

Canadian Council of Muslim Women Position Statement on  
POLYGAMY IN THE QURAN & in Canada.

Jan 2012.

**CCMW Position:**

As believing Canadian Muslim women we base our positions on both the Quran and the laws of Canada. We believe in the interpretation of Islam which emphasizes universal rights of all humans, including women.

CCMW believes in the universal rights of all, including equality. Equality means full rights as a citizen in matters of the state, as well as equality within the family.

In the instance of polygamy, we believe it is inherently harmful to women and children, because the family structure is based on the values of tribal patriarchy.

We support the decision of Justice Bauman, of the B.C. Supreme Court, to uphold the ban of polygamy.

Even if there are individuals who want such a family structure, we believe there are reasonable limits to freedoms, including religious freedom, as stated in the Charter.

**Quranic Position:**

The issue of polygamy is of concern beyond Canada, as we know that hundreds of women's organizations in Muslim majority countries are fighting against the practice.

However, in some present tribal patriarchal societies, where women do not have many rights and their lives are circumscribed, marriage is the only route for safety, security, status and prestige. Marriage is a contractual agreement not merely between couples, but includes families and tribes. Generally, there are no high expectations of close emotional ties within the marriage, and so therefore it is understandable that for women polygamy is a more acceptable alternative to being unmarried, a burden on the family and being more vulnerable.

This is not the situation in Canada and many other countries.

Besides the Mormons, there is also concern regarding some Muslims who are practicing polygamy in Canada, and therefore it is essential to clarify polygamy within Islam.

Over the centuries Muslim scholars and men have accepted polygamy, but the Quranic permission and the context are not clearly understood, and too many men see the practice as their God given right.

In the Quran, polygamy is mentioned in Chapter 4 – aptly named An Nisa/Women.

*[The three verses which mention the practice and provide the context are: 4:3, 4:127 and 4:129].*

Much of this chapter was revealed after the battle of Uhud, in the 4<sup>th</sup> year of the Hijrah, circa 627 C.E. The Hijrah was the migration of the fledging Muslim community from Mecca to Medina, and marks the start of the Muslim calendar.

This is the context which is crucial to any discussion of polygamy, as permission was granted under these specific conditions.

Verse 4:3 is about compassion towards women and their children, and is not about men or their sexuality, or their need for multiple sexual partners. It is an instruction to a tribal patriarchal society that these women and their children needed “protection and maintenance” and if the only way available was through marriage, then that could be done.

Because some men may have been misusing the property of orphans, God suggests a solution - “If you fear that you cannot do justice to orphans, marry such women as seem good to you, two, or three or four, but if you fear that you will not do justice then marry only one...”

If these verses are read anew, without the historical justifications, the clear message is that God fears unjust behavior on the part of men towards widows and orphans, therefore permits polygamy. But God knows that equal, fair treatment is unlikely for multiple wives, and therefore instructs men to only marry one so that “you will not deviate from the right course.”

In addition, the same point is made in Verse 129: “And it will not be within your power to treat your wives with equal fairness, however much you may desire it...”

Some men use the example of the Prophet’s multiple wives as justification for their own polygamy.

But not all the Prophet’s practices can be interpreted as universal for all men, because he was not like other men. He had one wife for most of his life, and it was only on the death of Khadija that he married other women. Also, many of his marriages were politically motivated, as he wanted to cement his relationships with his friends and with other tribes.

The Quran states that his wives are not like other women, and so many of the rulings regarding them do not apply to all Muslim women.

A powerful hadeeth, [saying of the Prophet] is about the reaction of the Prophet on hearing that his much loved cousin and son in law, Ali - married to his daughter Fatima - was considering taking a second wife. The Prophet was so angered that Ali would consider a rival to his daughter that he announced in public that if Ali wanted a second wife, he would have to divorce Fatima before he married someone else.

Some justify polygamy as a right for a man, and then add that the wife can include divorce as her option in a marriage contract, if the husband wants a second wife.

This is the worst kind of manipulation and cruelty. First, the false assumption is that it is the prerogative of the husband, second that it is easy for a wife with children to demand a divorce so that she then has to leave her marriage and her children become fatherless. How is this concern for women and their children? Consider how many wives would exercise this option.

The Quran's message is eternal, but understandably the context has changed, and there are examples of the evolutionary teachings of the Quran.

The most significant one is about slavery. Slavery was not abolished by the Quran, and slaves continued to exist for a long time within Muslim communities. It is true that most slaves were those taken in war, but slaves they still were. The Quran teaches kind behavior towards slaves, but did not eradicate slavery.

However, over time no Muslim would justify slavery.

#### **Canadian context:**

Polygamy is a criminal act under the Criminal Code [293[2] which states that anyone involved in the practice of polygamy is "guilty of indictable offence, and liable to imprisonment for a term not exceeding 5 years."

Another significant consideration is that Canada is a signatory to the international convention, CEDAW, which is against polygamy.

CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women, 1992] states,

"Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited."

Recently, in Canada, polygamy has become highly publicized due to the Mormon practice in the community of Bountiful.

To assess whether the practice can be justified as a religious right within the parameters of the Charter, the B.C government held a Reference case at the Supreme Court. The resulting report by Justice Bauman [December 2011] upholds the ban against the practice of polygamy. He concludes that the prohibition on polygamy may be seen as restricting freedom of religion, but the "salutary effects of the prohibition far outweigh the deleterious."

Therefore the ban against polygamy in Canada continues. However, there are some who argue against the criminalization of the practice.

### **Decriminalization of polygamy in Canada:**

Some of the arguments for this are

[a] the legalizing of same sex marriages means other forms of marriages should also be recognized;

[b] There is little difference between adultery and polygamy and in fact polygamy is somehow better than adultery;

[c] Marriage arrangements are choices made by individuals and therefore should be left up to them, rather than the state.

Some responses are

[a] the rationale for same sex marriage is more about human rights such as equality of individuals, as same sex marriage should be based on the equality of individuals.

One cannot use the same argument of human rights for polygamy, as that partnership is based on inequality, and research shows that children are affected adversely.

[b] To say that polygamous men refrain from adultery is wishful thinking.

The argument that legally sanctioned multiple sexual partners for men stops adultery is not correct. A study in the Middle East showed that men did have adulterous relationship even within polygamy. Comparing two bad practices and choosing one over another does not make sense

The law is not concerned with those adults who want to practice group sex, but the issue is about the legality of polygamy as a form of marriage and family.

[c] The Trudeau quote that the state has no business in the nation's bedrooms does apply to forms of legal marriage. The state, as the collective of citizens, has been given the responsibility of providing laws and policies to protect the members of families, in terms of marriage, divorce and the welfare of children and women.

### **Opposition to polygamy:**

1. Amongst the many ills of tribal patriarchy, polygamy is an aspect of male dominance, with little attention to its effect on women or children.

Tribal patriarchy does not have equality of the sexes as an underlying value.

Without equality of all citizens in a democratic, civil society, half of humanity is deprived of basic rights such as equal treatment under the law; equal opportunities and choices; equal share in property and inheritance, and equal partnership in a marriage.

Polygamy is based on an unequal relationship between a man and a woman. The woman is generally dependent on the man, making her vulnerable for her future and for her children.

The justification for tribal patriarchal practices, including polygamy, is couched in religious or cultural requirements, and as Law Professor Macfarlane of the University of Windsor, found in her Jan 2012 report on Muslim marriage and divorce in Canada and the States,

“Religious justification [no matter what the religion] can be a highly effective means of control. Challenging something framed as a religious obligation is far more difficult and risky to stand up against than a perspective grounded in personal opinion or even historical tradition.”

*UNDERSTANDING TRENDS IN AMERICA MUSLIM DIVORCE & MARRIAGE.*  
Julie Macfarlane. *On line report of the Institute for Social Policy and Understanding. Jan 2012, p20.*

This is why one must dig deeper as to why some women claim they are happy as sister wives of one man.

Perhaps some independent minded women, don't value equality, and do choose polygamy, but this is not true for the majority of women.

2. We believe that polygamy is not part of the males' religious freedom, as some Mormons and some Muslims argue. Even if this were true, all rights have limitations.

In the Canadian Supreme Court decision in the *Marcovitz v Bruker* case, 2007, the judges explained the limits to religious freedom:

“...religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land.”

*Polygamy Reference Expert Report for the B.C. Reference Case. July 2010.*  
*N. Bala, p 29.*

3. The argument about individual choice is raised often, especially when anyone advocates against laws and practices which are detrimental to women and children. The reaction is that one deprives women of choice, even if they choose what may be harmful to them.

CCMW has done a research project about how Canadian Muslim women made choices, and the results were similar to those found by Professor Macfarlane in her

study. For Muslim women their decisions are influenced by what is taught to them as their religious teachings; by the community and by their families. Women tend to place their family members welfare and wishes above their own choices and well-being.

3. Research from different parts of the world demonstrates the harm inflicted on women and children in polygamous marriages.

A Canadian study done by the B.C. Ministry of Woman's Equality 1993 - "Life in Bountiful: Lifestyle of a Polygamous Community" concludes that women's access to power is limited; there is indoctrinated conformity; lack of personal empowerment and an under-developed sense of self. Women were unable to understand or exercise choice, and there was a blurring of personal and collective identity. Girls were raised to be wives in polygamous marriages as required by God.

Law Professor Nick Bala of Queen's University, in his submission to the B.C. court, quotes a review of research from 69 cultures and the findings are that co-wife hostility, fear, and anger leads to sadness of loss for the women and their children.

In the Middle East and Africa, polygamy has negative psychological and health effects on women who end up with low levels of self-esteem. They have limited access to financial resources, and minimal influence in the selection of partners.

Interestingly, another study from the Middle East found that polygamy also impairs mental, familial and marital functioning of husbands as well. This makes sense because surely men too crave emotional closeness and perhaps even equal partnership with wives, and this is not likely in polygamy.

There is not enough research on the effect on children, but one study on Bedouin-Arab children in Jordan and UAE found children also suffer along with their mothers.

The tensions between wives, the discrimination amongst them, their lack of resources, restrictions on them all affected their children.

The recent American/Canadian research project led by Law Professor Julie Macfarlane of Windsor University" reports that 1 in 7 women spoke of marital problems related to adultery or the taking of a second wife, and 1 in 3 women reported domestic abuse. These statistics are higher than the general Canadian statistic of 1 in 7 who women report violence, and there are no stats regarding the threat of second wives or the threat of the male prerogative re divorce. Some expressed anxiety as husbands threatened divorce or second wives.

*Report: UNDERSTANDING TRENDS IN AMERICA MUSLIM DIVORCE AND MARRIAGE.  
Julie Macfarlane. On line report of the Institute for Social Policy and Understanding. Jan 2012.*

4. No matter how hard we try, we cannot get rid of the arguments of cultural relativism which can do us more harm than is intended.

As a minority group in Canada, we are firmly committed to ensuring that our religious rights are protected and respected. We do want accommodations made, but also agree these should be reasonable and fair for all concerned.

Cultural relativism upholds the principle that all cultures are equal with no one culture being the model. A good principle but which sadly sometimes gets misguided. Cultural relativists accord an inordinate amount of non-judgemental respect for the cultures of the "OTHER" and can end up excluding some women from the universal rights available to all Canadian women. It is not kindness to bend backward to accommodate practices which are detrimental to any woman, regardless of religion, culture, race or ethnicity.

The comments of Justice Abella of the Supreme Court in the *Marcovitz v Bruker* case regarding religious law governing the Jewish divorce are applicable to our discussion of polygamy:

"disparate impact on women and ...vividly illustrates the troubling paradox of multicultural vulnerability, by demonstrating how well-meaning attempts to respect differences often translate into a licence for subordination of a particular category of group members -in this instance, women."

To conclude, the Quranic quote regarding the prohibition against alcohol is true for polygamy as well:

"There is some good in it, but the evil far surpasses the good, therefore abstain."

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