

I Do, I Do, I Do...You Can't

Polygamy has jumped to the top of those issues that are considered interesting, but weird. You only have to turn to HBO's dramatic series "Big Love", to get a taste of the controversial practice of plural wives in the fundamentalist Mormon community. If you change the channel to TLC, you'll get a glimpse of the even stranger lives of the "Sister Wives".

Many of us have also followed the legal travails of Warren Jeffs, imprisoned leader of the Fundamentalist Church of the Latter Day Saints of Jesus Christ, who after two criminal trials in two States now languishes in prison for life, plus 20 years for the felony sexual assaults of two teenage girls. Notably, the jury deliberated for only 30 minutes before finding Jeffs' guilty.

At the same time as Jeff's legal woes unfolded, British Columbia's polygamous colony in Bountiful was the subject of numerous investigations that resulted in the arrest of Bountiful leaders, Winston Blackmore and James Oler in 2009. Blackmore is believed to have 25 wives and 101 children.

Do you remember that it took three or four legal opinions from several of British Columbia's top lawyers to figure out whether Blackstone and Oler could be convicted under the polygamy laws of Canada? The concern was that the law would be considered unconstitutional and Blackmore and Oler would walk. Someone finally said they could, and the show began.

After lengthy court proceedings and exhaustive analysis provided by a phalanx of lawyers—I counted 38, representing the governments of BC and Canada, and a raft of non-profit organizations, ranging from the BC Teacher's Federation to REAL Women of Canada and the Canadian Polyamory Advocacy Association, the British Columbia Supreme Court delivered hundreds of pages of Reasons setting out the Court's opinion.

What's to consider you may ask? Polygamy is illegal and has always been illegal in the western world. Why would 38 lawyers waste their time debating the pros and cons of polygamy?

The answer is found in one word: the Charter. Yes, Canada's very own Charter of Rights and Freedoms, one of Pierre Elliot Trudeau's legacies, invites all and sundry to assess and analyze our laws under the microscope of our constitutional freedoms, in this case freedom of religion, expression and association.

But first the Court examined the historical context of polygamy reviewing the phenomenon of multiple marriages around the world. Modern polygamy, we are told, found its roots in Greco-Roman society.

I'm sure you know that polygamy is practiced in Muslim communities, but did you also know that it has been practiced among North America's First Nations groups and is favoured by Wiccans as well?

These polygamous communities engage in the practice as a result of their religious convictions. Muslims rely on the Qur'an, fundamentalist Mormons on the Book of Mormon and aboriginals and Wiccans on their own spiritual beliefs.

The Court recognized the legitimacy of religious freedoms and agreed the criminalization of polygamy interferes with those freedoms, but did not accept that freedom of expression or association were breached by the criminalization of polygamy.

But a finding of a breach of religious freedom was not enough for the law to be repealed. Neither was an infringement of the personal security of a participant in a polygamous union significant enough to oust the law. The fact you can go to jail for polygamy is just too bad.

The Court upheld the law of polygamy but allowed that children between the age of 12 and 17 should not be subject to the rigours of arrest and conviction for their involvement.

The Court determined that the harm to women and children including sexual exploitation, coercion, and pedophilia justified the law against polygamy.

Meanwhile, back in TV Land, Kody Brown, patriarch, father and husband of "Sister Wives" has fled Utah and moved to Las Vegas with his family to avoid possible charges of bigamy.

You only need to watch the show to understand why polygamy is still against the law.