



Polygamy Reference Ruling Emphasizes the Rights of Children

The decision of the British Columbia Supreme Court in the Polygamy Reference case makes a strong statement respecting the rights of children and the state obligation to protect them from harm. In a lengthy judgment, Chief Justice Bauman catalogues the volumes of evidence demonstrating the harms to women and children associated with the practice of polygamy around the world and in our own backyard, in Bountiful, British Columbia.

Chief Justice Bauman concluded that the case was essentially about harm and Parliament's reasoned apprehension of harm. His factual findings on the harms to children include, higher infant mortality, more emotional, behavioural and physical problems, lower educational achievement, higher risk of psychological and physical abuse, early marriage for girls, early pregnancy resulting in negative health implications, as well as significant harm caused by exposure to, and potential internalization of, harmful gender stereotypes.

The David Asper Centre for Constitutional Rights and the Canadian Coalition for the Rights of Children joint submission to the Court urged it to consider the rights of children, particularly in isolated communities such as Bountiful. In addition to giving high priority to the children's right to protection from harm, the ruling reinforces the state's positive obligations to prevent violations of the rights of children, and makes strong links between rights under the *Charter* and under the *Convention on the Rights of the Child (CRC)*. Chief Justice Bauman specifically notes Canada's positive obligations to prevent violations of the *CRC*, stating, "These positive obligations are heightened with regard to the *CRC* as children are, of course, inherently less able to advocate on their own behalf."

In the analysis of the claim that the provision breaches the *Charter*, the judgment specifically refers to the rights of women and children to be free from physical, psychological, economic, social and legal harms that are also enshrined in sections 7, 15 and 28 of the *Charter*. While ultimately finding that the provision breaches ss.2(a) and 7 of the *Charter*, the evidence of the potential harm of the practice of polygamy and the state's legitimate objective to prevent such harms justify the prohibition against polygamy except where it applies to children aged 12 to 17 years, who might also be charged. The conclusion is that the provision should be read down to exclude from prosecution those young people who may be parties to a polygamous marriage.

This ruling rightly recognizes the duty to protect the rights of children directly affected, and it is hoped that the authorities take action accordingly, particularly where the evidence has suggested sexual exploitation and trafficking of children. The ruling also advances the recognition of children's rights in Canadian jurisprudence. It appears from the ruling that the arguments and analysis of the evidence put forward by the CCRC/David Asper were given very serious consideration by the judge and were influential in shaping the final ruling.

Counsel for the David Asper Centre for Constitutional Rights and the Canadian Coalition for the Rights of Children were Brent Olthuis and Stephanie McHugh of Hunter Litigation Chambers, Vancouver, and Cheryl Milne of the Asper Centre.