor Peter Wilson has been instructed to proceed with a direct indictment against the accused who have chosen to be tried by judge and jury, with the trial expected to take place in Cranbrook, British Columbia.](#) No trial date has been set yet.

***Karen Monnon Dempsey, President, National Council of Women of Canada***