

The Government of Canada Introduces Legislation to Prevent Barbaric Cultural Practices in Canada

Date: November 11, 2014

Original Newsletter(s) this article was published in: Blaneys on Immigration: November 2014

On November 5, 2014, Citizenship and Immigration Minister Chris Alexander announced that the Government of Canada had tabled its proposed *Zero Tolerance for Barbaric Cultural Practices Act* (the "Proposed Act"). The Proposed Act is intended to amend the current *Immigration and Refugee Protection Act* ("IRPA"), the *Civil Marriage Act* and the *Criminal Code* for the purpose of preventing barbaric cultural practices from taking place in Canada.

According to the Government of Canada, the Proposed Act will provide more protection and support for vulnerable immigrants, primarily women and girls, including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible if they practice polygamy in Canada;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify the existing legal requirements, at the national level, for "free and enlightened consent" and establishing a new national minimum age for marriage of sixteen (16);
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond to be used where there are grounds to fear that a person would commit a forced or early marriage offence, including the mandatory surrendering of a passport to prevent a child from being taken out of the country to facilitate a forced marriage;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriage;
- Limiting the defence of provocation so that it would not apply in alleged "honour" killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the above court-ordered peace bond.

In terms of the immigration-related amendments, the Proposed Act will attempt to address the issue of polygamy through the creation of a new polygamy-specific ground of inadmissibility. Under this new ground, foreign nationals (both temporary residents and permanent residents)

who practice polygamy in Canada could be found inadmissible on that basis alone, without the need for a criminal conviction. If such a foreign national is found to be inadmissible under this ground, they could then be subject to removal from Canada.

While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada, it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is required before a person practicing polygamy in Canada can be found inadmissible.

Once the Proposed Act is implemented, a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses will be deemed to be practicing polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

As mentioned above, the new ground of inadmissibility would apply to the temporary stream, to the permanent immigration stream, and to existing Canadian permanent residents:

- While in the permanent stream, permanent residents will be required to stop practicing polygamy and will only be permitted to immigrate with one monogamous spouse.
- In the temporary stream, visitors, students and workers who practice polygamy abroad and come to Canada with even one of their spouses, or who join one of their spouses in Canada, would be deemed to be practicing polygamy on Canadian soil and would be inadmissible under IRPA.
- Existing permanent residents who practice polygamy in Canada would also be inadmissible under IRPA. This should apply even where one of the polygamous spouses is residing outside Canada.

Although the stated objectives of the Proposed Act are admirable, some critics have alleged that the immigration-related amendments will instead ensure that vulnerable women and girls never have the opportunity to come to Canada, where they might otherwise benefit from the protection of Canadian laws. In other words, it will not necessarily eliminate barbaric cultural practices; it will only ensure that they do not take place on Canadian soil.

It remains to be seen what effect the proposed ground of inadmissibility will have on vulnerable women and girls who reside abroad. However, it should at least discourage Canadian permanent residents from continuing the practice of polygamy after their arrival in Canada.