

Youth Agency and the Culture of Law

Forced Marriage



Forced Marriage

A forced marriage occurs when a person is pressured – whether by parents, relatives, community members or any other third party – into marrying against his or her will. These individuals experience coercion from others, which may be in the form of threats or abuse, including emotional, physical, financial, or sexual abuse. People may be forced into marrying for a variety of reasons, including beliefs stemming from their religion or culture, financial reasons, or immigration reasons.

In some cases, those being coerced to marry do not necessarily feel or realize that they are being coerced. There may be no physical threats or exchanged words of emotional abuse. Rather, a person may feel like they are expected to get married and have no other realistic options. For example, they may agree to marry because they actually fear the consequences if they voice their opposition to the marriage, such as being ostracized from the family with little or no resources to survive on their own (see, Handout on Emancipation). In these cases, where there is no express or obvious forms of outright coercion, the person is not choosing his or her spouse voluntarily, and thus also can be described as being forced to marry.

Forced marriages are different from arranged marriages. In many cultures, traditions, and family settings, parents and other elder members play active roles in facilitating the marriage of their sons, daughters, nieces, and nephews. In an arranged marriage, family members may present or help

choose from among possible marriage partners. However, the key distinction between forced marriage and arranged marriage is that the person getting married still makes the final choice about whether or not he or she wishes to marry the marital candidate. That is, the person getting married gives their free and informed consent to the marriage.

An Ontario report released in 2013 showed that individuals of all genders and from all cultures, religions, backgrounds, and sexual orientations can experience forced marriage. Forced marriages are not limited to specific communities, cultural or religious groups. Nor are young women the only ones forcibly married. Individuals of any age can also be forced to marry. However, young people, especially those under the age of majority, are especially vulnerable to pressure from their family given that they are often dependent on their family for financial and emotional support.

Forced marriages may take place in Canada, or they may take place abroad if an individual is taken out of Canada to marry. This is especially the case for those who are under the age of majority or under the absolute minimum marriage age limit, which is 16 years of age across Canada. As the absolute minimum age for marriage is part of federal law, it applies to individuals who reside in Canada, whether they marry in Canada or elsewhere in the world, but many people may not know this and may seek to marry their minor child (under age 16) outside of Canada.

Can you be Forced to Marry?

Both federal and provincial laws limit who can get married in Canada. One of these limitations is that the parties to a marriage must both give their free and informed consent to marry (section 2.1 of the *Civil Marriage Act*) without being pressured or coerced by others.

Depending on the province you live in, you must also meet additional requirements if you are age 16 or over, but under the full marriage age. In Ontario, the full age of marriage, or the age at which you can get married on your own without any additional requirements, is 18. If you are 16-18, you can still get married as long as both your parents consent (see Handout on Minimum Marriage Age), or with the agreement of the court. But even in these cases, your parents' consent does not mean they also have the power to determine who you marry. The choice to marry a particular person is one that you must freely make on your own. Your choice of spouse must also be informed: you must clearly understand the facts of the situation and the consequences of marrying.

In June 2015, the federal government passed new legislation to make forcing an individual to marry a criminal offence. If you were forced to marry, you can consult a family lawyer about your options. The marriage would be considered legally valid by authorities, until you end it through a divorce or annulment. This applies to marriages of Canadian residents whether they took place in Canada or outside of Canada.

It is now an offence in criminal law to celebrate (meaning to conduct the marriage ceremony with or without legal authority), aid or actively participate in a marriage ceremony with full knowledge that one of the parties is marrying against their will (section 293.1 of the *Criminal Code*). This offence does not apply to individuals who are passive participants at the wedding ceremony. It applies to those who knowingly and willingly took some active steps to help the marriage ceremony take place, such as being a signatory witness or transporting the person being forced to marry to the ceremony.

It is also now an offence to remove from Canada a person under the age of 18, who is ordinarily resident in Canada, for the purposes of forcing that young person to marry in another country (section 273.3 of the *Criminal Code*).

There is also a new peace bond available in the *Criminal Code* to prevent forced marriages from taking place (section 810.02). A peace bond is not a criminal charge, but a signed promise to keep the peace and be on good behaviour for a period of time. If a person has reasonable grounds to believe that he or she, or another person will be forced into a marriage or taken outside of the country for a forced marriage (in the case of someone under 18 years of age), that person may apply to the court to have peace bonds taken out against the individuals they fear will commit a forced marriage related offence. The court can make orders that would be particularly useful in specifically preventing forced marriage, whether in Canada or abroad, such as ordering

the individual to surrender travel documents, to refrain from making arrangements or agreements in relation to the wedding, or to participate in a family violence counselling program.

In addition, general criminal offences (which existed prior to the new legislative changes) may apply if force is used to impose a marriage. For example, a person who forces you to marry may face a charge of kidnapping, forcible confinement, uttering threats, assault, extortion, or sexual assault.

Under Canada's immigration laws, spouses from abroad who are sponsored by Canadian citizens or permanent residents may be denied entry into Canada if their marriage to a Canadian is perceived by officials as not being genuine, which may happen where it was forced.

Forced marriage also violates international human rights law. The *Universal Declaration of Human Rights* is an international document that influences Canadian law. Article 16.2 of the declaration states that: "Marriage shall be entered into only with the free and full consent of the intending spouses".

Canada is also bound by the *Convention on the Rights of the Child*. This Convention specifically addresses the rights of children, and has several provisions that may be relevant in a situation where a child is forced to marry:

Convention on the Rights of the Child

Article 11: State Parties shall take measures to combat the illicit transfer and non-return of children abroad.

Article 12: State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 19: State Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, which Canada has signed and ratified, also addresses forced marriage:

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Article 16(1): State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent. [...]

Canada has not, however, signed the 1962 *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, which also specifies that marriages must be entered into with the full and free consent of both parties.

In 2013, Canada and Zambia introduced a UN resolution calling for an end to child and forced marriages. The resolution was adopted by the Human Rights Council and has been co-sponsored by over 100 countries around the world. The resolution recognizes that child marriages and forced marriages are human rights violations with negative impacts on the health and education of young people.

Against their Will: Inside Canada's Forced Marriages

Forced marriage is one of the last taboos to break. A new law could make it a crime. So why do those who champion prevention oppose it?

Rachel Browne

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<http://www.macleans.ca/news/canada/against-their-will/>

Lee Marsh

Two weeks after her 18th birthday, Lee Marsh was sitting at the kitchen table one Sunday, reading the Bible, when her mother came in and announced that Marsh would marry a 20-year-old member of their Jehovah's Witness congregation in Montreal. The girl was stunned; she had met her husband-to-be just once. Five weeks later, it was done.

For a few months before, her mother had been shopping her around while sizing up men in the congregation – some more than 20 years older – looking for a suitable husband. She made Marsh wear a tight, low-cut white dress bought for the outings. “I hated wearing it. I’ve always preferred to be covered up,” Marsh says. “But my mother really wanted me to be attractive to these men.” Marsh’s mother had rejected all the suitors up to that day in 1970 when she announced the match. “I knew I wasn’t allowed to have an opinion. This wasn’t a woman that you said no to.”

Marsh thought about the leather strap hanging by the front

door, the one her mother used when the children – Marsh was the eldest of four – dared to defy her. They never knew what would set her off; two weeks before, Marsh had got it for not cleaning the house properly. So Marsh buried the feelings of anger and betrayal she felt toward the woman who had abandoned her twice already in her short life: After her parents divorced when she was nine, she was left behind in Toronto with a father she says sexually abused her; later, in Montreal, when she had returned to her mom, she says her mother’s Jehovah’s Witness boyfriend also sexually assaulted her, and she was sent into foster care.

In their congregation, the pressure to get married early was intense. Breaking off the engagement was not an option. “Once the announcement was made in church that we were getting married, I was trapped,” she says. “I couldn’t back out of it.” Marsh would do anything to stay in her mother’s good graces; she couldn’t bear the thought of losing her again.

During the ceremony, Marsh was terrified. “I wanted to run, but I didn’t dare.” She had told her husband about her history of sexual abuse, but he told her not to worry, that they would get through it together.

Two weeks into the marriage, Marsh realized just how much she resented it. Her husband started demanding sex constantly and she felt it was her duty to submit. “The Witnesses believe that when you’re married, you are obligated to deliver sex whenever your husband wants it,”

she explains. “It brought back everything I had gone through as a child and I became extremely depressed and suicidal.” But she stayed, had two children and, for 15 years, endured what she describes as incessant verbal and sexual abuse from a man who eventually became a church elder. That meant he passed judgment on others in the congregation, deciding whether or not they had sinned and how they would be punished. In 1984, Marsh decided to leave. In addition to a legal, secular divorce, she needed a “spiritual” divorce, otherwise, the church would still consider her his wife. In a letter to church elders, she writes that she tried to be a “good, submissive wife,” and “almost always pushed aside my personal feelings so that he would be happy.” She details the emotional and sexual abuse, but does not cite forced marriage; only recently did she even hear the term. “It wasn’t really applicable at the time. I wanted out of the marriage, not because I was pushed into it, but because of the abuse that was triggering all of my past abuse,” she says.

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Shortly after Marsh sent that letter to her church, the elders “dis-fellowshipped” her and announced it to the congregation; Marsh packed her bags and moved out. She says her husband bribed her children to stay with him, but, in 1986, she obtained custody of her two daughters, then 14 and 10, and went on to study at Montreal’s Dawson College and Concordia University to become a counsellor for abused women and children. Now 62, Marsh frequently hears from ex-Jehovah’s Witnesses who say they, too, were forced to marry. “I used to think I was the only one, but I’m hearing more and more women saying they were forced into

marriage. I'm flabbergasted, because I thought I was alone." Jehovah's Witnesses in Canada would not directly answer questions regarding Marsh's claims, but a spokesperson said in an email that "forced marriage, and spouses being required to submit to marital acts against their will, is repugnant and contrary to what Jehovah's Witnesses believe, practise and teach." They pointed to their website for information on dis-fellowshipping, which states: "If a baptized Witness makes a practice of breaking the Bible's moral code and does not repent, he or she will be shunned or dis-fellowshipped," and also explains that dis-fellowshipped people who demonstrate a desire to change their ways are "welcome to become members of the congregation again."

Antua Petrimoulx

Born Manuel Aguilar in Reynosa, Mexico, in 1965, Petrimoulx was 20 when her mother, a devout Catholic, forced her to marry a woman, even though Petrimoulx knew, deep down, she was female with no desire for other women. Her mother and brothers taunted and punished her for behaving like a girl and having relationships with other boys. In her late teens, they forced her to have sex with a female prostitute in a hotel room and, shortly after that, her mother told her she would be marrying a woman in order to fit in with the community and become a real man. The couple had sex once, on their wedding night. After a couple of months, Petrimoulx moved back home, where the abuse escalated. Her mother forced her to take anti-psychotic medications, and often locked her in her bedroom. When she did make it out of the house

dressed as a woman, the police frequently targeted her. She says she was once raped and burned with cigarettes by police officers in the back of their squad car. In 2005, she fled to Canada, where she filed an application for refugee status as a victim of forced marriage and police brutality. Her claim was accepted and she now lives in Windsor, Ont. Although she is safe, Petrimoulx suffers from depression, and has tried, and failed, to write the hairdresser's exam five times; the stress and anxiety were too much and she could not concentrate. She cannot work and her mental health is precarious.

Elizabeth in Hamilton

Elizabeth, who does not want to use her real name for fear of alerting her British ex-fiancé, whom she believes would jeopardize the criminal investigation, was raised in Hamilton by parents who belonged to the Church of God. It's a distant offshoot of the Christian Open Brethren movement, which originated in 19th-century England and Ireland. The precise number of members is unknown, but scholars estimate there are 100 or so congregations around the world.

Elizabeth says church elders were very involved in her family's day-to-day decisions, and friendships outside the community were discouraged. When she was in Grade 3, she recalls being pulled out of class by a social worker and taken to a room, where she was asked if she was fearful of being married off to older men. "Thankfully, that wasn't happening, but all community members are required to marry within the group. The penalty for not doing so is punishment or expulsion,"

she says. “The attitudes of the leaders toward their marriage practices are: If you don’t like it, just leave.”

At age 14, Elizabeth started receiving letters and gifts from men in her church and partner churches abroad who were interested in courting her. “They were also coming to visit all the time, making a point of being with my family, trying to get their foot in the door.” She wasn’t interested, and tried her best to ignore the advances, even graduating from high school. She was trying to figure out what she wanted to study at McMaster University when a church elder in his 30s came to town in search of a bride. One of his relatives began sending her tapes of sermons, in which he described how parishioners must only marry other church members or face excommunication. The church told the 25-year-old she would be cut off from her family if she didn’t marry the English church leader. “I was feeling pressure from the community, like a cloud hanging over me,” she said. “It’s a very difficult place to be in, because you’re being told the judgment of God is on you if you don’t conform.”

In a written response to questions about Elizabeth’s case, a spokesperson for the Church of God in Toronto says it’s not aware of any forced marriages in its congregations, and that members who may have come to Canada to find a spouse “probably came more in hope than expectation!”

In 2007, Elizabeth’s future husband brought her to England to prepare for the wedding. She thought she would live with someone else until they were married, but, when she

arrived, he told her she had to live with him right away for immigration purposes. She was only allowed to leave the house to run errands or go to church. “I was being kept at home and told how to dress and the things I could or could not wear as the wife of an elder.”

She says he began raping her on a regular basis, once forcing himself on her in his car. It continued even when she was ill. “Rather than helping me through this sickness and getting me medical attention,” she said, “he’s demanding things sexually from me, premaritally, which is unusual in the Brethren.” In its letter, the Church of God Toronto states that “any church member engaging in premarital sex would be excommunicated from the Church for committing a serious sin.”

In 2008, Elizabeth’s fiancé brought her back to Canada, where she thought she would be retrieving the rest of her belongings. Instead, she says he took her to a room at the Holiday Inn by Toronto’s Pearson airport and sexually assaulted her for the last time. He flew back to England alone and she hasn’t seen him since.

Elizabeth says her parents and church elders ignored her complaints about the abuse and her plea to investigate and remove her ex-fiancé from his leadership role. Women in the church told her it was her fault the engagement fell through and that she should marry someone else. After writing church leaders about her grievances, she was officially excommunicated in a letter dated Sept. 26, 2011, for the “sin

of unforgiveness,” specifically, for being unable to forgive her ex-fiancé and the church, but the letter does not go into further detail. “We do not intend to reopen discussion about those things. We have done all that we possibly can do as an oversight in Toronto. Local U.K. oversight has agreed, our District oversight has agreed, and those things must now be left with the Lord,” the letter to Elizabeth reads.

The Church of God Toronto wouldn’t comment on Elizabeth’s allegations, but says it would not “tolerate or permit the occurrence of sexual abuse by elders or church members” and would notify the police if it occurred.

Three years ago, Elizabeth was riding the bus in northeast Toronto when she saw an ad for the Agincourt Community Centre’s forced-marriage project, with the telephone number for its hotline at the bottom. In that moment, she realized what had happened to her, even though, in her case, no marriage had occurred. When she mustered up the courage a few weeks later to call, she got Shirley Gillett on the line. The program coordinator had been raised in an Open Brethren church outside Orillia, Ont., a more liberal offshoot of the Brethren movement. “I couldn’t say that I was surprised,” Gillett recalls. “We had suspected that we were going to find forced marriage in small Christian sects in Canada.” Gillett invited Elizabeth to join her group of six or so survivors, which meets monthly. Elizabeth is now co-operating with the Tees Valley Inclusion Project, a non-profit group based in Middlesbrough, England, which is looking into more than 100 forced-marriage cases. Hers is their second Christian case.

U.K. government authorities are reviewing the evidence in her case to see whether a conviction is possible.

Elizabeth, now 33, lives in Toronto and has a long-term boyfriend. When she tries to explain the forces that conspired to keep her in the relationship, the despair seeps through the sentences that tumble out of her computer. “I felt damned if I do (get forced into marriage, because I am a lover of freedom), and damned if I don’t (get married ‘in the lord,’ because I could not function in a Brethren society, and there are some things about the way of life I enjoy). It’s like being sawn in half and torn between two realities – painful. It’s mental torture. I felt trapped.”

After excommunication, her parents wrote her out of their will in what she calls a classic Brethren tactic to make her feel socially rejected. “My parents are being very influenced by the Brethren and it REALLY upsets me,” she wrote in a recent email. “I feel like I’ve lost my own family members.”

She warned her parents not to go to any Brethren weddings, because even celebrating a forced marriage could mean a jail sentence under Canada’s proposed legislation. Elizabeth is disappointed that SALCO is opposed to Bill S-7, because she feels the new law would help young men and women like herself who are born into the Brethren community. The day the law passes, she will be free of the shame and guilt of her failed relationship, the abuse and her excommunication. Finally, there would be vindication: the acknowledgement that what happened to her was a crime.

Lev Tahor, An Ultra-Orthodox Hasidic Jewish Group

More recently, 200 members of Lev Tahor, the ultra-Orthodox Hasidic Jewish group that originated in Jerusalem in the 1980s, moved to Quebec, where they lived for 10 years. Many fled to a small community in southwestern Ontario in 2013 after they heard that Children's Aid was about to remove their children based on allegations that they were being confined to basements and forced to marry older men, among other abuses. An ex-member of the group testified that the goal of the community was to marry children by age 13. They fled again in March to Guatemala, although several children have since been returned to the Toronto area, where they are in foster care.

Key Background Information

It may seem strange, even impossible, that someone could be forced to marry against her will. But, like sexual assault – and, more recently, human trafficking – the curtain is being pulled back on what has been happening in Canada, and around the world, for centuries. In some nations, such as Norway, Belgium, Pakistan and the United Kingdom, forced marriage is a crime. Next year, Canada is expected to join that list when Bill S-7, which adds forced marriage to the Criminal Code, is approved.

In September 2013, Toronto's South Asian Legal Clinic of Ontario released a report that counted 219 confirmed or suspected cases of forced marriage in Ontario and Quebec

from 2010 to 2012, information obtained through interviews and a survey filled out by service providers from shelters, legal clinics, immigration agencies and youth groups. The people, the vast majority of whom are women, came from a wide range of religious groups: 103 were Muslim, 12 Christian, 44 Hindu, 24 were unsure of their religious affiliation, and five had none. Almost half were Canadian citizens and, in most cases, family members were the perpetrators. People were taken out of Canada to get married in 57 per cent of cases. Yet the report points out that the Department of Foreign Affairs “confirmed they had provided assistance” to just 34 individuals from 2009 to 2012.

DEFINITION: Forced marriage always involves pressure to wed against a person’s will, under physical or emotional duress, or without free and informed consent, according to definitions from international law and human rights groups. The main reason people submit to a marriage is because they do not want to disobey or disappoint family or church.

Very little data exist on forced marriage in Canada, but numerous court cases and anecdotal evidence suggest it’s been happening for more than a century, from coast to coast. Only in the last decade have researchers and advocacy groups started to grasp its prevalence and scope.

Since 2011, Foreign Affairs Minister John Baird has sought to make Canada a world leader in combatting forced marriage around the world, which he has said can be eradicated “within a generation.” Last October, he introduced the first-

ever UN resolution dedicated to ending it, and has pledged approximately \$35 million to projects combatting child and forced marriage in developing countries such as Ghana, Bangladesh, Zambia and Burkina Faso. Yet York University Ph.D. student Karlee Sapoznik, who researched forced marriage in Canada for her doctoral thesis, says the Canadian government has historically ignored – and even denied – that people get married against their will within our borders. “There’s almost this mythology that it doesn’t happen in Canada.”

On Nov. 5, when Citizenship and Immigration Minister Chris Alexander announced [Bill] S-7, the “Zero Tolerance for Barbaric Cultural Practices Act,” he introduced a three-pronged piece of legislation to address the problem at home and abroad. Alexander cited the 2012 Sharia honour killings, in which an immigrant from Afghanistan, his second wife and his only son conspired to drown the family’s three teenage daughters, because their “Westernized behaviour” had shamed the family. Bill S-7 would ban people in polygamous and forced marriages from immigrating to Canada. The second piece will amend the Civil Marriage Act to make 16 the minimum age of marriage across the country.

It would also enshrine forced marriage in the Criminal Code. “Everyone who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is marrying against their will” would be guilty of a crime punishable by up to five years in prison. It is moving at a fast clip through Parliament; it received its third reading on

Dec. 12. (re: Bill S-7)

At York University, Sapoznik interviewed victims of forced marriages – including a Mennonite woman from Winnipeg, who says that in 1988, she was forced to get married at age 18 after her family and community found out she was pregnant – and examined legal cases dating back to the 19th century.

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In Toronto, the South Asian Legal Clinic of Ontario (SALCO) investigated its first case of forced marriage in 2005, after a counsellor at a Toronto high school called to report that a family of girls had gone abroad for a vacation, but one of them did not return to Canada. Deepa Mattoo, the acting executive director of the clinic, says the group tracked the girl down, found out she was about to be forced to marry, and arranged to bring her home.

In many of SALCO's cases, women who come to them for advice don't even know that what is happening to them is wrong. "People going through it know they aren't being given a choice, but they don't necessarily call it forced marriage," said Mattoo. "They may say something like their father is making them get married, but they won't say that their human rights are being violated." Toronto's Barbara Schlifer Clinic started a support program for forced-marriage victims in 2009, and the caseload has been increasing ever since. "I've had Irish clients who have experienced forced marriage; Roma clients, Saudi, South Asian, European and Christian clients. It's pretty much across the board," says

Farrah Khan, who has been counselling victims since 2006. “We see different economic backgrounds, as well. We see it happening in communities that are isolated, in communities that have a fear about losing their connections to culture, to faith.” Rape must also be brought into discussions about forced marriage, because couples are expected to consummate the marriage.

For families with LGBT children, forced marriage is a way to control their sexuality and protect the family from the shame of having a gay or transgender child. Yegi Dadui, transgender program coordinator at the Sherbourne Health Clinic in Toronto, deals with about four cases a year involving both Canadian citizens and newcomers. “There’s so much stigma around being trans already. Not being able to express yourself and be yourself is difficult, and that’s what’s going on in forced-marriage situations, as well.” Because these cases are even more taboo, it’s difficult to find people who will discuss their experiences openly. Although Antua Petrimoulx is not one of Dadui’s clients, her story has parallels with other cases in Canada.

Mattoo says SALCO’s clients are often hesitant to seek help from the police or the courts, because they don’t want to incriminate – or testify against – family. Without them, they would be alone in the world, a fate sometimes more frightening than the abuse itself. It’s also difficult to prove emotional duress and subtler types of pressure. In cases of physical and sexual abuse, SALCO has helped clients pursue criminal charges against spouses they were forced to marry,

the same way they would even if the marriages weren't forced. For Mattoo, Canada already has robust laws that deal with abuse, and she feels victims are more in need of a place to live, counselling to deal with the psychological trauma, and help getting back on their feet after they leave their marriages and, sometimes, their family members.

That's why SALCO and 13 other activist groups and social service agencies, including the Schlifer clinic and the Woman Abuse Council of Toronto, are opposed to Bill S-7. "The proposed legislation exposes the underlying racist agenda that this government harbours," their statement reads, referring to the name of the bill and the fact that they feel it singles out non-Western communities where polygamy is accepted. Mattoo's main criticism is that the new law allows the federal government to wash its hands of the problem. "I'm not saying that any criminal action should go unreported, but criminalizing will not help prevent it."

On June 16, the United Kingdom made forced marriage a criminal offence. Its forced-marriage unit, created in 2005 by the British government in response to a growing number of cases, says it "gave advice or support related to a possible forced marriage" in 1,302 cases between January and December 2013, the most recent statistics. Anyone who uses "violence, threats or any other form of coercion" to force someone to marry faces up to seven years in prison. The case of a blond-haired, blue-eyed Christian girl from Ontario is one of the first being investigated under the new law. (See case 3, Elizabeth.)

QUESTIONS TO CONSIDER: Community Response to Criminal Laws on Forced Marriage

1. The federal government's recent changes to the law that make forcing you to marry a criminal offence were met with criticism by several community organizations and individuals that work with victims of forced marriage. Among these concerns, which are described in the article, are that victims may be resistant to discuss their situation with police or courts out of fear of incriminating or having to testify against their families. Since existing criminal offences like kidnapping and assault can already be used to pursue criminal charges against spouses, another concern is that victims would be better assisted through increased support for housing, counselling, and other social services. Others, however, support the changes to the law as a way to discourage people from forcing others to marry.

What do you see as the pros and cons of the new legislative changes that now make it a criminal offence to force someone to marry? Do you support the new changes? Do you think that another approach would be more effective?

QUESTIONS TO CONSIDER: Community Response to Criminal Laws on Forced Marriage

2. The federal government's legislative changes were originally introduced as part of Bill S-7, referred to as the "Zero Tolerance For Barbaric Cultural Practices Act". This title was also criticized for racially stereotyping communities by implying that certain cultures are "barbaric," a word that is often used to mean "primitive" or "savage."

What do you think about the title of the bill? Do you agree or disagree that it could stigmatize some communities by portraying entire cultures in a negative light?

QUESTIONS TO CONSIDER:

Lee Marsh

1. How do you think Lee felt when her mother announced her upcoming marriage?

2. Why do you think Lee went through with the marriage after it was announced? What pressures was she facing and from whom?

3. Whose approval did Lee need in order to divorce from her husband?

QUESTIONS TO CONSIDER:

Lee Marsh

4. What was the congregation's reaction to her letter to the church elders?

5. Who could Lee have turned to for support? What difficulties could she have experienced in doing so?

QUESTIONS TO CONSIDER:

Antua Petrimoulx

1. How was Antua treated by her mother and siblings before she married? Why do you think they treated her this way?

2. What do you think were some of the reasons that Antua was forced to marry?

3. How was Antua treated by her family and the police when she left her marriage?

4. Why do you think Antua came to Canada?

QUESTIONS TO CONSIDER:

“Elizabeth”

1. What were the basic expectations around marriage for members of “Elizabeth’s” community?
2. What happened to “Elizabeth” when she arrived in England?
3. What happened with “Elizabeth’s” fiancé and why did they not marry?

QUESTIONS TO CONSIDER:

“Elizabeth”

4. How did members of “Elizabeth’s” community react when she complained about the conduct of her fiancé?

5. How did “Elizabeth” seek out support, and who assisted her?

6. How did “Elizabeth’s” parents treat her?

**On *It's My Choice: Who, If, When to Marry*
(South Asian Legal Clinic of Ontario, 2012)**

At this stage, students can read the graphic novel in Part III of this curriculum entitled *It's My Choice: Who, If, When to Marry*. *It's My Choice* is produced by the South Asian Legal Clinic of Ontario (SALCO), and focuses specifically on examples of forced marriage in the South Asian community. As the above case studies in *Maclean's* "Against their Will: Inside Canada's Forced Marriages" and numerous other documented cases illustrate, forced marriage occurs across all cultures, religions, and regions.

QUESTIONS TO CONSIDER:

Maya, 17, and Sam

1. Why did Maya have such conflicting feelings about her experience?
2. What were Maya's parents' concerns?
3. How might Maya's and her parents' concerns and beliefs be different? How might they be the same?

QUESTIONS TO CONSIDER:

Maya, 17, and Sam

4. What were Maya's options aside from going through with the marriage?

5. Could Maya legally leave the care of her parents?

6. Who might Maya be able to turn to for support?

QUESTIONS TO CONSIDER:

Karine, 18 and Sheila

1. Why was Sheila having disagreements with her parents?
2. Why did their parents take Sheila to Pakistan and what happened?
3. What happened to Karine's relationship with her parents when she turned 18?

QUESTIONS TO CONSIDER:

Karine, 18 and Sheila

4. What plans did Karine develop and who helped her carry them out?

5. What legal rights does Karine have?

6. Suppose Karine was actually 16, instead of 18, and was experiencing the same pressure from her parents' to marry. Suppose Karine's parents told her that they were soon planning to take her to another country where she would meet and marry her future husband, like they had done with her sister Sheila. What do you think Karine might be experiencing as a 16 year old?

QUESTIONS TO CONSIDER:

Ash

1. What do you think are some of the reasons that Ash's parents wanted him to get married?
2. How did Ash's parents find out that he was gay and what was their reaction?
3. How did Ash's parents pressure him into marrying? Why do you think Ash eventually got married despite not wanting to?

QUESTIONS TO CONSIDER:

Ash

4. Why did he tell his wife that he was gay and how did she react?

5. What kind of support did Ash get after he and his wife divorced? How do you think this helped?

6. What lessons did Ash learn from his experience that he could share with Karine and other young people?

Leaving a Forced Marriage

An individual who has been forced to marry, like all other married individuals, has the option of obtaining a divorce. Divorce is covered by the federal *Divorce Act*. Under the *Divorce Act*, the only requirement to obtaining a divorce is to show that your marriage has broken down. To show that your marriage has broken down, one of the following criteria must apply:

1. You and your spouse have been living apart for a year.
2. Your spouse has treated you with physical or mental cruelty.
3. Your spouse has committed adultery.

An individual who has entered a forced marriage may be able to apply to the court to get that marriage **annulled**. When a marriage is legally annulled, it is treated as if the marriage never took place at all because under the law, it was invalid to begin with. This is somewhat different from a divorce, because a divorce ends the marriage while also serving as a record that the parties were at one time married. An annulment creates a “legal fiction”, that states there was no marriage in the first place, except for certain purposes such as the legitimacy of any children, and eligibility for some remedies such as support and division of marital property.

A court might agree to annul the marriage if the individual

can show that he or she married under duress, because then they did not freely consent to the marriage

It is important to note, however, that an annulment is much harder to obtain than a divorce. The outcome is not as certain, as annulment involves a high standard of proof to show that the marriage was “under duress.” The court will refuse to grant an annulment in many cases where the parties were subject to “mere moral persuasion”, meaning that they married to avoid upsetting their family or religious community. Generally, duress means that the person had to be so overcome that they were unable to think properly and therefore lacked the mental ability to consent, which is difficult to prove if there was no fear.

S(A) (bride) v S(A) (groom)

A.S. (“A”) was 16 years of age and was living with her mother and stepfather in Ontario. “A” was pressured into marrying “S” by her mother and stepfather. “S” had recently arrived in Canada. According to “A”, her mother and stepfather told her that “S” wanted to live in Canada, and needed to marry “A” in order to do so. They also told “A” that they would receive \$2,000 if she agreed to marry “S”, and told her that “we can have all this nice stuff that we didn’t have before with all this money”. “A” repeatedly told her parents that she did not want to get married, but they continued to apply pressure. “A” was particularly afraid of this pressure because of a history of sexual abuse by her stepfather, which earlier required Children’s Aid Society to take her into its care.

“A” ended up marrying “S” in Hamilton. Because she was only 16 years old, her mother and stepfather were required to consent to her marriage. Although they married, “A” and “S” never lived together nor did they have sexual relations. Shortly after the marriage, “S” left Canada and “A” applied to the court to annul her marriage.

“A” provided evidence to the court that she was not able to withstand the pressure coming from her mother and stepfather to marry. She admitted that the pressure was not of a physically threatening nature. Nonetheless, she did not feel she had the ability or capacity to overcome the pressure they put upon her to marry “S”.

Justice Mendes da Costa decided to grant the annulment on behalf of “A”, because she married under duress. In his decision, Justice Mendes da Costa said the following:

A valid marriage is grounded upon the consent of each party. Oppression may vitiate consent and, if there is no consent, there is no valid marriage. Different people may respond to oppression in different ways, and conduct that may overmaster the mind of one person may not have this impact upon the mind of another. It matters not, therefore, whether the will of a person of reasonable fortitude would – or would not – have been overborne; the issue is, rather, the state of mind of the applicant. To constitute duress, it must be established that the applicant’s mind was so overcome by oppression that there was an absence of free choice...

...

Oppression can take various forms; it may be generated by fear, or by persuasion or pressure. Essentially, the matter is one of degree, and this raises a question of fact for the court. The determination involves a consideration of all relevant circumstances, including the age of the applicant, the maturity of the applicant, the applicant's emotional state and vulnerability, the lapse of time between the conduct alleged as duress and the marriage ceremony, whether the marriage was consummated, whether the parties resided together as man and wife and the lapse of time between the marriage ceremony and the institution of the annulment proceeding. As long as the oppression affects the mind of the applicant in the fashion stated, physical force is not required and, no more so, is the threat of such force a necessary ingredient. Nor is the source of the conduct material.

In other cases, annulments have been refused, even where “incredible pressure” had been brought to bear by family members and by the spouse for immigration sponsorship, and the couple never lived together or consummated the marriage (see, for example, *Parihar v Bhatti*; *Khan v Mansour*).

QUESTIONS TO CONSIDER:

1. How does Justice Mendes da Costa define “duress”?
2. What were the 8 criteria or circumstances that Justice Mendes da Costa mentioned are important when considering whether an individual in the marriage has experienced oppression?
3. Do you agree with the court’s decision? Why or why not?

QUESTIONS TO CONSIDER:

4. If “A” was older than 16, do you think the court’s decision would have changed? Why or why not? What about if the marriage had been consummated, or if the husband had not left right after the marriage but had stayed?

5. In her petition to the court, “A” also asked, if an annulment were not granted, that the judge issue a divorce decree. The judge stated in his judgment that he would have granted a divorce because the parties had lived apart for more than one year. However, “A” preferred an annulment. Why do you think “A” preferred an annulment instead of a divorce? What are the benefits of one over the other?

Key Terms

- Forced Marriage
- Arranged Marriage
- Consent
- Coercion
- Divorce
- Annulment
- Duress