Bountiful case has wide ramifications for Canadian law

Muslims anxiously watch polygamy case on religious freedom

Daphne Bramham, Vancouver Sun

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As special prosecutor Richard Peck continues poring through the mountains of evidence collected in the polygamous community of Bountiful in the East Kootenays by the RCMP, he can't help but be aware of how high the stakes are.

It may be part of the reason Peck has asked for a month-long extension to July 31 to make a recommendation on laying charges -- double the time he and Attorney-General Wally Oppal initially estimated.

Far from being a discrete case about a tiny sect of about 1,500 fundamentalist Mormons, it is potentially a landmark case that could either result in the Supreme Court of Canada agreeing to unfettered religious practice or setting new limits on religious freedom.

If B.C. charges either or both of Bountiful's leaders, Winston Blackmore and Jim Oler, with the criminal offence of practising polygamy and loses, it opens the door for the free practise of plural marriage in the guise of religion.

If B.C. loses, it could even open the door to other repugnant practices, such as female genital mutilation.

Although rarely prosecuted, polygamy has been illegal in Canada since 1890. But since the Charter of Rights and Freedoms was enacted in 1982, there have been unanswered questions about whether the guarantee of freedom of religion trumps the polygamy law and whether the Charter's equality rights provisions forbid such discriminatory practices as genital mutilation and forced marriages of girls and women.

Certainly, Muslim groups are anxiously watching to see what happens. Islam's holy book allows men to take up to four wives. However, unlike Mormon fundamentalist leaders who have taken 20 or more wives and support their 30, 40 or 100-plus children by milking government programs, the Koran stipulates that men can only take multiple wives if they can support them financially.

Muslims comprise only two per cent of Canadians. But Islam is the country's fastest-growing religion, with the number of Muslims doubling to an estimated 580,000 between 1991 and 2001.

There are no estimates of how many Muslims have plural wives in Canada, but Homa Arjomand says polygamy is common.

"I live in Toronto. I have lived in British Columbia and in Alberta and, believe me, even though it is illegal, people are practising polygamy."

Arjomand, who helped organize the campaign to stop sharia law from being used in family cases in Ontario, says even some imams are taking second and third wives.
And while there have been a number of court cases where judges have upheld the right of Immigration Canada to deny entry to practising polygamists, Arjomand says when she worked in for the Canadian Embassy in Turkey, polygamists dodged the law by claiming the second and third wives as dependent children.

Not only are Arjomand and other Muslim women urging various provincial governments to prosecute polygamists, she said they are encouraging women in polygamous marriages to testify against their husbands.

But it's not easy. "The imam can go to the mosque and say that what the women are doing is anti-Islam. He can isolate them from their families and their community and isolation means death to them."

Especially since many of them have three or more children, have difficulty with English, know nothing about welfare or the law and have few friends or social supports.

It's Muslims, more than fundamentalist Mormons, who raise the stakes so high, not just in B.C. but across Canada.

The federal government could and probably would step into any court case that might escalate into a constitutional challenge to the polygamy law, especially since an overwhelming majority of Canadians have told pollsters that they find polygamy abhorrent even if some people's god tells them it's okay.

In the past, federal justice ministers have even offered to underwrite the cost of the court challenge. It's not clear whether that offer is still on the table. Conservative Justice Minister Rob Nicholson is not commenting on Bountiful, according to his staff.

Ottawa's options would be to rewrite the polygamy law or to use the notwithstanding clause to override the Charter's guarantee of freedom of religion for the enforcement of the sanctions against plural marriage.

The Canadian government faces another challenge if B.C. loses.

Polygamous Muslims -- even those who are legally married in their own countries -- have consistently had their immigration applications denied on the grounds that polygamy is illegal.

They already potentially have a case for charging the Canadian government with discrimination since several plural wives who were living illegally in Bountiful have been allowed to stay on the humanitarian and compassionate grounds that they should not be separated from their Canadian husbands and Canadian-born children.

Of course, there are legal precedents for restricting religious freedom. Twice in the past two years, the B.C. government has won judgments against Jehovah's Witnesses who refused blood transfusions for their children.

Last December the Ontario Court of Appeal also unanimously rejected Adi Abdul Humaid's contention that Islamic culture justified the so-called "honour killing" of his wife, who was having an affair.

Several studies commissioned by the federal government have concluded that the anti-polygamy law is constitutional. The most recent, released last September, concluded that polygamy "constitutes an unjustifiable violation of the rights of women and children."
Its author -- Rebecca Cook, the co-director of international reproductive and sexual health law program at the University of Toronto -- noted that even though religious, cultural and family life protections exist in various international treaties, they do not extend to practices that "violate the rights and freedoms of others."

Even though on several occasions Blackmore has admitted to having "married" several very young girls, there is a complicating issue in prosecuting him and Bountiful's other polygamists: Are there any women from that closed community willing to stand up to their religious leaders in court and tell their stories?

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